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February 26, 2014

VIA HAND DELIVERY

Executive Director Earl Taylor
c/o Sharla Dillon
Tennessee Regulatory Authority
502 Deaderick Street, 4th Floor
Nashville, Tennessee 37243

Re: ***In re: Petition of Piedmont Natural Gas Company, Inc. for Accounting Order
Docket No. 13-00119***

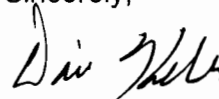
Dear Mr. Taylor:

Enclosed please find an original and five (5) copies of Piedmont Natural Gas Company, Inc.'s Motion for Summary Judgment, Brief in Support, and affidavits of Robert L. Thornton and Mandi J. King.

This material is also being filed electronically today by way of email to the Tennessee Regulatory Authority docket manager, Sharla Dillon. Please file the original and four copies of this material and stamp the additional copy as "filed." Then please return the stamped copy to me by way of our courier.

Should you have any questions concerning this matter, please do not hesitate to contact me at the email address or telephone number listed above.

Sincerely,



David Killion

cc: James H. Jeffries, IV
Joe Shirley, Consumer Advocate and Protection Division
Shiva K. Bozarth

12804434.1

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

IN RE:)	
)	
PETITION OF PIEDMONT NATURAL GAS)	
COMPANY, INC. FOR ACCOUNTING)	Docket No. 13-00119
ORDER)	
)	

**PIEDMONT NATURAL GAS COMPANY, INC.'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to the Hearing Officer's January 10, 2014 Order Establishing Procedural Schedule ("Procedural Order"), Piedmont Natural Gas Company, Inc. ("Piedmont" or the "Company") hereby moves for summary judgment as to the two preliminary issues identified in the Procedural Order in this docket. In support of this Motion, Piedmont states as follows:

1. On August 30, 2013, Piedmont filed its Petition, seeking an adjustment to the reported balance in its deferred Actual Cost Adjustment ("ACA") account in order to reflect the appropriate balance in that account consistent with the Company's general ledger balance for the costs included in that account.

2. On November 11, 2013, Utilities Division Staff ("Staff") of the Tennessee Regulatory Authority ("Authority" or "TRA") filed a Motion to Intervene, asserting that Piedmont's proposed accounting adjustments are somehow barred by previous adjustments made in TRA Docket No. 07-00174.

3. The Hearing Officer issued the Procedural Order on January 10, 2014, which provided Piedmont and Staff an opportunity to file dispositive motions and supporting briefing on the issues of: (a) whether the costs underlying the proposed adjustments in Piedmont's ACA

account are legitimate gas costs eligible for inclusion in that account; and (b) 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. As allowed by this Order, Piedmont now files the instant Motion for Summary Judgment.


4. Due to a variety of factors discussed, in detail, in Piedmont's supporting Brief, Piedmont has only recently determined that its ACA account balance is over-stated by \$3,664,354.59. In this docket, Piedmont seeks authorization from the Authority to correct that balance. Staff, however, has opposed Piedmont's Petition.

5. As explained in detail in Piedmont's accompanying Brief and as further supported by the Affidavits of Mandi J. King and Robert L. Thornton filed contemporaneously herewith, Piedmont's proposed adjustments are legitimate gas costs eligible for inclusion in its ACA account and necessary to correct Piedmont's reported account balance. The requested adjustments have never been addressed or authorized in a prior proceeding and are in no way barred by adjustments previously made in Docket No. 07-00174 or any in other proceeding.

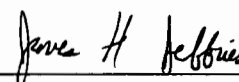
6. Based on the foregoing, Piedmont respectfully submits that the Authority should grant its Motion for Summary Judgment as to the preliminary issues identified in the Procedural Order, finding that: (a) the costs underlying the proposed adjustments in Piedmont's ACA account are legitimate gas costs 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.

Respectfully submitted, this the 26th day of February, 2014.

Piedmont Natural Gas Company, Inc.

 by COX *u/p* permission

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion for Summary Judgment was served upon the parties in this action by electronic mail and by depositing a copy of the same in the United States Mail, First Class Postage Prepaid, addressed as follows:

Joe Shirley
Senior Counsel
Office of the Attorney General
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, Tennessee 37202
joe.shirley@ag.tn.gov

Shiva K. Bozarth
Legal Counsel
Tennessee Regulatory Authority
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Nashville, Tennessee 37243
Shiva.k.bozarth@tn.gov

This the 26th day of February, 2014.



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

IN RE:)	
)	
PETITION OF PIEDMONT NATURAL GAS)	
COMPANY, INC. FOR ACCOUNTING)	Docket No. 13-00119
ORDER)	
)	

**BRIEF IN SUPPORT OF PIEDMONT NATURAL GAS
COMPANY, INC.'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to the Hearing Officer's January 10, 2014 Order Establishing Procedural Schedule ("Procedural Order"), Piedmont Natural Gas Company, Inc. ("Piedmont" or the "Company") has, concurrent herewith, filed with the Tennessee Regulatory Authority ("Authority" or "TRA") a Motion for Summary Judgment as to both of the preliminary issues identified in the Procedural Order in this docket. These issues are:

- (1) Whether the costs underlying the proposed adjustments in Piedmont's Actual Cost Adjustment ("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 ("Joint Audit Report").

Piedmont submits that the answers to these preliminary issues are that Piedmont's proposed adjustments to its ACA account do represent legitimate gas costs eligible for inclusion in that account and that those adjustments are not barred pursuant to the Joint Audit Report (or by any other applicable statute, rule, regulation or ruling of the Authority). In support of these conclusions, Piedmont respectfully submits the following Brief for consideration by the Authority.

EXECUTIVE SUMMARY

Piedmont's current reported balance for its deferred ACA account is incorrect and inconsistent with Piedmont's general ledger balance for the costs included in that account. The discrepancy in Piedmont's ACA account dates back several years to a period when Piedmont was working to upgrade and update its gas cost accounting systems and practices. This upgrade was necessary to accommodate the significantly enhanced complexity of Piedmont's Tennessee gas cost transactions that resulted from the implementation of asset management arrangements ("AMAs").¹ The existence and exact nature of the adjustments needed to correct Piedmont's ACA account were effectively "hidden" from Piedmont and TRA Staff for a number of years due to a disparity in the way Piedmont was required to account for its gas costs on its general ledger (accrual) and how it was required to account for those same costs in its annual ACA audit process before the Authority (cash). Neither Piedmont nor TRA Staff recognized the existence of this disparity in account balances until October 2011, and Piedmont was not able to determine the precise nature of the needed adjustments until October 2012, after which Piedmont made its ACA filing in this docket.²

The TRA has established a well-defined set of rules that require utilities to: (a) accurately record gas costs; (b) permit TRA Staff to audit those costs and approve the utility's accounting

¹ AMAs allow holders of interstate storage and capacity rights as well as supply commitments to "optimize" the physical and economic efficiency of those rights by securing their use for utility operations when needed and otherwise making those assets available for third-party use when not needed to meet utility needs. These arrangements have reduced Tennessee consumer gas costs by millions of dollars over the last decade but the accounting for such arrangements is substantially more complex than that required for gas costs that are not subject to AMAs.

² There was a roughly 6-8 month delay in filing this petition based upon an initial plan to combine the Company's request in this docket with a proposal to refund certain excess accumulated deferred income taxes ("ADIT") held on Piedmont's books to its customers. Piedmont's tax accountants were not able to complete the steps necessary to file the excess ADIT refund proposal until recently. Piedmont has now made that proposal in Docket No.14-00017, seeking TRA approval to refund approximately \$4.7 million to customers and has waived any interest on its ACA adjustments attributable to the ADIT related delay.

thereof; and (c) file for prior period adjustments to ACA account balances when necessary to maintain an accurate balance in the ACA account. This process is aimed at achieving one purpose: to ensure proper accounting of gas costs such that utilities do not over-collect or under-collect their gas costs from customers. Piedmont's proposed adjustments in this docket seek to achieve that same purpose and are completely consistent with both the intent and express rules of the Authority. The adjustments Piedmont seeks to make to its ACA account in this proceeding represent actual gas costs Piedmont has previously paid to suppliers and upstream capacity providers in order to make natural gas service available to its customers. Acceptance of Piedmont's proposed adjustments will not result in a windfall to Piedmont but will simply make Piedmont whole for these costs.

Party Staff in this docket opposes Piedmont's proposed adjustments to its ACA account. In its filings to date, Staff has not articulated a precise legal theory upon which its position is based, however, it is clear that Staff's objections are founded in the passage of time since the audit period to which the adjustments relate and the fact that the Staff audit for that period has been completed and accepted by the Authority. With respect to the first point, Piedmont would be the first to acknowledge that the timing of these proposed adjustments is not ideal and that it would much prefer that these adjustments had been found earlier. Nonetheless, Piedmont would note that the account discrepancies driving this petition were not revealed until October 2011, and after that discovery, it took another nine months of work by one of Piedmont's gas cost managers to unravel the discrete bases for the ledger/ACA imbalance and to calculate appropriate adjustments to the ACA account. Once Piedmont discovered these adjustments, it promptly advised Staff. In the meantime, no harm to customers has occurred as a result of the intervening passage of time -- the primary effect of that passage of time has been to reduce

customer bills below what they would (and should) have been had this imbalance been reconciled in 2007. Further, the passage of time in this case was not the result of wrongful or dilatory conduct by Piedmont but simply an extraordinary set of circumstances which, when combined, precluded Piedmont and Staff from discovering these discrepancies in a more timely manner.

