

# BUTLER | SNOW

December 11, 2014

**VIA ELECTRONICALLY**

Hon. Herbert H. Hilliard, Chairman  
Tennessee Regulatory Authority  
c/o Sharla Dillon, Dockets and Records Manager  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243

**RE: In Re: Petition of Piedmont Natural Gas Company, Inc. for Approval of a  
CNG Infrastructure Rider to its Approved Rate Schedules and Service  
Regulations, TRA Docket No. 14-00086**

Dear Chairman Hilliard:

Attached for filing please find the *Testimony of Ron Jones* and the *Testimony of Scott M. Carr, Ph.D.*, witnesses for Tennessee Fuel and Convenience Store Association in the above-captioned matter.

As required, an original of this filing, along with four (4) hard copies, will follow. Should you have any questions concerning this filing, or require additional information, please do not hesitate to let me know.

Very truly yours,

BUTLER SNOW LLP

  
Melvin J. Malone

clw  
Attachments

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**Direct Testimony of Ron Jones**

**Regarding**

**Petition of Piedmont Natural Gas, Inc. for Approval of a CNG Infrastructure Rider  
to Its Approved Rate Schedules and Service Regulations**

**Tennessee TRA Docket No. 14-00086**

**December 11, 2014**

1 Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND BUSINESS TITLE.

2 A. My name is Ron Jones. I am a Principal of WRD Regulatory Consulting, LLC, a  
3 company comprised of former Regulatory Utility Commissioners, which provides  
4 regulatory expertise on a variety of matters to utility and non-utility companies. My  
5 business address is 2933 Nocturne Forest Drive, Nashville, TN 37207.

6 Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL  
7 BACKGROUND.

8 A. I graduated from Tennessee State University with a Bachelor of Business Administration  
9 degree with majors in Accounting and Business Administration. I have attended both the  
10 primary and advanced Regulatory Studies programs sponsored by the National  
11 Association of Regulatory Utility Commissioners at Michigan State Graduate School of  
12 Business. I have also attended numerous regulatory seminars and training courses over  
13 the course of my career.

14 Q. PLEASE OUTLINE YOUR BUSINESS EXPERIENCE

15 A. I am currently a principal and founding member of WRD Regulatory Consulting, where I  
16 have worked for four (4) years. My primary area of expertise is the policy evaluation of  
17 regulated utility companies' proposals. I am a 22 year veteran of public service in the  
18 utility sector, where I served my first 10 years with the Tennessee Public Service  
19 Commission and the following 12 years with the Tennessee Regulatory Authority. I've  
20 served in increasingly responsible positions throughout my career that culminated as the

1 joint appointee of the Governor, Speaker of the Senate, and Speaker of the House to a six  
2 year appointment as a Director of the Tennessee Regulatory Authority. My term was  
3 from July 2002 to June 2008. During my career with both the Public Service  
4 Commission and the Tennessee Regulatory Authority, I served as a Compliance Auditor,  
5 Financial Analyst, Senior Policy Advisor, and Director.

6 I was appointed by the president of the National Association of Regulatory Utility  
7 Commissioners ("NARUC") to serve a three year term as Chairman of the Consumer  
8 Affairs Committee. I was also a member of the Southeastern Association of Regulatory  
9 Utility Commissioners, a member of the NARUC Board of Directors, a member of the  
10 NARUC Utility Market Access Partnership Board, and a NARUC representative to the  
11 Federal Communications Commission's Consumer Advisory Committee.

12 During my six-year term as a Director of the Tennessee Regulatory Authority, I also  
13 served as a member of the NARUC Telecommunications Legislative Task Force, testified  
14 before the United States Congress Senate Committee on Commerce, Science and  
15 Transportation regarding the Truth in Caller ID Act, appeared on C-Span at the  
16 Washington Press Club where I advocated for increased energy funding for Tennessee  
17 and other states, served as a member of the State Regulatory Advisory Committee to the  
18 Federal Communication Commission's Advisory Committee on Diversity for  
19 Communications in the Digital Age, and served as a participant on the Metropolitan  
20 Nashville Broadband Task Force.

1 I also served as Chief Financial Officer for the Tennessee Department of Labor and  
2 Workforce Development where I managed a \$220 million dollar operating budget and  
3 approximately 50 professional employees.

4 Q. HAVE YOU TESTIFIED BEFORE ANY GOVERNMENTAL AGENCIES  
5 REGARDING ANY REGULATORY MATTERS?

6 A. Yes, I testified in Washington, D.C before the United States Congress Senate Committee  
7 on Commerce, Science and Transportation, before state legislative committees and before  
8 organizations of national legislators.

9 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE TENNESSEE  
10 REGULATORY AUTHORITY?

11 A. No, I have not.

12 Q. ON WHOSE BEHALF ARE YOU SUBMITTING TESTIMONY?

13 A. I am submitting testimony on behalf of the Tennessee Fuel and Convenience Store  
14 Association ("TFCA").

15 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

16 A. The purpose of my testimony is to address a number of regulatory issues that are  
17 appropriate to consider in evaluating Piedmont's Petition, which is seeking to recover the  
18 cost of compressed natural gas ("CNG") motor fuel infrastructure from its captive natural

1 gas customer base. I also address certain aspects of Piedmont's existing tariff, Rate  
2 Schedule 342 and its proposed tariff, Rate Schedule 343.