Piedmont does not believe that the Authority's acceptance of the Joint Audit Report blocks the relief requested by Piedmont. Authority Rule 1220-4-7-.03 specifically anticipates the need for prior period adjustments to closed accounting periods from time to time, which is exactly what Piedmont is proposing here. By definition, such adjustments must be based upon information coming to light after the close of the relevant period, otherwise they would not constitute "prior period" adjustments. Staff apparently contends that no prior period adjustments are permitted in circumstances where an audit has been completed and approved. This interpretation of the Authority's Rules appears to be contrary to its plain intent and is also contrary to prior practice where the Staff and the Authority have approved such adjustments, including a prior period adjustment to the audit period covered in Docket No. 07-00174.³

As is explained in detail below and in the Affidavits of Mandi J. King and Robert L. Thornton filed contemporaneously herewith, Piedmont's proposed adjustments are legitimate gas costs eligible for inclusion in the ACA account and are necessary to correct Piedmont's current ACA account balance. The requested adjustments have never been authorized in a prior proceeding and are in no way barred by adjustments previously made to Piedmont's ACA account in Docket No. 07-00174, or in any other proceeding. On these facts, and the absence of

³ The fact that Staff has previously accepted prior period adjustments for the period covered by the Docket No. 07-00174 audit report substantially undermines Staff's contention that this audit report bars Piedmont's current proposed adjustments because it is "final."

any demonstrable harm to customers, Piedmont respectfully submits that the TRA should grant Piedmont's Motion for Summary Judgment on the two preliminary issues set forth in the Procedural Order.

APPLICABLE LEGAL STANDARD

Pursuant to Tennessee Rule of Civil Procedure 56.04, summary judgment is proper when the movant has established that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." T.R.C.P. 56.04. "The standard is not the absence of all factual disputes; rather, it is the absence of disputed material facts under the substantive law applicable to the action."⁴ Here, the undisputed facts make clear that Piedmont is entitled to summary judgment, as a matter of law, on both of the preliminary issues identified in the Procedural Order.

STATEMENT OF THE FACTS

I. Piedmont and the Operation of its ACA Account.

Piedmont is a natural gas local distribution company and a public utility under the laws of the State of Tennessee and its utility operations within the State are subject to the jurisdiction of the TRA.⁵ Piedmont's upstream costs of providing service to its Tennessee customers consist primarily of the commodity cost of gas purchased on the wholesale market and the interstate pipeline and storage costs incurred to deliver gas supplies to Piedmont's "citygate" delivery points on various interstate natural gas pipelines located in and around Nashville and Davidson

⁴ *In re Petition Regarding Notice of Election of Interconnection Agreement*, Order Granting Nextel South Corp.'s and Nextel Partner's Motions for Summary Judgment, Docket Nos. 07-00161 and 07-00162, 2008 Tenn. PUC LEXIS 118 (July 17, 2008).

⁵ *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, Statement of Stipulated Facts (Feb. 21, 2013) at ¶¶ 1-2 (hereinafter referred to as "Stipulated Facts").

County, Tennessee.⁶ Piedmont's upstream gas costs are recovered, on a pass through basis, utilizing estimated commodity and demand rates embedded in its overall service rates.⁷

The accounting and true-up of upstream commodity and demand costs actually incurred by Piedmont and its recovery of such costs through the estimated gas cost components included in its rates is accomplished through Piedmont's Purchased Gas Adjustment ("PGA") Rider and managed through its ACA account mechanism, both of which are administered pursuant to the Authority's Purchased Gas Adjustment Rules (TRA Rule 1220-04-07) and Piedmont's Service Schedule No. 311.⁸ Consistent with the provisions of Authority Rule 1220-04-07-.02, it is the intent of the PGA mechanism and the related ACA account that Piedmont recover its total gas costs in a timely manner.⁹ In the normal course of Piedmont's operations, and in order to effectuate the intent of Authority Rule 1220-04-07, Piedmont records its upstream gas costs and related cost recoveries from customers in both its general ledger accounts and its ACA account on a monthly basis.¹⁰ Consistent with Generally Accepted Accounting Principles ("GAAP"), Piedmont's general ledger accounts are maintained on an accrual accounting basis.¹¹ Consistent with the directives of the Authority, Piedmont maintains its ACA account on a cash basis.¹² This difference in accounting methodology effectively means that the balances in these two accounts

⁶ *Id.* at ¶ 5. Piedmont's on-system costs of providing the sale and redelivery of natural gas to its customers are recovered through rates established by the TRA in general rate case proceedings pursuant to T.C.A. § 65-5-103. *Id.* at ¶¶ 3-4.

⁷ *Id.* at ¶ 6.

⁸ *Id.* at ¶ 7 and Exh. A; Affidavit of Robert L. Thornton (filed contemporaneously herewith, hereafter referred to as "Thornton Aff.") at ¶ 5.

⁹ Thornton Aff. at ¶ 6.

¹⁰ Stipulated Facts at ¶ 9; Thornton Aff. at ¶ 6.

¹¹ Stipulated Facts at ¶ 10.

¹² *Id.* at ¶ 11; Thornton Aff. at ¶ 7..

never match.¹³ Piedmont would prefer that both accounts utilize accrual accounting but the Authority required Piedmont to adopt cash accounting for the ACA account at or about the same time the discrepancies underlying Piedmont's proposed ACA account adjustments arose.¹⁴

Piedmont's ACA account is normally audited by TRA Staff on an annual basis.¹⁵ In conducting the audit, TRA Staff relies predominantly on documentation and data provided by Piedmont but is not precluded from independently reviewing publicly available third-party corroborating information regarding Piedmont's gas cost transactions when it deems necessary.¹⁶ The first step in the ACA audit process is the submission of information by Piedmont to TRA Staff regarding Piedmont's PGA and ACA account activity for the relevant period.¹⁷ The second step is Staff's technical audit of Piedmont's ACA account and the issuance of its preliminary audit findings to Piedmont for comment.¹⁸ The third step in the audit process is Piedmont's submission of its response(s) to Staff's preliminary audit findings.¹⁹ The final step in the audit process is the publication and filing of Staff's final audit report to the Authority.²⁰ Following submission of Staff's audit report, the Authority typically reviews and approves the report unless

¹³ *In re: Petition of Piedmont Natural Gas Company, Inc. for Accounting Order*, Docket No. 13-00119, Response to TRA Staff Discovery Request No. 1 (hereinafter "Piedmont Discovery Responses") at ¶ 4 (Feb. 5, 2014).

¹⁴ See Stipulated Facts, Exh. F at p. 2.

¹⁵ Stipulated Facts at ¶ 12. Prior to Docket No. 10-00225, Piedmont's ACA account annual audit period was from January 1 through December 31 of each year. In Docket No. 10-00225, Staff's audit of Piedmont's ACA account was for the extended 18 month period January 1, 2009 through June 30, 2010. The audit was extended in order to synchronize Piedmont's ACA accounting audit period with its Performance Incentive Plan accounting audit period. Since Docket No. 10-00225, Piedmont's ACA annual audit accounting period has been from July 1 to June 30 of each year. *Id.* at ¶¶ 13-15.

¹⁶ *Id.* at ¶ 16.

¹⁷ *Id.* at ¶ 17.

¹⁸ *Id.* at ¶ 18.

¹⁹ *Id.* at ¶ 19.

²⁰ *Id.* at ¶ 20.

there are substantive disagreements between Staff and Piedmont, in which case the matter may be litigated before the Authority.²¹ Adjustments to Piedmont's ACA account, either through the audit process or as a result of correcting entries by Piedmont, while not desirable, are not unusual.²²

II. Adjustments to Piedmont's ACA Account.

Authority Rule 1220-04-07-.03 both anticipates and allows for the possibility of prior period adjustments to Piedmont's ACA account balance.²³ Below are just a few examples, where Staff and the Authority have approved previous prior period adjustments whereby the current balance in the account is adjusted on the basis of corrected information about Piedmont's prior gas costs or gas cost collections:

- In Docket No. 07-00174, Piedmont made a Commodity miscellaneous adjustment #9 in the amount of \$514,593.86, which was related to meter reads, fuels and third party gas, on gas withdrawn from the Firm Storage Market Area ("FSMA") facility for part of the prior ACA accounting period which was recorded in the current period.²⁴ TRA Staff and the Authority accepted the adjustment.²⁵
- In Docket No. 08-00227, Piedmont made a demand adjustment to a Midwestern pipeline invoice in the amount of \$41,199, which related to the December 2006 invoice from Midwestern that was inadvertently omitted from the 2006 period filing (Docket No. 07-00174).²⁶ Piedmont included this amount on the January 2007 line for Midwestern demand gas costs and the adjustment was accepted by TRA Staff and the Authority.²⁷

²¹ *Id.* at ¶ 21.

²² *Id.* at ¶ 22.

²³ *Id.* at ¶ 23 and Exh. C.

²⁴ Piedmont Discovery Responses at ¶ 2.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

- In Docket No. 09-00093, Piedmont filed separate schedules for Storage accounts FSMA, FSPA, FSSNASH and LNG to report storage inventory activities.²⁸ In October 2008, Piedmont made withdrawal adjustments to each of the inventory schedules in order to true up the storage balances for the 2006 period.²⁹ In Finding #2, Staff indicated that since these were prior period adjustments, the adjustments should have been made at the beginning of the audit period (January 2008).³⁰ Staff moved these adjustments to January 2008 on the inventory schedules and recalculated the cost of inventory activities for all 12 months of the audit period.³¹ The total of these adjustments was (\$501,256.79), excluding interest. These adjustments likewise were accepted by the TRA Staff and the Authority.³²

The second adjustment discussed above (Docket No. 08-00227) is particularly noteworthy in this docket because it represents an adjustment to the same period Staff now argues is closed to adjustments as a result of the Joint Audit Report.

When necessary, Piedmont has sought prior period adjustments in Tennessee and in other states in order to obtain and/or maintain a correct balance in its gas cost deferred accounts.³³ Piedmont seeks these adjustments in order to maintain the accuracy of its gas cost account balances irrespective of whether the adjustments favor Piedmont or its customers.³⁴ By way of illustration of this fact, in Docket No. 2012-4-G before the Public Service Commission of South Carolina (“PSCSC”), Piedmont recently proposed an adjustment to its gas cost account during the 2012 review period that related to an incorrect entry from the gas flow period of December, 2007.³⁵ This proposed adjustment was to the benefit of Piedmont’s customers in the amount of

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Piedmont Discovery Responses at ¶ 2; Thornton Aff. at ¶ 8.

³⁴ *Id.*

³⁵ *Id.*

\$2,806,898, including interest of \$502,714, and was accepted by the PSCSC.³⁶ From Piedmont's perspective, the adjustments it seeks in this docket are similar in nature – i.e. made to correct an inaccurate balance in its gas cost ACA account – with the only difference being who receives the benefit of the adjustment.³⁷

III. Context of Piedmont's Proposed Adjustments in this Docket.

Beginning in approximately 2006, Piedmont began experiencing substantially increased complexity in the accounting for its Tennessee gas costs.³⁸ This increased complexity arose primarily from the implementation of AMAs where Piedmont would contract with a third-party asset manager to “optimize” its upstream supply and capacity assets.³⁹ These asset managers would commit to the utilization of Piedmont's capacity and supply assets to serve Piedmont's needs but would otherwise be able to use them to serve third-party's needs.⁴⁰ Under these arrangements, the asset managers would pay Piedmont for the right to use Piedmont's assets when not needed to serve Piedmont's customers and/or would share the profits they made in utilizing the assets to serve third-parties.⁴¹ These payments/profits were shared between Piedmont and its customers with the majority of these payments being credited to Piedmont's

³⁶ *Id.*

³⁷ Piedmont would also point to its recent filing in TRA Docket No. 14-00017, in which it proposes to refund approximately \$4.7 million to its customers in excess Accumulated Deferred Income Taxes, as evidence that its actions in both that docket and in this docket are driven by the desire to maintain accurate accounts rather than purely seeking economic benefit or cherry-picking adjustments to improve its bottom line. Piedmont is not aware of any requirement of law to make this refund but believes that it is the appropriate course of action as a matter of proper corporate and utility accounting.

³⁸ Affidavit of Mandi J. King (filed contemporaneously herewith, hereafter referred to as “King Aff.”) at ¶ 5.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

ACA account.⁴² These arrangements were highly beneficial to Piedmont's customers but substantially increased the complexity of Piedmont's Gas Cost accounting.⁴³

In the face of these changes in how Piedmont's upstream supply and capacity assets were being utilized, Piedmont determined that its gas cost accounting and staffing procedures required supplementation in order to handle the growing accounting complexity associated with the thousands of annual gas cost transactions reflected in its ACA account, many of which were related to the implementation of AMAs.⁴⁴ Piedmont then proceeded to implement a variety of changes to its gas cost accounting systems, including augmentation/restructuring of its accounting staff, the establishment of a Gas Costing System as a system of record, the establishment of the Middle Office function, the development of a standard cost of gas file, invoice processing and payment controls, reconciliation of data to 3rd party supporting documentation when appropriate, and other processes.⁴⁵ To address these concerns, Piedmont hired additional gas cost accounting personnel, including a new Director of Gas Cost Accounting, Robert L. Thornton, to take over Piedmont's gas cost accounting function on a going forward basis.⁴⁶

Currently, the improved processes and procedures implemented by Piedmont will identify any adjustments that are necessary to the ACA account and/or general ledger on a monthly basis.⁴⁷ Previously, the processes and procedures that Piedmont had in place were not

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at ¶ 6.

⁴⁵ Piedmont Discovery Responses at ¶ 9.

⁴⁶ King Aff. at ¶ 6.

⁴⁷ Piedmont Discovery Responses at ¶ 9; King Aff. at ¶ 7.

able to “true-up” balances in its general ledger and ACA account.⁴⁸ This was due to the different accounting methodologies used for the general ledger and the ACA filing.⁴⁹

Since the new processes, procedures and controls have been implemented, audit findings have been insignificant.⁵⁰ For example, in Docket No. 11-00168 for the period July 1, 2010 to June 30, 2011, there were no audit findings.⁵¹ On September 28, 2012, Piedmont submitted its most recent annual deferred ACA account filing for the period July 1, 2011 through June 30, 2012 in Docket No. 12-00114.⁵² Staff made just one audit finding of (\$529.73), including interest.⁵³ To put this adjustment in context, Piedmont had thousands of transactions and \$66,503,466.23 in gas costs flow through its ACA account during the 2012 audit period.⁵⁴ On March 26, 2013, the Authority issued its Order Adopting ACA Audit Report of Tennessee Regulatory Authority’s Utilities Division whereby it approved the Staff’s sole audit finding.⁵⁵ The Authority concluded that “the Company appears to be correctly implementing its purchased gas adjustment as calculated in the ACA account in all material respects” and voted unanimously to approve Staff’s audit report.⁵⁶

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *In re Piedmont Natural Gas Company, Inc. Actual Cost Adjustment Account Filing for Period July 1, 2011 – June 30, 2012*, Docket No. 12-00114, Piedmont Natural Gas Company, Inc.’s Actual Cost Adjustment Account Filing for the Period July 1, 2011 – June 30, 2012 (Sept. 28, 2012).

⁵³ *Id.* The Company and TRA Staff have agreed to withhold the filing for the period of July 1, 2012 to June 30, 2013 until resolution of the issues in this docket.

⁵⁴ King Aff. at ¶ 7.

⁵⁵ *In re Piedmont Natural Gas Company, Inc. Actual Cost Adjustment Account Filing for Period July 1, 2011 – June 30, 2012*, Docket No. 12-00114, Order Adopting ACA Audit Report of TRA’s Utilities Division (Sept. 28, 2012).

⁵⁶ Piedmont’s approved ACA account ending balance as of June 30, 2012 was an over-collection of \$8,639,411.62. *Id.* at p. 2.

IV. Piedmont and TRA Audit Staff Believed They Reached a Correct ACA Account Closing Balance in Docket No. 07-00174 But Both Were Mistaken.

Docket No. 07-00174 was Piedmont's ACA audit docket for the 12 months ending December 31, 2006.⁵⁷ At the time of that audit, Piedmont was in the initial stages of working through the accounting complexities it discovered in 2006.⁵⁸ Piedmont's filing reported a December 31, 2006 ACA account balance of \$7,682,964.25 in under-recovered gas costs. Staff's Compliance Report in that docket recommended proposed adjustments of (\$4,730,021.97) to Piedmont's ACA account.⁵⁹

In the Compliance Report, Staff reprimanded Piedmont for reporting accrued estimated gas costs, cash outs and gas cost recoveries followed by reversals and bookings in subsequent months, as Staff had previously instructed Piedmont only to report actual gas costs.⁶⁰ In Docket No. 07-00174, Piedmont initially agreed with some of Staff's proposed adjustments and disagreed with others as reflected in the Compliance Report.⁶¹ After extensive discussions with Staff, Piedmont and Staff ultimately agreed to certain adjustments to Piedmont's ACA account and an ending balance in that account at December 31, 2006.⁶² Staff and Piedmont submitted

⁵⁷ Stipulated Facts at ¶ 24.