3 Q. PLEASE BRIEFLY SUMMARIZE THE CONCLUSIONS THAT YOU HAVE  
4 REACHED IN THIS MATTER

5 A. I have concluded that Piedmont's Petition should be denied, as filed, because of its failure  
6 to satisfy a number of crucial regulatory issues that I discuss below. I also conclude that  
7 in the event the Authority finds that Piedmont's Petition should be approved, it should  
8 require the development of adequate safeguards. These safeguards should be designed to  
9 repay Piedmont's captive ratepayers in the instance of a sale to a non regulated entity or  
10 the failure of the retail CNG enterprise. Moreover, I conclude that Rate Schedule 342 be  
11 terminated and that Rate Schedule 343 be denied.

12 Q. WHAT ARE THE REGULATORY AND OTHER ISSUES THAT YOU WILL  
13 ADDRESS IN YOUR TESTIMONY?

14 A. I will discuss the following:

- 15 1) whether the Petition, as filed, complies with Tennessee Code Annotated 65-5-  
16 103(d);
- 17 2) whether the Petition supports the existence of an economic benefit;
- 18 3) review of other relevant statutes;
- 19 4) review of Rate Schedules 342 & 343;

- 5) public interest review;
- 6) other regulatory considerations; and
- 7) safeguards

**ANALYSIS OF TENNESSEE CODE ANNOTATED 65-5-103(d)**

Q. What does Piedmont propose in its Petition?

A. "Piedmont proposes to implement a new CNG Infrastructure Rider ("IR") mechanism in its tariff in order to allow it to recover, on an intra-rate case basis, the costs associated with levels of capital expenditures incurred as the result of expansion of existing CNG infrastructure and the construction of new CNG filling stations to increase accessibility and improve safety in response to the growing demand for natural gas as an alternative motor vehicle transportation fuel in Tennessee."<sup>1</sup>

Q. ON WHAT BASIS IS PIEDMONT SEEKING APPROVAL OF ITS PETITION?

A. According Piedmont, the legal support for its request is Tennessee Code Annotated § 65-5-103(d)(3)(A)(1), which allows Piedmont to request and the Authority to authorize an alternative regulatory mechanism outside the context of a rate case.<sup>2</sup> While the language of the statute is seemingly administrative, merely allowing for intra-rate case recovery of

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<sup>1</sup> Piedmont Petition ¶ 5

<sup>2</sup> Powers direct testimony, P.4, L19.

1 certain expenses and costs, it is silent with respect to the manner in which a regulated  
2 utility is permitted to operate in order to qualify for alternative regulatory treatment.

3 Q. DOES TENNESSEE CODE ANNOTATED § 65-5-103(d) ALLOW RECOVERY FOR  
4 ALTERNATIVE FUELS FOR CNG MOTOR FUEL INFRASTRUCTURE AS  
5 PROPOSED BY PIEDMONT?

6 A. No, Tennessee Code Annotated § 65-5-103(d) does not specifically permit a  
7 regulated utility to offer competing CNG motor fuel services and recover its  
8 investment and costs of operations from captive ratepayers. Although Tennessee  
9 Code Annotated § 65-5-103(d) makes no allowance for the recovery of CNG  
10 motor fuel costs as proposed by Piedmont, the company nevertheless requests that  
11 recovery for the costs of this competitive product's (CNG motor fuel stations)  
12 infrastructure and expenses be recovered (subsidized) by ratepayers.<sup>3</sup>

13 Q. Did your review stop after you concluded that Tennessee Code Annotated § 65-5-  
14 103(d) does not specifically permit a regulated utility to offer competing CNG  
15 motor fuel services and recover its investment and costs of operations from  
16 captive ratepayers?

17 A. No, my review did not end there.

18 Q. WHAT DID YOU DO NEXT?

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<sup>3</sup> Response to TRA Staff Discovery Request No. 6



1 A. After concluding that Tennessee Code Annotated § 65-5-103(d) could not, on its  
2 face, provide the relief Piedmont requests because the statute does not expressly  
3 permit what Piedmont proposes to do, I reviewed the legislative record in an  
4 attempt to discover whether Piedmont's Petition and the application of the statute  
5 could be harmonized with the statute as passed.

6 Q. DID THE LEGISLATIVE RECORD PROVIDE CLARITY REGARDING  
7 PIEDMONT'S PROPOSAL TO RECOVER CNG MOTOR FUEL  
8 INFRASTRUCTURE COSTS FROM RATEPAYERS?

9 A. Yes, it did. On March 6, 2013, then TRA Chairman Allison testified before the  
10 House Business and Utilities Sub Committee.<sup>4</sup> He was asked "[I]s it the intent of  
11 this legislation to permit regulated, natural gas companies to subsidize their retail or  
12 wholesale alternative motor vehicle transportation fuel operations with rate payer  
13 funds?" Chairman Allison answered "The answer is no." One week later before  
14 the House Finance Ways & Means Subcommittee,<sup>5</sup> TRA Chairman Allison again  
15 testified that "There is no intent in this legislation to allow any other class of  
16 consumers to subsidize the facilities that would go into providing natural gas as a  
17 motor fuel." Moreover, Chairman Allison further testified that "as the Regulatory  
18 Authority, we will assure there is no cross-subsidization going on as we implement  
19 the various rates." Chairman Allison's direct and precise conclusion on the

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<sup>4</sup> *Testimony on HB 191 Before the House Business and Utilities Sub Committee*, Tennessee General Assembly (2013) (Statement of James M. Allison, Chairman, Tennessee Regulatory Authority) attached as RJ-Exhibit I

<sup>5</sup> *Testimony on HB 191 Before the House Finance Ways & Means Subcommittee*, Tennessee General Assembly (2013) (Statement of James M. Allison, Chairman, Tennessee Regulatory Authority) attached as RJ-Exhibit I

1 intention of the language of House Bill 191, codified as Tennessee Code  
2 Annotated § 65-5-103, is a clear statement on the fate of Piedmont's Petition, as  
3 filed. It must be denied, consistent with Chairman Allison's testimony. For  
4 Piedmont to ask otherwise would require the Authority to affirmatively  
5 superimpose its will over and above the clear intent and purpose of the Tennessee  
6 General Assembly.

7 Q. WHY IS THE ABOVE LEGISLATIVE HISTORY SO IMPORTANT HERE?

8 A. As Tennessee Code Annotated § 65-5-103(d) itself is not sufficiently clear on this  
9 point, the legislative history is important because it provides a definitive answer to  
10 the question of whether Tennessee Code Annotated § 65-5-103(d) allows  
11 Piedmont to recover from ratepayers costs incurred in constructing or operating  
12 CNG motor fuel stations.

13 Q. BASED ON YOUR REVIEW OF THE LEGISLATIVE INTENT, SHOULD  
14 PIEDMONT'S PETITION BE APPROVED UNDER TENNESSEE CODE  
15 ANNOTATED § 65-5-103(d)?

16 A. No. Piedmont's Petition, as filed, should be denied, consistent with Chairman  
17 Allison's clarifying comments regarding the operation and allowances under  
18 Tennessee Code Annotated § 65-5-103(d).

19 Q. IF THE LEGISLATIVE HISTORY DID NOT EXIST, WOULD THE  
20 AUTHORITY THEN APPROVE PIEDMONT'S PETITION?

1 A. No, because, as stated above, Tennessee Code Annotated § 65-5-103(d) contains no  
2 language permitting the relief that Piedmont requests. Moreover, at best, the statute  
3 is ambiguous with respect to Piedmont's request and it would not serve the public  
4 interest to apply an ambiguity in a case of first impression such as this that would  
5 unfairly burden Piedmont's ratepayers with costs that largely do not directly benefit  
6 them.

7 **BENEFITS**

8 Q. ARE YOU FAMILIAR WITH THE STATUTE AND ITS CONTEMPLATION OF  
9 ECONOMIC BENEFIT FOR PURPOSES OF THE RELIEF REQUESTED IN THE  
10 PETITION?

11 A. Yes, I have familiarized myself with this subject matter and the statute's consideration of  
12 it.

13 Q. GIVEN YOUR REVIEW OF THE SUBJECT OF ECONOMIC BENEFITS HERE AND  
14 OF THE STATUTE, WHAT IS YOUR OPINION WITH RESPECT TO A  
15 DEMONSTRATION BY PIEDMONT OF MATERIAL OR SIGNIFICANT  
16 ECONOMIC BENEFITS?

17 A. Based upon my review of the testimony submitted by Piedmont in this matter, it is my  
18 opinion, on balance, that Piedmont has failed to demonstrate a significant or material  
19 amount of benefit to support the relief requested. For instance, Piedmont has conducted  
20 little analysis or research on this subject, admitting, by way of example, that the company

1 “has not attempted to quantify the individual impacts of these benefits to local economies  
2 at this time.” This is but one example of the relative absence of empirical evidence,  
3 research or analysis submitted by Piedmont in support of purported benefits for the action  
4 it asks the Authority to take.

## 5 RELEVANT STATUTES

6 Q. ARE THERE EXISTING STATUTES THAT PROHIBIT A REGULATED UTILITY  
7 FROM EXERCISING AN UNFAIR ADVANTAGE OR ENGAGING IN UNFAIR  
8 PRACTICES?

9 A. Yes. Tennessee Code Annotated §65-4-115<sup>6</sup> is one of them. This statute prohibits public  
10 utilities from engaging in unjust, unduly preferential, or discriminatory actions.  
11 Piedmont's proposal to recover its investment and expenses for CNG motor fuel  
12 infrastructure is, in my opinion, an overt violation of this statute because under the  
13 Company's proposal, it will avoid funding costs that its competitors and potential  
14 competitors cannot avoid. And, that is, namely, the recovery of its CNG motor fuel  
15 infrastructure costs from ratepayers. This violation is a major competitive blow to

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<sup>6</sup> 65-4-115. Unjust practices and unsafe services prohibited.

No public utility shall adopt, maintain, or enforce any regulation, practice, or measurement which is unjust, unreasonable, unduly preferential or discriminatory, nor shall any public utility provide or maintain any service that is unsafe, improper, or inadequate, or withhold or refuse any service which can reasonably be demanded and furnished when ordered by the authority.

1 potential providers that fairness and the law demand be recognized by denying  
2 Piedmont's Petition, as filed.

3 Q. WHAT IS THE REGULATORY APPLICABILITY OF THIS STATUTE?

4 A. This statute prevents utilities from behaving in a manner that results in an unjustified  
5 preference or discriminatory action being committed. Piedmont's Petition allows it to  
6 enjoy the very advantage this statute seeks to avoid. The appropriate regulatory response  
7 is to find that Piedmont's Petition is in violation of this statute because it confers upon  
8 Piedmont the ability to engage in an action which is patently unduly preferential and  
9 discriminatory.

10 Q. WHAT IS THE UNDULY PREFERENTIAL AND DISCRIMINATORY BEHAVIOR  
11 THAT PIEDMONT WOULD ENJOY IF ITS PETITION IS APPROVED?

12 A. Piedmont would be able to avoid costs of operation in the CNG motor fuel business that  
13 are not available to its competitors and potential competitors.

14 Q. IS THERE ANOTHER RELEVANT STATUTE?

15 A. Yes, 65-4-122. prohibits utilities from charging different customers different rates,<sup>7</sup>  
16 which is precisely what Piedmont is proposing in its Rate Schedules 342 and 343,

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<sup>7</sup> 65-4-122. Discriminatory charges -- Reasonableness of rates -- Unreasonable preferences -- Penalties.