⁵⁸ See King Aff. at ¶ 5.

⁵⁹ Stipulated Facts at ¶ 25 and Exh. D.

⁶⁰ *Id.* at Exh. D, Findings #1, 12, and 18, pages 8, 26, and 34. Staff acknowledged the inconsistency between Piedmont's general ledger and ACA account in its Audit Report and stated that it was unconcerned with the reconciliation of the general ledger to the audited ACA balance. See *id.* at pg. 38, n. 13 ("The Company is free to book transactions to its General Ledger as it deems appropriate according to the Uniform System of Accounts (USOA). Staff is not responsible for the Company's general ledger and is therefore unconcerned with reconciliation of the general ledger to the audited ACA balance. Staff's charge relating to ACA audits is to determine if the Company's ACA filing is inaccurate. ACA filings are typically received by the Authority several months subsequent to the end of the current ACA period and must reflect actual monthly transactions in the period in which they occur.").

⁶¹ Stipulated Facts at ¶ 26.

⁶² *Id.* at ¶ 27 and Exh. E.

these agreed adjustments to the Authority in the Joint Audit Report on June 10, 2008.⁶³ The Authority approved the Joint Audit Report in its Order Adopting ACA Audit Report of Tennessee Regulatory Authority's Utilities Division issued on August 7, 2008.⁶⁴

V. Piedmont's Proposed Adjustments.

At the time of the resolution of the Docket No. 07-00174 audit, Piedmont believed that it had resolved all discrepancies between its general ledger and its ACA account and that the agreed ending balance in the ACA account was that agreed to with Staff and approved by the Authority.⁶⁵ Piedmont later learned that this was not the case.⁶⁶ Due to the different accounting methodologies used for Piedmont's general ledger and ACA account, and prior to the completion of enhancements to its gas cost accounting system, Piedmont had difficulty balancing the two sets of accounts.⁶⁷ As a result, Piedmont was accustomed to seeing differences between its general ledger balance and ACA account balance.⁶⁸ This situation was exacerbated by the ACA audit processes utilized for the period 2006 through 2008 in which there were a number of adjustments proposed by Staff, and at least some initial disagreement about those adjustments.⁶⁹

After completing the audit processes for 2006-2008 and an extended period filing for 2009-2010 (which was approved on July 12, 2011), Piedmont became concerned that the ACA balance and the general ledger did not agree with respect to prior transactions.⁷⁰ In order to ferret

⁶³ *Id.*

⁶⁴ *Id.* at ¶ 28 and Exh. F.

⁶⁵ King Aff. at ¶ 8.

⁶⁶ *Id.*

⁶⁷ Piedmont Discovery Responses at ¶ 5.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

out the basis for this imbalance, Piedmont conducted a nine-month in-depth investigation of its prior gas cost accounting transactions, beginning in January 2012.⁷¹ As a result of this investigation, Piedmont ultimately determined that the year 2006 was the primary source of the variance and that the over-collection balance in its ACA account, as approved by the Authority in its March 26, 2013 Order, is over-stated by \$3,664,354.59.⁷² Neither Piedmont nor Staff identified these discrepancies in the Docket No. 07-00174 audit process or in the subsequent ACA account audits.⁷³

Based on these conclusions, Piedmont filed its Petition in this docket, requesting authorization from the Authority to correct the balance in its ACA account in order to accurately reflect the cumulative impact of prior Gas Cost collections and payments by Piedmont. Specifically, Piedmont identified the following adjustments:

1. Demand Payment to Midwestern Gas Pipeline – Piedmont’s 2006 ACA filing did not include the first demand payment to Midwestern Gas Pipeline in November 2006.
2. Removal of Estimated Information – Piedmont inappropriately included in the 2006 ACA filing the December 2005 estimate to actual variance. The 2005 ACA filing had been approved on an actual cost basis; therefore this adjustment was not necessary.
3. Inclusion of Incoming Wire – Piedmont received a wire from Tennessee Gas Pipeline (“TGP”) for credit invoices and other payment issues. The ACA schedule was credited with this wire in error as the credits had already been recorded to the ACA schedule in prior months.
4. Payment Issues with TGP – Some of Piedmont’s TGP assets were released to a third party, resulting in some confusion as to who would be the billable party for the released assets. With the issuance of the credit from TGP listed in item 3, all payments issues were resolved. This adjustment properly records the amounts invoiced by TGP to the ACA.

⁷¹ *Id.*; King Aff. at ¶ 9.

⁷² Piedmont Discovery Responses at ¶ 5. This amount includes \$2,708,394.04 in adjustments and \$955,960.55 in interest.

⁷³ King Aff. at ¶ 15.

5. Failure to Book True-Up Adjustment – Piedmont did not book an adjustment associated with an asset manager true-up because Piedmont mistakenly thought it was processed in 2005.

These costs, which are further described below and in Piedmont’s “White Paper,” are legitimate gas costs of the type that would have been included in the ACA account had they been properly identified and understood in Docket No. 07-00174.⁷⁴

DISCUSSION

I. The Costs Underlying the Proposed Adjustments in Piedmont’s ACA Account are Legitimate Gas Costs.

Each of the adjustments proposed in this docket represent legitimate gas costs as that term is defined in the Authority’s PGA Rules and Staff does not dispute this fact.⁷⁵ The Authority’s Rule 1220-04-07-.01(1) defines gas costs very broadly to mean:

[T]he total delivered cost of gas paid or to be paid to Suppliers, including, but not limited to, all commodity/gas charges, demand charges, peaking charges, surcharges, emergency gas purchases, over-run charges, capacity charges, standby charges, gas inventory charges, minimum bill charges, minimum take charges, take-or-pay charges and take-and-pay charges, storage charges, service fees and transportation charges and any other similar charges which are paid by the Company to its gas suppliers in connection with the purchase, storage or transportation of gas for the Company’s system supply.

As is explained below, the costs underlying each of Piedmont’s proposed adjustments in this docket fall within this definition.

A. Adjustment #1: Demand Payment to Midwestern Gas Pipeline.

Adjustment #1 in the amount of \$41,200 occurred because Piedmont did not include the first demand payment for Midwestern Gas Pipeline from November 2006 in the ACA audit

⁷⁴ Stipulated Facts at Exh. G.

⁷⁵ *Id.* at ¶ 30.

materials provided to Staff for the 2006 audit period.⁷⁶ Inasmuch as this was a new payment for a service Piedmont had not previously received, it appears that it was simply overlooked in the pre-audit accounting process.⁷⁷ To put this oversight in context, it is significant to note that Piedmont reported thousands of transactions and more than \$188,574,614.40 in gas costs in that audit.⁷⁸ The total adjustment is \$54,043.26, which includes interest in the amount of \$12,843.26.⁷⁹

Demand charges fall squarely within the definition of gas costs under the Authority's PGA Rules and there is no question about the legitimacy of this cost as a Gas Cost. Staff appears to concede both that this is a legitimate gas cost and also that it is an appropriate prior period adjustment (despite the fact that Staff simultaneously contends that all such adjustments are barred by the Joint Audit Report in Docket No. 07-00174) because it represents a "new invoice that was not filed in Docket No. 07-00174 or subsequent audit dockets and is, therefore, an appropriate prior period adjustment."⁸⁰

B. Adjustment #2: Removal of Estimated Information.

Prior to revising its accounting procedures, Piedmont filed ACA schedules with estimate information in one period, and the estimate to actual variance in the next.⁸¹ This served to correct previous estimates in the subsequent month.⁸² Staff subsequently clarified that only

⁷⁶ *Id.* at Exh. G; King Aff. at ¶ 10.

⁷⁷ King Aff. at ¶ 10.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *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, Party Staff's Responses to Discovery Request of Piedmont to Party Staff (hereinafter "Staff Discovery Responses") at p. 6 (Feb. 5, 2014). Additionally, Staff recommends that the new invoice be filed in the next ACA audit as a prior period adjustment.

⁸¹ Stipulated Facts at Exh. G; King Aff. at ¶ 10.

⁸² King Aff. at ¶ 10.

actual costs should be reported and the schedule was changed accordingly.⁸³ At the time of this change, Piedmont did not realize that Staff had adjusted Piedmont's 2005 filing to remove the estimated-to-actual variance adjustment.⁸⁴ Therefore, an adjustment was included in January 2006 for the estimate to actual variance from December 2005 in error.⁸⁵ This error arises directly from the variance in accounting methodologies between Piedmont's books and its ACA account. Piedmont now seeks to correct this error.⁸⁶ The necessary adjustment to correct this error is \$431,638.27, including \$122,280.80 in interest.⁸⁷

Staff has conceded that this adjustment represents a legitimate gas cost account adjustment, yet contends that it should not be granted. Staff acknowledges that the "proposed Adjustment #2 . . . does correct a misstatement of the beginning balance at January 1, 2006 which was never questioned by Audit Staff or Piedmont at the time."⁸⁸ Staff further admits that it "agrees that Audit Staff made an accrual adjustment in Docket No. 06-00087 for December 2005 to include December 2005 actual gas costs and therefore the miscellaneous adjustment #27 in January 2006 was not necessary."⁸⁹ Given Staff's acknowledgements regarding the nature of this proposed adjustment and the fact it was an adjustment to Piedmont's ACA account, there is no question that it represents legitimate gas costs eligible for recovery through the ACA account.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Staff Discovery Responses at p. 6.