(a) If any common carrier or public service company, directly or indirectly, by any special rate, rebate, drawback, or other device, charges, demands, collects, or receives from any person a greater or less compensation for any service within this state than it charges, demands, collects, or receives from any other person for service of a like kind under substantially like circumstances and conditions, and if such common carrier or such other public service company makes any preference between the parties aforementioned,

1 discussed below. Moreover, Piedmont itself, by the operation of the mechanism would  
2 violate section (c ) of the statute which reads " It is unlawful for any such corporation to  
3 make or give an undue or unreasonable preference or advantage to any particular person  
4 or locality, or any particular description of traffic or service, or to subject any particular  
5 person, company, firm, corporation, or locality, or any particular description of traffic or  
6 service to any undue or unreasonable prejudice or disadvantage." Under this language,  
7 Piedmont is the beneficiary of the "undue or "unreasonable preference or "advantage," as  
8 it can take advantage of its subsidized operating and investment costs in an arena where  
9 there are competitors and potential competitors.

10 Q. WOULD PIEDMONT'S PETITION, AS PROPOSED, PROVIDE IT WITH AN  
11 UNFAIR ADVANTAGE OVER MEMBERS OF TFCA WHO MAY CHOOSE TO  
12 ENTER THE CNG MOTOR FUEL BUSINESS IN COMPETITION WITH  
13 PIEDMONT?

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such common carrier or other public service company commits unjust discrimination, which is prohibited and declared unlawful.

(b) Any such corporation which charges, collects, or receives more than a just and reasonable rate of toll or compensation for service in this state commits extortion, which is prohibited and declared unlawful.

(c) It is unlawful for any such corporation to make or give an undue or unreasonable preference or advantage to any particular person or locality, or any particular description of traffic or service, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic or service to any undue or unreasonable prejudice or disadvantage.

(d) Any such corporation that shall be guilty of extortion or unjust discrimination, or of giving to any person or locality, or to any description of traffic an undue or unreasonable preference or advantage, shall be fined in any sum not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000).

(e) An action may be brought by any person against any person or corporation, owning or operating such public service company in Tennessee, for the violation of this section, before any court having jurisdiction to try the same.

1 A. Yes, it would. Piedmont's ratepayer funded CNG motor fuel operations would enjoy an  
2 unfair advantage over its competitors and potential competitors since its infrastructure  
3 costs and expenses would be recovered from ratepayers outside motor vehicle fueling i.e.,  
4 commercial and residential users of natural gas. If allowed, Piedmont would enjoy an  
5 unfair advantage over competitors and potential competitors in the CNG motor fuel  
6 market, such as TFCA members or any other nonutility competitors. Accordingly,  
7 Piedmont's Petition must be denied.

8 **PUBLIC INTEREST**

9 Q. WHAT IS THE PUBLIC INTEREST?

10 A. While the public interest test is to a certain extent fluid, there are minimum  
11 standards and guiding principles that are carefully applied so as to, among other  
12 things, comply with the law, adhere to legislative intent , comply with regulatory  
13 orders and rules and serve the public good.

14 Q. WHAT ARE SOME OF THE GUIDING PRINCIPLES THAT SHOULD BE  
15 APPLIED IN DETERMINING WHETHER THE PUBLIC INTEREST TEST  
16 HAS BEEN SATISFIED ?

17 A. Several of the guiding principles are the creation of criteria that guide the  
18 development of a public interest assessment tool and the other is for the decision  
19 maker to keep in mind the policy goals being pursued and build a test around those

goals.<sup>8</sup> In Piedmont's case, the General Assembly has provided the policy direction in the language of Tennessee Code Annotated § 65-5-103(d) to use as a guiding principle. Seemingly, the major components needed to establish a public interest test in this matter are already developed and can be applied to Piedmont's Petition.

Q. IS COMPLIANCE WITH EXISTING STATE LAW A COMPONENT OF THE MINIMUM REGULATORY STANDARDS THAT SHOULD BE USED IN APPLYING THE PUBLIC INTEREST STANDARD?

A. Absolutely. A key element of the regulatory compact<sup>9</sup> is that regulated companies in exchange for a grant of monopoly franchise service areas abide by agency rules and governing laws. The Authority must find that Piedmont's proposed recovery mechanism is in the public interest as a condition of approval.<sup>10</sup> To the extent the Authority adopts as a minimum threshold in applying the public interest test that companies must be in compliance with all state laws and Authority rules, Piedmont's mechanism must fail and the Petition denied for being in violation of Tennessee Code Annotated §65-4-115, which is discussed below.

Q. MUST PIEDMONT SATISFY EACH OF THE PUBLIC INTEREST FACTORS OR ONLY ONE OR SOME OF THEM TO PASS THE PUBLIC INTEREST TEST?

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<sup>8</sup> Filipink, Eric, *Serving The "Public Interest" - Traditional vs Expansive Utility Regulation*, 2009, p.3.

<sup>9</sup> McDermott, Karl, *Cost of Service Regulation*, 2012, p.5

<sup>10</sup> Tenn. Code Ann. § 65-5-103(d)(2)(A)



1 A. All of them. Any one of the above justifications, standing alone, is a severe enough  
2 deficiency to support a finding that Piedmont's Petition, as filed, is not in the public  
3 interest and should be denied.

4 Q. WHAT IS PIEDMONT'S POSITION AS TO WHY ITS PETITION IS IN THE PUBLIC  
5 INTEREST?

6 A. Piedmont states that its petition is in the public interest "because it creates a partial  
7 and interim bridge to recover the costs of new capital investment by the Company  
8 related to infrastructure and equipment expansion for the purpose of economic  
9 development infrastructure between rate case filings. It will allow the Company to  
10 periodically update rates for its customers with smaller but more frequent  
11 adjustments to rates and enhance public safety and accessibility to Piedmont's CNG  
12 distribution system in Tennessee.<sup>11</sup> Also, Piedmont states that "capital investment  
13 in additional CNG infrastructure to support the growth of natural gas as an  
14 alternative fuel" is in the public interest.<sup>12</sup> Finally, Piedmont asserts that Rate  
15 Schedule 342 and Rate Schedule 343 are in the public interest because they will  
16 "demonstrably" reduce fuel costs to individuals and businesses adopting that fuel  
17 and creating limited economic opportunities.<sup>13</sup> While I cannot state there may not  
18 be some level of benefit for selected motorists, there remains an issue, as discussed

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<sup>11</sup> Piedmont Petition, ¶ 15

<sup>12</sup> Valentine Direct Testimony, p.9, l20.

<sup>13</sup> Valentine Supplemental Testimony, p.13, 15.

1 above, with the fact that these motorists may not be Piedmont natural gas  
2 customers and will realize the benefit contemplated here by Piedmont.

3 Q. SHOULD THE DEFINITION AND APPLICATION OF PUBLIC INTEREST REMAIN  
4 CONSISTENT WITH POLICY STANDARDS AND CONSIDERATIONS  
5 DEVELOPED AND APPLIED IN GENERAL RATES CASES?

6 A. Absolutely, the standard for review should not change at all when the frequency of  
7 review changes. The same considerations should hold true i.e., compliance with statute,  
8 TRA Rules and orders.

9 Piedmont's breach of state law cannot be dismissed in an evaluation of public interest.  
10 Piedmont must cure the infirmities in its filing before it can receive favorable  
11 consideration for an alternative regulatory mechanism.

12 Because one of the prongs of the legislation is the generation of an economic benefit, we  
13 cannot conclude, based on the record, that a net benefit will inure to ratepayers. In fact,  
14 ratepayers, under Piedmont's plan, will fund the so-called "benefit" in an amount that  
15 exceeds \$550,000 per year. Based on these facts, the Authority must deny Piedmont's  
16 Petition based on its failure to meet the requirements of Tennessee Code Annotated  
17 Section 65-5-103(d).

18 Q. IN YOUR OPINION, HAS PIEDMONT MET THE MINIMUM  
19 REQUIREMENTS OF THE PUBLIC INTEREST TEST AS YOU HAVE  
20 DESCRIBED IT?

1 A. No, it has not. While the Company's Petition cites several reasons (see Petition at  
2 p. 8) why its request is in the public interest, its basic infirmity is seeking to use  
3 ratepayer funding to recover the costs for competitive CNG motor fuel  
4 infrastructure which runs afoul of both 65-4-122, 65-4-115, and, most importantly,  
5 of Tennessee Code Annotated Section 65-5-103(d), because the cross subsidy  
6 proposed as the mechanism for cost recovery is prohibited by the statute.

7 Q. IS PIEDMONT'S PETITION, AS FILED, IN THE PUBLIC INTEREST?

8 A. No, Piedmont's Petition, as filed, is not in the public interest for the following  
9 reasons:

10 1) The Petition is inconsistent with legislative intent as clarified by Chairman  
11 Allison and accepted by members of both the Tennessee Legislative Finance Ways  
12 & Means and Utilities Subcommittees, and thus inconsistent with the statute.

13 2) The Petition fails to support the existence of a measureable net benefit to  
14 Piedmont's captive customers.

15 3) The Petition fails the public interest test because it does not pass the  
16 minimum threshold test that requires Piedmont to be in compliance with all laws,  
17 rules, and orders.

18 Q. IS IT NECESSARY TO FIND THAT PIEDMONT'S PETITION IS IN THE PUBLIC  
19 INTEREST IN ORDER FOR IT TO RECEIVE AUTHORITY APPROVAL?

1 A. Yes. Tennessee Code Annotated § 65-5-103(d)(2)(A) states in part:

2 "A public utility may request and the authority *may* authorize a mechanism  
3 to recover the operational expenses, capital costs or both, *if such expenses or*  
4 *costs are found by the authority to be in the public interest. . . .*" (*emphasis*  
5 *added*)

6 Consequently, the Authority must find that Piedmont's Petition, as proposed, is in the  
7 public interest before it can be approved. And, as I have demonstrated here, Piedmont's  
8 Petition is not in the public interest and should be denied

9 Q. IN COMPARING PIEDMONT'S ACTIONS AGAINST THE STANDARDS  
10 DISCUSSED ABOVE, WHAT DO YOU CONCLUDE?

11 A. The infirmities in Piedmont's Petition are fatal to its request. As a result of these  
12 infirmities, Piedmont's Petition should be denied.

13 **OTHER REGULATORY CONSIDERATIONS**

14 Q. WHAT WEIGHT SHOULD THE AUTHORITY PLACE ON PIEDMONT'S  
15 STATEMENT THAT IT RECEIVED APPROVAL FOR ITS PROPOSAL IN OTHER  
16 STATES<sup>14</sup>

17 A. None. First, the documents requested in TFCA Discovery Request #8 were not produced  
18 so that a determination could be made on relevance, if any. Next, Piedmont's proposal

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<sup>14</sup> TFCA Discovery Request No. 8

1 here must be evaluated on Tennessee state law and applicable orders and rules. And,  
2 finally, for reasons too numerous to list, the public policies of the various states, do not  
3 always align with ease.