⁸⁹ *Id.* at pp. 6-7.

C. Adjustment #3: Inclusion of Incoming Wire.

The ACA schedule was credited with this wire in error, as the invoices had already been recorded to the ACA.⁹⁰ Piedmont reversed the credit in December 2006 on the ACA schedule in order to correct the apparent double-counting of the credit in Piedmont's ACA account.⁹¹ During the audit process, the TRA questioned this reversal and stated that the credit was a pipeline refund.⁹² Consequently, Piedmont agreed to remove it.⁹³ Piedmont's subsequent investigation revealed that it was not a pipeline refund and was instead a credit legitimately due Piedmont for asset management activity relating to Piedmont's TGP capacity.⁹⁴ This adjustment totals \$917,248.71, which includes \$217,982.06 in interest.⁹⁵

In its discovery responses, Staff states that it "does not challenge that an analysis of the . . . invoices that form the basis of proposed Adjustment #3 shows that Piedmont overpaid by approximately \$699,283.81 and was due a credit from the supplier."⁹⁶ Further, because the costs underlying this adjustment represent pipeline demand and commodity costs – a category of costs expressly included in the definition of gas costs under the Authority's PGA Rules - there is no question that this proposed adjustment represents legitimate gas costs eligible for recovery through Piedmont's ACA account.

⁹⁰ Stipulated Facts at Exh. G; King Aff. ¶ 11.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Staff Discovery Responses at p. 9.

D. Adjustment #4: Payment Issues with TGP.

Adjustment # 4 concerns TGP invoices from January 2006-December 2006 that were inadvertently misrepresented in the approved ACA schedule in Docket No. 07-00174.⁹⁷ Piedmont paid what it believed to be correct amounts for its TGP service during the period November 2005-October 2006.⁹⁸ During that period, this capacity was subject to an AMA.⁹⁹ After paying its TGP invoices, Piedmont later learned that when assets were released to a third party, TGP continued to bill directly for withdrawals when the delivery location was also a system balancing point.¹⁰⁰ In 2006, Piedmont began paying Merrill Lynch for FSMA withdrawals because Piedmont expected TGP to bill them for all released assets.¹⁰¹ In April of 2006, Piedmont stopped trying to get a credit from TGP and took a credit against the Merrill Lynch invoice instead.¹⁰² For the remainder of the asset management contract with Merrill Lynch, all FSMA withdrawal charges were remitted directly to TGP.¹⁰³ The adjustment needed to correct Piedmont's ACA account for the confusion stemming from the implementation of AMAs on the TGP system is \$951,853.41, which includes interest of \$259,715.81.¹⁰⁴

As was the case for Adjustment #3 above, the costs underlying this adjustment represent demand and commodity payments to TGP and adjustments to those payments by TGP from the utilization of an asset manager to manage that capacity. These costs are clearly within the

⁹⁷ Stipulated Facts at Exh. G; King Aff. ¶ 12.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

Authority's definition of demand and commodity costs and are eligible for recovery through Piedmont's ACA account. Staff's response to Adjustment #4 was the same as referenced and addressed above for Adjustment #3 – i.e. that Piedmont's proposed adjustments were legitimate gas costs but should not be recoverable for other reasons.¹⁰⁵

E. Adjustment #5: Failure to Book True-Up Adjustment.

Finally, Adjustment #5 relates to an asset manager true-up Piedmont performed on its FSMA capacity on TGP for the period April 2005-October 2005.¹⁰⁶ In May 2006, Piedmont calculated that the adjustment would reduce the storage balance by 101,516 dekatherms. Piedmont's Gas Accounting Department assigned the October rate of \$9.52, resulting in a \$966,432.32 adjustment.¹⁰⁷ During the audit process in Docket No. 07-00174, Staff questioned the adjustment and Piedmont removed it from the schedule, believing at that time that the adjustment had been processed in 2005.¹⁰⁸ During its investigation, Piedmont recreated the inventory schedules for its FSMA capacity and now understands that the adjustment was not included in the 2005 ACA audit.¹⁰⁹ This adjustment totals \$966,432.32, which includes interest of \$343,138.62.¹¹⁰

Storage inventory costs of the type underlying this proposed adjustment are clearly within the definition of gas costs set forth in the Authority's PGA Rules and are eligible for inclusion in

¹⁰⁵ Staff Discovery Responses at pp. 7-8.

¹⁰⁶ Stipulated Facts at Exh. G; King Aff. ¶ 13.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

Piedmont's ACA account. Staff's response to Adjustment #5 was the same as referenced and addressed above for Adjustments #3 and #4.¹¹¹

In sum, it is clear that the costs underlying each of Piedmont's proposed adjustments in this docket fall squarely within the Authority's definition of gas costs and are eligible for inclusion in Piedmont's ACA account on that basis. Staff's position on these adjustments, as set forth in their discovery responses, does not dispute this conclusion. Instead, they take the position that Piedmont should not be allowed to recover these costs for other reasons. On the basis of the foregoing, the Authority should find that the costs underlying Piedmont's proposed adjustments constitute legitimate gas costs eligible for recovery through Piedmont's ACA account.

II. Piedmont's Proposed ACA Adjustments are not Barred under the Terms of the Joint Audit Report Approved by the TRA in Docket No. 07-00174.

The Authority's PGA Rules allow natural gas utilities like Piedmont to recover funds paid to gas suppliers for the purchase, storage or transportation of gas, and ensure that utilities do not over-collect or under-collect these gas costs from customers. The ACA must be calculated monthly as the difference between: (1) revenues billed to customers for gas costs using a Gas Charge Adjustment; and (2) the amount the utility paid suppliers for gas, plus margin loss. TRA Rule 1220-04-07-.03(1)(c)(2). On an annual basis, utilities are required to file a report reflecting the transactions in the ACA account. TRA Rule 1220-04-07-.03(2). Staff is tasked with conducting a compliance audit of each of these annual filings, in which Staff reviews gas supply invoices, supplemental schedules and other source documents provided by the utility. *See* TRA Rule 1220-04-07-.05.

¹¹¹ Staff Discovery Responses at pp. 7-8.

Piedmont's Tariff includes a Service Schedule No. 311 PGA Rider, which includes language nearly identical to the PGA Rules.¹¹² The PGA Rider likewise provides that it "is intended to permit the Company to recover, in a timely fashion, the total cost of gas purchased for delivery to its customers and to assure that the Company does not over-collect or under-collect gas costs from its customers."¹¹³ Both Piedmont's Tariff and the PGA Rules expressly contemplate adjustments to prior period ACAs, stating:

In the event that circumstances warrant a correction to or restatement of a prior period ACA, such correction or restatement shall be made in accordance with the ACA calculation in effect for the time period(s) to which the correction or restatement relates. The resulting adjustment shall then be added to or deducted from the appropriate ACA in the next ensuing ACA filing with the Authority.

TRA Rule 1220-04-07-.03(1)(c)(3)(emphasis added); PGA Rider at §III(D)(emphasis added).¹¹⁴

In its Petition, Piedmont seeks to correct its ACA balance to accurately reflect prior gas cost collections and payments by Piedmont. This is expressly permitted by both the Authority's PGA Rules and the provisions of Piedmont's Tariff. On these facts, and in the absence of evidence that the adjustments proposed in this proceeding were the result of misconduct or dilatory action by Piedmont, Piedmont contends that it has presented a *prima facie* case for making such adjustments.

In its intervention and discovery responses, Staff has variously asserted that Piedmont's proposed adjustments are barred by: (1) the Authority's approval of the Joint Audit Report in Docket No. 07-00174; or (2) the doctrines of collateral estoppel, *stare decisis*, and retroactive-

¹¹² Stipulated Facts at Exh. A.

¹¹³ *Id.* at ¶ I(A).

¹¹⁴ Significantly, neither the Authority's Rules nor any other statute, regulation or ruling establishes a discrete time limit for making prior period adjustments.

ratemaking. As is demonstrated below, none of these assertions is sustainable and, as such, Piedmont is entitled to Summary Judgment on this issue.

A. The Joint Audit Report Approved in Docket No. 07-00174 Does Not Bar Piedmont's Proposed ACA Account Adjustments.

In both its Motion to Intervene and Discovery Responses, Staff maintains that the Joint Audit Report and the Authority's approval of that report in Docket No. 07-00174 somehow bar Piedmont's Petition in this case. As described above, the Joint Audit Report was based on both Piedmont and Staff's mistaken conclusion that the agreed upon ACA account balance reflected in that report was correct. After several years of delay attributable to differences in accounting methodologies between its books and ACA account, and a subsequent nine months of extensive research, Piedmont has recently (in October 2012) determined that the balance in its ACA account is over-stated by \$3,664,354.59.¹¹⁵ The adjustments proposed in this docket were not addressed in either Docket No. 07-00174 or in intervening ACA audits. These types of prior period adjustments are necessary in this case to correct Piedmont's ACA balance and to allow it to recover previously expended gas costs necessary to provide service to its customers.

The basis for Staff's position that the Joint Audit Report bars Piedmont's proposed adjustments in this proceeding appears to be the use of the word "Final" in the title and other places in the report, the statement that the report "resolves all pending issues between Audit Staff and Piedmont in this proceeding," and the assertion that the report constitutes a negotiated settlement of that docket. Piedmont acknowledges that the Joint Audit Report contains the word final in several places and that it resolved all pending issues between Audit Staff and Piedmont

¹¹⁵ Piedmont Discovery Responses at ¶ 5.

in that proceeding but respectfully disagrees with Staff's conclusions about the impact of that report on this proceeding.

Piedmont's disagreement is based on the following five factors:

1. The document at issue is a joint audit report and is titled as such. It is not denoted as a "settlement agreement" and it does not contain provisions such as releases and waivers of claims or recitations of compromise and settlement as would normally be expected in a settlement agreement. It is, at best, a joint statement of the parties' conclusions about the appropriate ending balance in Piedmont's ACA account as of December 31, 2006.

2. In the Authority's Order accepting the Joint Audit Report, it did not advise Piedmont that its right to make prior period adjustments was eliminated or diminished in any way, which it presumably would have done had that been the Authority's intent as to the effect of the report.

3. The report does not provide for a waiver of Piedmont's right to seek subsequent prior period adjustments for the 2006 audit period, as expressly allowed by the Authority's PGA Rules, which one would expect of a "settlement agreement" that precluded all such adjustments.

4. The Staff's own action of permitting Piedmont to make a prior period adjustment to its 2006 audit period (the period covered by the Joint Audit Report) in its 2008 ACA audit proceeding (Docket No. 09-00093) directly contradicts Staff's current interpretation of the Joint Audit Report.

5. As to the use of the word "Final" in the Joint Audit Report, Piedmont would note that Staff's last audit report to the Authority on Piedmont's ACA account in Docket No. 12-00114 covering the period from July 1, 2011 through June 30, 2012 also uses the word "Final" to describe itself but, to date, Staff has not contended that prior period adjustments attributable to

that period are somehow barred by its use of that adjective or that it effectively repeals that portion of Authority Rule 1220-04-07-.03 that permits such adjustments.

Put simply, the Joint Audit Report in Docket No. 07-00174 was intended to represent the parties' agreement, based upon the information of which they were aware at that time, of the correct ending balance of Piedmont's ACA account as of December 31, 2006, no more and no less. As such, it resolved all pending issues between Staff and Piedmont in that proceeding which was, after all, only an annual ACA account audit proceeding. Staff now appears to contend that an agreed resolution of the ending ACA account balance in that proceeding bars any further adjustment to that audit period despite the fact that such a conclusion is contrary to both the express provisions of the Authority's PGA Rules and the Staff's intervening action of permitting a prior period adjustment to that same audit period in Docket No. 09-00093. Piedmont submits that such an interpretation of the Joint Audit Report in Docket No. 07-00174 is unjustified based upon the language and context of the Joint Audit Report, the Authority's Rules and the law of the State of Tennessee.

With respect to the latter point, Piedmont would note that under Tennessee law, a settlement agreement is a contract between two or more settling parties. *Sweeten v. Trade Envelopes*, 938 S.W.2d 383, 385 (Tenn. 1996). In order for a contract to be valid in Tennessee it:

Must result from a meeting of the minds of the parties in mutual assent to the terms, must be based upon a sufficient consideration, free from fraud or undue influence, not against public policy and sufficiently definite to be enforced.

Higgins v. Oil, Chemical and Atomic Workers Int'l Union, Local # 3-677, 811 S.W.2d 875, 879 (Tenn. 1991). "It is fundamental that for a contract to be enforceable, it must be of sufficient explicitness so that a court can perceive what are the respective obligations of the parties." *Id.* at

880 (citations omitted). In this case, there is no Settlement Agreement filed in Docket No. 07-00174 and the Joint Audit Report does not contain any provisions sufficient to waive Piedmont's rights to seek prior period adjustments to its ACA account balance under Authority Rule 1220-04-07-.03.

Accordingly, Piedmont cannot be deemed to have released its right to propose future adjustments to its ACA account because under Tennessee law, future unknown claims may be released by contract only if the contract contains express terms to that effect.

[I]t is the language of the release that determines whether it covers injuries that arise prospectively. This is true even with respect to injuries resulting from acts or omissions that had not occurred at the time of the release, if the release itself expressly so provides.

Woody v. A.W. Chesterton Co., 2008 Tenn. App. LEXIS 146, *14 (Tenn. Ct. App. Mar. 13, 2008).¹¹⁶ Similarly,

A release ordinarily covers all such matters as may fairly be said to have been within the contemplation of the parties when it was given . . . consequently a demand of which a party was ignorant when the release was given is not as a rule . . . embraced . . . therein.

New Life Corp. of Am. V. Thomas Nelson, Inc., 932 S.W.2d 921, 925 (Tenn Ct. App. 1996) (refusing to extend release to unknown claims, where the language of the agreement only released known claims). Here, the Joint Audit Report contains no language that would release future efforts by Piedmont to correct its ACA account balance as provided by TRA Rules. Under Tennessee law, absent such language, it cannot be asserted as a bar to Piedmont's proposed prior period adjustments.

¹¹⁶ See also *Marlett v. Thomason*, 2007 Tenn. App. LEXIS 199, *17 (Tenn. Ct. App. Apr. 5, 2007) (“[T]he scope and extent of a release generally depends on the intent of the parties as expressed in the agreement.”).

B. The Doctrines of Collateral Estoppel, *Stare Decisis*, and Retroactive Ratemaking Do Not Preclude Piedmont's Proposed Adjustments.

Staff's Discovery Responses indicate its belief that the doctrines of collateral estoppel, *stare decisis* and retroactive ratemaking bar Piedmont's Petition in this docket.¹¹⁷ A closer examination of the legal tenets governing these three doctrines refutes Staff's assertions in this regard.

1. Collateral Estoppel.

Under Tennessee law, "collateral estoppel precludes a party from litigating an issue already raised in an earlier action if the following three elements are present: 1) the issue at stake is identical to the one involved in the earlier action; 2) the issue was actually litigated in the prior action; and 3) the determination of the issue in the prior action was a necessary part of the judgment in that action." *In re Bellsouth Telecommunications, LLC d/b/a/ AT&T Tennessee v. Halo Wireless, Inc.*, Order, Docket No. 11-00119, 2012 Tenn. PUC LEXIS 26 at *9 (Jan. 26, 2012). "The familiar rule is that where the two causes of action are different, the judgment in the first suit is binding as an estoppel only as to those matters in issue, the inquiry being *what point or question was actually litigated* and determined in the original action, *not what might have been litigated and determined.*" *Dickerson v. Godrey*, 825 S.W.2d 692, 694 (Tenn. 1992) (emphasis added, citations omitted)).

Here, none of the three elements of collateral estoppel are present. First, the adjustments at stake in this docket are not identical to the adjustments made in Docket No. 07-00174. The proposed adjustments in this docket were never raised during the audit in Docket No. 07-00174. In fact, Piedmont was not even aware that these adjustments were necessary and therefore, could

¹¹⁷ Staff Discovery Responses at pp. 3-4.

not have raised them during that proceeding. *See e.g., Hampton v. Tennessee Truck Sales*, 993 S.W.2d 643, 646 (Tenn. Ct. App. 1999) (“The issue to be litigated in this case was the defendants’ liability for a breach of the bailment contract. From the record in this case we cannot conclude that that issue was litigated in the former case. In fact we don’t think it could have been litigated in that action because the truck was not delivered to the plaintiff until the former suit had been settled.”). Similarly, in this docket, the need to make the adjustments proposed by Piedmont was not discovered until October 2011 and it was not until the completion of a subsequent investigation that the precise nature of such adjustments was determined. Inasmuch as the discrete adjustments proposed in this docket were not identified until October 0f 2012, they could not have been part of Staff’s 2007 audit.

As to the second factor, the issues in this docket were never actually litigated in Docket No. 07-00174. Again, Piedmont was not aware of these discrepancies and they were neither raised nor considered by the Authority in Docket No. 07-00174. Finally, the third element is not satisfied as the proposed adjustments in this case had no bearing on the judgment issued in Docket No. 07-00174. *See e.g., Andrew Johnson Bank v. Bryant, Price, Brandt, Jordan & Williams*, 744 S.W.2d 581, 584 (Tenn. Ct. App. 1987) (“We believe that the trial court erred in granting the Defendants’ motion for summary judgment on the basis of collateral estoppel. The issues necessary to determine the outcome of this action were not necessary to support the judgment of the Chancery Court as affirmed by this Court in the action between the Bank and Crumley.”).