4 Q. HOW DO YOU RESPOND TO PIEDMONT'S ATTEMPTS TO JUSTIFY ITS  
5 PROPOSED CROSS-SUBSIDIZATION OF ITS CNG MOTOR FUEL BUSINESS BY  
6 NATURAL GAS DISTRIBUTION CUSTOMERS BY POINTING OUT THAT THE  
7 MANNER IN WHICH ITS COSTS OF SERVICE ARE CURRENTLY ALLOCATED  
8 "CREATES THE POTENTIAL FOR SUBSIDIZATION OF ONE RATE CLASS BY  
9 OTHERS?"

10 A. The cross-subsidization that is the centerpiece of Piedmont's Petition bears little  
11 resemblance to the thoughtful process and policy considerations that accompany  
12 Cost of Service deliberations that precede the allocation of the company's revenue  
13 requirement among rate classes. First of all, rate class decisions have matured and  
14 developed through the years based on a cumulative regulatory process where there  
15 were findings that allocations among rate classes were just, reasonable, and in the  
16 public interest. The public policy objectives of regulators in establishing rate  
17 design, and the creation of subsidies and the subsidy proposed in Piedmont's  
18 Petition bear very little in common other than to say a "subsidy" is present in rate  
19 design. Moreover, universal service considerations were pursued so that natural  
20 gas, as a cooking and heating fuel, remained affordable to Tennesseans. These  
21 universal service considerations contributed greatly to the general health and

1 welfare of all ratepayers, which of course, is a motivating policy objective.

2 Additionally, each rate class provided its proportionate share to the overall recovery  
3 of fixed costs. By contrast, the subsidy in Piedmont's proposal will benefit very  
4 few, if any ratepayers, other than those ratepayers who may own NGVs. In fact,  
5 ratepayers will experience a negative benefit. That is, their rates will increase.

6 Q. HOW DOES PIEDMONT'S PETITION DIFFER FROM THE TRADITIONAL,  
7 UNIVERSAL CONCEPT THAT YOU JUST OUTLINED ABOVE?

8 A. Traditional universal service concepts were developed over the years to yield  
9 important benefits to all ratepayers. The most important universal service goal  
10 developed over the years and reflected in rate design is the provision of available,  
11 safe, reliable and affordable natural gas service services at just and reasonable rates  
12 to all of Piedmont's serving area, including high cost areas. Piedmont's Petition,  
13 by contrast, seeks to serve an extremely narrow segment of ratepayers, only those  
14 that drive natural gas vehicles, and potentially provides services to consumers who  
15 reside outside of Piedmont's service area. Yet, Piedmont's proposal would result  
16 in Piedmont's regulated natural gas customers, including low income customers  
17 and customers who qualify for gas payment assistance, subsidizing CNG motor  
18 fuel stations.

19 Q. IF PIEDMONT'S PETITION IS DENIED, HOW DOES IT RECOVER THE COSTS OF  
20 ITS CNG MOTOR FUEL INFRASTRUCTURE?

1 A. Utility infrastructure investments not recoverable from ratepayers are not eligible for  
2 inclusion in rate base and are borne by Piedmont's shareholders. If the Authority denies  
3 Piedmont's Petition, as I am recommending, the full \$4.7 million in infrastructure  
4 spending on CNG motor fuel plant would be borne by Piedmont's shareholders, as well as  
5 the proposed investment of \$4.6 million. Of course, shareholders would retain all profits  
6 from the CNG motor fuel business.

7 Q. HOW MAY THE COMPANY SUPPORT CNG MOTOR FUEL AS AN  
8 ALTERNATIVE MOTOR VEHICLE FUEL AND REMAIN IN COMPLIANCE WITH  
9 TENNESSEE CODE ANNOTATED § 65-5-103(d)?

10 A. Piedmont can offer wholesale natural gas rates for CNG and build underlying  
11 transmission, distribution, and metering infrastructure up to a third party's dispensing  
12 facilities. Piedmont states that transmission and metering represents the majority of its  
13 costs.

### 14 **Safeguards**

15 Q. ARE THE DEVELOPMENT OF SAFEGUARDS FOR PIEDMONT'S PETITION  
16 IN THE PUBLIC INTEREST?

17 A. Yes. I conclude that sound public policy and the public interest require the  
18 consideration of protections in this case.

1 Q. WHAT SAFEGUARDS DO YOU CONCLUDE ARE IN THE PUBLIC  
2 INTEREST?

3 A. At a minimum, the following safeguards should be considered if the Authority  
4 chooses to approve Piedmont's Petition:

5 1) The development of a cost allocation methodology to transfer any gains to  
6 ratepayers resulting from the sale of CNG motor fuel plant to a third party.

7 2) Creation of a non-regulated subsidiary to transfer the operations to after a  
8 given amount of time, under conditions to be negotiated). Transfer of assets should  
9 be accomplished consistent with an approved cost allocation methodology.

10 3) Require strict adherence to TRA Rule 1220-4-1-.01, Capital Additions  
11 Budgets of Utilities, so that a review and questions regarding capital expenditures  
12 can be asked before infrastructure costs are incurred.

13 4) Deny all tariff provisions that provide any pricing, including discounts,  
14 discretion to the Company. Any special rate or charge in the CNG motor fuel  
15 market should be approved by the Authority to ensure fairness.

16 5) Shorten the term of the experimental tariff to less than three (3) years.