In sum, because Staff cannot demonstrate the three elements of collateral estoppel, it cannot invoke it as a legal theory to bar Piedmont’s Petition in this case.

2. *Stare Decisis.*

Staff likewise cites to the doctrine of *stare decisis* as a legal ground upon which it seeks to bar the adjustments in Piedmont's Petition.¹¹⁸ *Stare decisis* is a foundational principle of our legal system which establishes the proposition that prior applicable legal precedent must be followed in order to uphold the objectives of "certainty, predictability and stability in the law [that] are the major objectives of the legal system." *Hooker v. Haslam*, 393 S.W.3d 156 (Tenn. 2012).

Contrary to Staff's contention, *stare decisis* is plainly inapplicable as there is no prior judgment or decision of the Authority that would be overturned if Piedmont's Petition is granted. The Authority's approval of the Joint Audit Report in Docket No. 07-00174 concerned the adjustments and issues raised in that proceeding. Here, Piedmont has since identified additional and new adjustments that have never been raised in a prior proceeding. As such, the Authority's approval of the Joint Audit Report has no bearing on a ruling on the instant Petition and therefore, the doctrine of *stare decisis* is inapplicable.

Even if the doctrine of *stare decisis* did apply in this circumstance, which Piedmont denies, it is well settled that the doctrine of *stare decisis* may yield when the prior decision is erroneous. *See, e.g. United States ex rel TVA v. Road Easement, Etc.*, 424 F. Supp. 567, 569 (E.D. Tenn. 1976) ("[O]bvious errors should not be perpetuated by strict adherence to precedent."); *In re Estate of Merle Jeffers McFarland*, 167 S.W.3d 299, 306 (Tenn. 2005) ("Generally, well-settled rules of law will be overturned only when there is obvious error or unreasonableness in the precedent"); *Arnold v. Mayor*, 90 S.W. 469, 470 (Tenn. 1905) ("if an error has been committed, and becomes plain and palpable, the court will not decline to

¹¹⁸ Staff Discovery Responses at pp. 3-4.

correct it, even though it may have been re-asserted and acquiesced in for a long number of years.”).

Based upon the foregoing authority, Piedmont contends that the doctrine of *stare decisis* is not applicable to this docket and, even if it were, the law of Tennessee would nonetheless support allowing Piedmont’s proposed prior period adjustments in order to correct its ACA account balance.

3. Retroactive Ratemaking.

Staff also contends that “the change requested by Piedmont in this docket would result in retroactive ratemaking in that Piedmont’s proposal would result in a change to rates long after an order dealing with the costs had been approved by the TRA.”¹¹⁹ It is well-settled that the TRA is prohibited from engaging in retroactive ratemaking. *See South Central Bell Telephone Company v. Tennessee Public Service Commission*, 675 S.W.2d 718, 1984 Tenn. App. LEXIS 3418 (Tenn. Ct. App. 1984). However, it is equally fundamental that adjustments that will affect *prospective* rates are not considered retroactive ratemaking. *See In Re: Nashville Gas Co. Application for Approval of Negotiated Gas Redelivery Agreement*, 1999 Tenn. PUC LEXIS 129, 13-15 (1999) (“[T]he Authority can approve the sharing arrangement for the margin loss without violating the prohibitions against retroactive ratemaking....[because] the sharing between the Company and its ratepayers will effect prospective rates. As a result, no rate is being adjusted retroactively.”). Piedmont is seeking adjustments to its ACA account that would impact rates moving forward. Its Petition in no way seeks to adjust previously charged rates and thus cannot constitute retroactive ratemaking.


¹¹⁹ Staff Discovery Responses at p. 4.

CONCLUSION

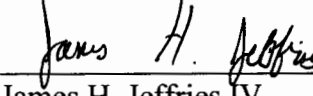
Piedmont's proposed adjustments to its ACA account in this proceeding were the result of inadvertent accounting errors which were not detected or addressed by Staff or Piedmont during the ACA audit process, and which were attributable to changing transactional structures in the interstate capacity and supply markets, and hidden by accounting methodology differences between Piedmont's books and its ACA account. Piedmont seeks only to make appropriate adjustments to its ACA account to correct these errors so that its ACA account balance is accurate. These adjustments will have the effect of keeping Piedmont whole with respect to its gas cost expenditures, which is the stated goal of the Authority's PGA Rules. The adjustments will not create a windfall for the company. Piedmont regrets the delay in bringing these adjustments forward but that delay is explainable and, more importantly, has not harmed customers. Under these facts, Piedmont respectfully submits that summary judgment in its favor should be granted with respect to the preliminary issues in this proceeding.

Respectfully submitted, this the 26th day of February, 2014.

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 by CDR w/permission

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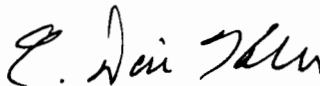
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Brief in Support of Piedmont Natural Gas Company, Inc.'s Motion for Summary Judgment was served upon the parties in this action by electronic mail and by depositing a copy of the same in the United States Mail, First Class Postage Prepaid, addressed as follows:

Joe Shirley
Senior Counsel
Office of the Attorney General
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, Tennessee 37202
joe.shirley@ag.tn.gov

Shiva K. Bozarth
Legal Counsel
Tennessee Regulatory Authority
502 Deaderick Street, 4th Floor
Nashville, Tennessee 37243
Shiva.k.bozarth@tn.gov

This the 26th day of February, 2014.



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

IN RE:)	
)	
PETITION OF PIEDMONT NATURAL GAS)	
COMPANY, INC. FOR ACCOUNTING)	Docket No. 13-00119
ORDER)	
)	

AFFIDAVIT OF MANDI J. KING

The undersigned, being duly sworn, deposes and says:

1. I am a citizen and resident of York County, South Carolina.
2. I am neither an infant nor incompetent and have personal knowledge of the matters discussed herein.
3. I am employed by Piedmont Natural Gas Company ("Piedmont") as the Manager of Gas Accounting.
4. I submit this affidavit in support of the Petition of Piedmont Natural Gas Company, Inc. for Accounting Order ("Petition") and Piedmont's Motion for Summary Judgment filed in this proceeding.
5. Beginning in approximately 2006, Piedmont began experiencing substantially increased complexity in the accounting for its Tennessee gas costs. This increased complexity arose primarily from the implementation of asset management arrangements ("AMAs") whereby Piedmont would contract with third-party asset managers to "optimize" its upstream supply and capacity assets. These asset managers would commit to the utilization of Piedmont's capacity and supply assets to serve Piedmont's needs but would otherwise be able to use them to serve third-party's needs. Under these arrangements, the asset managers would pay Piedmont for the

right to use Piedmont's assets when not needed to serve Piedmont's customers and/or would share the profits they made in utilizing the assets to serve third-parties. These payments/profits were shared between Piedmont and its customers with the majority of these payments being credited to Piedmont's Actual Cost Adjustment ("ACA") account. These arrangements were highly beneficial to Piedmont's customers but substantially increased the complexity of Piedmont's gas cost accounting.

6. In the face of these changes in how Piedmont's upstream supply and capacity assets were being utilized, Piedmont determined that its gas cost accounting and staffing procedures required supplementation in order to handle the growing accounting complexity associated with the thousands of annual gas cost transactions reflected in its ACA account, many of which were related to the implementation of AMAs. To address these concerns, Piedmont hired additional gas cost accounting personnel, including a new Director of Gas Cost Accounting, Robert L. Thornton, to take over Piedmont's gas cost accounting function on a going forward basis.

7. Since the new processes, procedures and controls have been implemented, audit findings have been insignificant. For example, in Docket No. 11-00168 for the period July 1, 2010 to June 30, 2011, there were no audit findings. On September 28, 2012, Piedmont submitted its most recent annual deferred ACA account filing for the period July 1, 2011 through June 30, 2012 in Docket No. 12-00114. Staff made just one audit finding of (\$529.73), including interest. To put this adjustment in context, Piedmont had thousands of transactions and \$66,503,466.23 in gas costs flow through its ACA account during the 2012 audit period.

8. At the time of the resolution of the Docket No. 07-00174 audit, Piedmont believed that it had resolved all discrepancies between its general ledger and its ACA account

and that the ending balance in the ACA account was that agreed to with Staff and approved by the Authority. Piedmont later learned that this was not the case.

9. Beginning in approximately January 2012, I conducted an investigation of Piedmont's prior gas transactions aimed at determining why Piedmont's ACA balance and general ledger did not agree with respect to prior transactions. This investigation, which required roughly 9 months to complete, revealed the five adjustments sought in Piedmont's Petition.

10. Adjustment #1 occurred because Piedmont did not include the first demand payment for Midwestern Gas Pipeline from November 2006 in the ACA audit materials provided to Staff for the 2006 audit period. Inasmuch as this was a new payment for a service Piedmont had not previously received, it appears that it was simply overlooked in the pre-audit accounting process. To put this oversight in context, Piedmont reported thousands of transactions and more than \$188,574,614.40 in gas costs in that audit. The total adjustment is \$54,043.26, which includes interest in the amount of \$12,843.26.

11. Adjustment #2 occurred as a result of Piedmont's prior procedure of filing ACA schedules with estimate information in one period, and the estimate to actual variance in the next. This served to correct previous estimates in the following month. Staff subsequently clarified that only actual costs should be reported and the schedule was changed accordingly. At the time of this change, Piedmont did not realize that Staff had adjusted Piedmont's 2005 filing to remove the estimated-to-actual variance adjustment. Therefore, an adjustment was included in January 2006 for the estimate to actual variance from December 2005 in error. This error arises directly from the variance in accounting methodologies between Piedmont's books and its ACA account. Piedmont now seeks to correct this error. The necessary adjustment to correct this error is \$431,638.27, including \$122,280.80 in interest.

12. Adjustment #3 occurred because the ACA schedule was credited with a wire in error, as the invoices had already been recorded to the ACA. Piedmont reversed the credit in December 2006 on the ACA schedule in order to correct the apparent double-counting of the credit in Piedmont's ACA account. During the audit process, the TRA questioned this reversal and stated that the credit was a pipeline refund. Consequently, Piedmont agreed to remove it. Piedmont's subsequent investigation revealed that it was not a pipeline refund and was instead a credit legitimately due Piedmont for asset management activity relating to Piedmont's TGP capacity and, therefore, Staff's rejection of Piedmont's reversal was improper. This adjustment totals \$917,248.71, which includes \$217,982.06 in interest.

13. Adjustment # 4 concerns Tennessee Gas Pipeline ("TGP") invoices from January 2006-December 2006 that were inadvertently misrepresented in the approved ACA schedule in Docket No. 07-00174. Piedmont paid what it believed to be correct amounts for its TGP service during the period November 2005-October 2006. During that period, this capacity was subject to an asset management agreement. After paying its TGP invoices, Piedmont later learned that when assets were released to a third party, TGP continued to bill directly for withdrawals when the delivery location was also a system balancing point. In 2006, Piedmont began paying Merrill Lynch for FSMA withdrawals because Piedmont expected TGP to bill them for all released assets. In April of 2006, Piedmont stopped trying to get a credit from TGP and took a credit against the Merrill Lynch invoice instead. For the remainder of the asset management contract with Merrill Lynch, all FSMA withdrawal charges were remitted directly to TGP. The adjustment needed to correct Piedmont's ACA account for the confusion stemming from the implementation of AMAs on the TGP system is \$951,853.41, which includes interest of \$259,715.81.

14. Finally, Adjustment #5 relates to an asset manager true-up Piedmont performed on its Firm Storage Market Area ("FSMA") capacity on TGP for the period April 2005-October 2005. In May 2006, Piedmont calculated that the adjustment would reduce the storage balance by 101,516 dekatherms. Piedmont's Gas Accounting Department assigned the October rate of \$9.52, resulting in a \$966,432.32 adjustment. During the audit in Docket No. 07-00174, Staff questioned the adjustment and Piedmont removed it from the schedule, believing at that time that the adjustment had been processed in 2005. In its investigation, Piedmont recreated the inventory schedules for its FSMA capacity and now understands that the adjustment was not included in the 2005 ACA audit. This adjustment totals \$966,432.32, which includes interest of \$343,138.62.

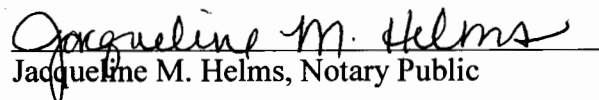
15. The discrete nature and amount of Piedmont's five proposed ACA adjustments were not known to Piedmont or TRA Staff prior to October 2012 and were not resolved by any prior ACA account audit.

This the 25th day of January, 2014.


Mandi J. King

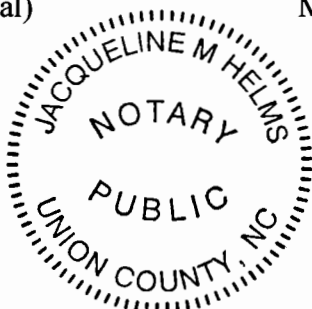
Mecklenburg County, North Carolina
Signed and sworn to before me this day by Mandi J. King

Date: 2/25/14


Jacqueline M. Helms, Notary Public

(Official Seal)

My commission expires: November 29, 2016



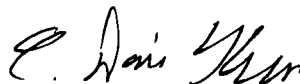
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Affidavits of Robert L. Thornton and Mandi J. King were served upon the parties in this action by electronic mail and by depositing a copy of the same in the United States Mail, First Class Postage Prepaid, addressed as follows:

Joe Shirley
Senior Counsel
Office of the Attorney General
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, Tennessee 37202
joe.shirley@ag.tn.gov

Shiva K. Bozarth
Legal Counsel
Tennessee Regulatory Authority
502 Deaderick Street, 4th Floor
Nashville, Tennessee 37243
Shiva.k.bozarth@tn.gov

This the 26th day of February, 2014.



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

IN RE:)	
)	
PETITION OF PIEDMONT NATURAL GAS)	
COMPANY, INC. FOR ACCOUNTING)	Docket No. 13-00119
ORDER)	
)	

AFFIDAVIT OF ROBERT L. THORNTON

The undersigned, being duly sworn, deposes and says:

1. I am a citizen and resident of Mecklenburg County, North Carolina.
2. I am neither an infant nor incompetent and have personal knowledge of the matters discussed herein.
3. I am employed by Piedmont Natural Gas Company ("Piedmont") as the Director of Gas and Regulatory Accounting.
4. I submit this affidavit in support of the Petition of Piedmont Natural Gas Company, Inc. for Accounting Order ("Petition") and Piedmont's Motion for Summary Judgment filed in this proceeding.
5. Piedmont's Tennessee upstream gas costs are recovered, on a pass through basis, utilizing estimated commodity and demand rates embedded in its overall service rates. The accounting and true-up of upstream commodity and demand costs actually incurred by Piedmont and its recovery of such costs through the estimated gas cost components included in its rates is accomplished through Piedmont's Purchased Gas Adjustment ("PGA") Rider and managed through its ACA account mechanism, both of which are administered pursuant to the terms of the


Authority's Purchased Gas Adjustment Rules (TRA Rule 1220-04-07) and Piedmont's Service Schedule No. 311.

6. Consistent with the provisions of Tennessee Regulatory Authority ("Authority" or "TRA") Rule 1220-04-07-.02, it is the intent of the PGA mechanism and the related ACA account that Piedmont recover its total Gas Costs in a timely manner. In the normal course of Piedmont's operations and in order to effectuate the intent of Authority Rule 1220-04-07, Piedmont records its upstream Gas Costs and related cost recoveries from customers in both its general ledger accounts and its ACA account on a monthly basis.

7. Piedmont's general ledger accounts are maintained on an accrual accounting basis. Consistent with directives of the Authority, Piedmont maintains its ACA account on a cash basis.

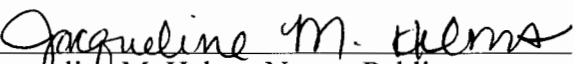
8. When necessary, Piedmont has sought prior period adjustments in Tennessee and in other states in order to obtain and/or maintain a correct balance in its gas cost deferred accounts. Piedmont seeks these adjustments in order to maintain the accuracy of its gas cost account balances irrespective of whether the adjustments favor Piedmont or its customers. By way of illustration of this fact, in Docket No. 2012-4-G before the Public Service Commission of South Carolina ("PSCSC"), Piedmont recently proposed an adjustment to its gas cost account during the 2012 review period that related to an incorrect entry from the gas flow period of December, 2007. This proposed adjustment was to the benefit of Piedmont's customers in the amount of \$2,806,898, including interest of \$502,714 and was accepted by the PSCSC.

This the 25th day of February, 2014.


Robert L. Thornton

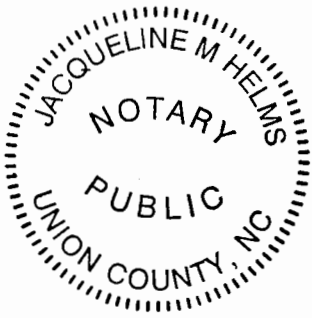
Mecklenburg County, North Carolina
Signed and sworn to before me this day by Robert L. Thornton

Date: 2-25-14


Jacqueline M. Helms, Notary Public

(Official Seal)

My commission expires: November 29, 2016



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Affidavits of Robert L. Thornton and Mandi J. King were served upon the parties in this action by electronic mail and by depositing a copy of the same in the United States Mail, First Class Postage Prepaid, addressed as follows:

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Shiva K. Bozarth
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This the 26th day of February, 2014.