17 **RATE SCHEDULES 342 & 343**

18 Q. SHOULD RATE SCHEDULES NOS. 342 & 343 BE AMENDED?



1 A. Yes, the second full paragraph on First Revised Page 1 of 2, of Rate Schedule 342  
2 and first full paragraph on First Page 2 of 3 of Rate Schedule 343<sup>15</sup> should be  
3 stricken.

4 Q. WHY?

5 A. This provision<sup>16</sup> allows the Piedmont to offer similarly situated customers different  
6 rates if the company, at its discretion, determines that the granting of a discount is  
7 not unduly discriminatory. This type of judgment should be in the hands of the  
8 Authority, rather than in the hands of the monopoly distributor. Additionally,  
9 Piedmont is today, and will continue to be if the Petition is granted, a competitor of  
10 other businesses in the CNG segment of the motor vehicle fuel market over which  
11 it will have price discounting discretion. This provision permits Piedmont to  
12 exercise control of prices to its competitors in the CNG motor fuel segment of the  
13 market.

14 Q. AS BEST THAT YOU CAN RECALL, DOES THE AGENCY HAVE A  
15 HISTORY OF DELEGATING THIS TYPE OF JUDGMENT TO THE  
16 REGULATED UTILITY?

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<sup>15</sup> Rate Schedule No. 343 "The Company may at its discretion offer a rate discount on a not unduly discriminatory basis to customers up to the per therm compression charge referenced above, in order to compete with alternative fuel providers and further develop the market demand for natural gas vehicular fuel or the facilities available to serve such demand."

<sup>16</sup> The language is identical on Rate Schedules 342 and 343. See Supra at 28.

1 A. Not at all. The agency requires the filing of tariffs, which are available for public  
2 inspection, so that similarly situated customers can see the rates to which they are  
3 entitled. Any company proposal to charge a rate that differs from its filed and  
4 approved tariff requires Authority review and approval. The judgment that  
5 departure from a tariffed rate is justified is within the exclusive jurisdiction of the  
6 Authority, absent any law to the contrary. Piedmont's tariff is an attempt to bypass  
7 Authority review and position itself in the CNG motor fuel market in its serving  
8 territory as the ultimate arbiter of which customer is entitled to a discount. In so  
9 doing, the Company seeks to substitute its judgment for that of the Authority.

10 Q. WHAT ARE THE REQUIREMENTS BY TRA RULE THAT MUST BE  
11 PRESENT IN ORDER FOR A UTILITY TO OFFER A SPECIAL RATE  
12 (SPECIAL CONTRACT)?

13 A. Company must demonstrate that circumstances surrounding its offering of a special rate  
14 are special or unique enough to warrant departure from general tariffs. This  
15 demonstration must be made to the Authority prior to the special rate being awarded.<sup>17</sup>

16 Q. ARE THERE OTHER REQUIREMENTS NECESSARY TO SUPPORT THE  
17 AWARDING OF A SPECIAL RATE?

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<sup>17</sup> 1220-4-1-.07 SPECIAL CONTRACTS

Special contracts between public utilities and certain customers prescribing and providing rates, services, and practices not covered by or permitted in the general tariffs, schedules or rules filed by such utilities are subject to the supervision, regulation and control by the Authority. A copy of such special agreements shall be filed, subject to review and approval.

1 A. Yes. Piedmont must also demonstrate that special rates are made generally available to  
2 similarly-situated customers that purchase like services.

3 Q. DOES PIEDMONT'S TARIFF MEET THIS STANDARD?

4 A. No. The tariff fails to provide sufficient information specifying the terms pursuant to  
5 which a company would qualify for the discount so that it could ascertain whether it is  
6 similarly situated to customers who receive discounts.<sup>18</sup>

7 Q. ARE THERE ANY OTHER STATUTES THAT PIEDMONT'S RATE SCHEDULE 343  
8 VIOLATE?

9 A. Yes, the Authority has existing statutes that prohibit companies from charging  
10 preferential or discriminatory rates. As discussed above, Piedmont's tariff makes it  
11 the final arbiter of what is unduly preferential, which is an unacceptable tariff  
12 provision and violates Tennessee Code Annotated §65-5-104. Unjust rate, fare,  
13 schedule or classification prohibited<sup>19</sup> and Tennessee Code Annotated § 65-5-104.  
14 Unjust rate, fare, schedule or classification prohibited.<sup>20</sup>

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<sup>18</sup> Supra at 24

<sup>19</sup> (a) No public utility shall:

(1) Make, impose, or exact any unreasonable, unjustly discriminatory or unduly preferential individual or joint rate, or special rate, toll, fare, charge, or schedule for any product, or service supplied or rendered by it within this state; or

(2) Adopt or impose any unjust or unreasonable classification in the making or as the basis of any rate, toll, charge, fare, or schedule for any product or service rendered by it within this state.

1

2 Q. DO YOU OPPOSE PIEDMONT'S WHOLESALE PROPOSED REVISED CNG  
3 MOTOR FUEL TARIFFS THAT OFFER WHOLESALE CNG MOTOR FUEL TO  
4 CUSTOMERS PROVIDING THEIR OWN COMPRESSION AND DISPENSING  
5 EQUIPMENT?

6 A. No. In my opinion, this is the type of investment and recovery under alternative  
7 regulation that fall within the language of Tennessee Code Annotated § 65-5-103(d).

8

9

10

11 Q. DOES THIS CONCLUDE YOUR PREPARED DIRECT TESTIMONY?

12 A. Yes.

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(b) Any measure taken by any public utility to avoid discrimination in rates, charges, fees and in the availability and quality of energy against consumers using solar- or wind-powered equipment as a source of energy shall not be considered unreasonable, unjust, or unduly preferential in violation of this section, unless such customers do not have sufficient safety equipment to protect the suppliers from damage.

20

(a) If any common carrier or public service company, directly or indirectly, by any special rate, rebate, drawback, or other device, charges, demands, collects, or receives from any person a greater or less compensation for any service within this state than it charges, demands, collects, or receives from any other person for service of a like kind under substantially like circumstances and conditions, and if such common carrier or such other public service company makes any preference between the parties aforementioned, such common carrier or other public service company commits unjust discrimination, which is prohibited and declared unlawful.

(b) Any such corporation which charges, collects, or receives more than a just and reasonable rate of toll or compensation for service in this state commits extortion, which is prohibited and declared unlawful.

(c) It is unlawful for any such corporation to make or give an undue or unreasonable preference or advantage to any particular person or locality, or any particular description of traffic or service, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic or service to any undue or unreasonable prejudice or disadvantage.

# **Exhibit 1**

## TENNESSEE GENERAL ASSEMBLY

### House Finance Ways & Means Subcommittee, March 13, 2013

**Chairman Michael Harrison:** Okay we'll take item 39, House Bill 191 out of order. Leader McCormick you're recognized.

**Representative Gerald McCormick:** Thank you Mr. Chairman. House Bill 191 is an administration bill in cooperation with the TRA. It has several components but basically it realigns the TRA's funding mechanism which will result in over \$1 Million in fee reductions passed down to utilities and hopefully to the consumers too. It also enables the adoption of best practices for more efficient rate reviews which means we're going to bring in and see...

**Chairman Michael Harrison:** Bill's been moved and properly seconded. Do we have questions on the bill? Chairman Sargent, you're recognized.

**Representative Charles Sargent:** thank you Mr. Chairman. Leader McCormick, let me, I have two questions I'd like to ask and I think you probably know what they are. One of these, we're going to do an annual rate review and normally we did a review after 4 or 5 years and they had a full blown hearing. When we do this will there actually be a review or is it just going to be that they ask for a half percent or a  $\frac{3}{4}$  percent of an increase is that going to be automatic or will they actually have an annual review and see why they need that increase?

**Representative Gerald McCormick:** That's a good question. What they're going to do, as you know in the past, they'd wait several years, 3 to 5 years and longer sometimes and then go in and have a full blown case where a lot of lawyers were hired and a lot of fights and negotiating positions and that type thing. What this does is gives the TRA the ability to really on a constant basis keep an eye on these companies and give them some rate, usually increases I suspect, based on some expenses that they really don't have any control over. It'll be more of, I'd say, a CPA driven process rather than a legal driven process but with the clear understanding that it could turn into a legal process if the system breaks down. So, it has the safeguards of the old system but some efficiencies in the new system.

**Representative Charles Sargent:** You feel doing it like this, the consumers are still going to be protected and have all the protections they had before?

**Representative Gerald McCormick:** I do feel like it and I had some questions myself. I'm carrying the legislation but I think we need to ask tough questions about legislation that we carry not just other people's legislation and something that keeps cropping up that reassures me is that the Commission will have the ability and as the words are written to act in the public interest. Which is vaguely defined which I think gives them a lot of authority to go in if the system is being abused to step in and change things if they need to in the public interest.

**Representative Charles Sargent:** Chairman, thank you for that. For those, I just wanted to make sure that we had that on the record. The other question I have is under Section 5. Section 5 as you know where natural gas companies would be able to set up, and there's been a lot of talk about this, set up their own substation or sell natural gas for cars and trucks. Is that, do you see that as the intent of the legislation?



**Representative Gerald McCormick:** You know Chairman, this is one that just came up yesterday and I hate to make this last any longer but I don't want to give you the wrong answer. If I have the Committee's permission I'd like to call up possibly Chairman Allison to address that question, if that's okay with the Chairman too and both Chairmen.

**Chairman Michael Harrison:** Without objection we're out of session. If you would, come forward and state your name for the record.

**Jim Allison:** I'm Jim Allison, I'm the Chairman of the Tennessee Regulatory Authority. The answer to your question is what it deals with is a procedural change in how we will go about looking at those rates. It does not guarantee recovery, it does not say that there will be any cross-subsidization of the fuel, motor fuel dispenser by residential consumers or anything of that nature but the alternative rate making procedures, all of them, are permissive and it would require that finding that the public interest, like the Leader stated.

**Chairman Michael Harrison:** You're recognized.

**Representative Charles Sargent:** Thank you Mr. Chairman. My question is, is it the intent of natural gas companies to go into set up, I'll say natural gas stations through-out the state and have the rate payers paying for that infrastructure and not as a commercial entity? Is there, I want to make sure we don't have rate payers paying for infrastructure where we have commercial entities out there that have to basically pay for their own infrastructure.

**Jim Allison:** There is no intent in this legislation to allow any other class of consumers to subsidize the facilities that would go into providing natural gas as a motor fuel.

**Representative Charles Sargent:** And is also your understanding that natural gas companies do not intend to set up stations throughout the state? And they're going to lead back to the retailers of the Mapcos and the Exxons and the Shell stations of the world to do that?

**Jim Allison:** I can't really address what the intentions of the natural gas companies are but as the Regulatory Authority we will assure there is no cross-subsidization going on as we implement the various rates.

**Representative Charles Sargent:** Okay. Thank you. Thank you Mr. Chairman.

**Chairman Michael Harrison:** Representative Armstrong, you're recognized.

**Representative Joe Armstrong:** Thank you Mr. Chairman and Chairman Sargent brings up a very interesting question as it relates to, you know, natural gas vehicles and of course, realizing that natural gas is becoming the transportation fuel. Certainly I didn't know if the agency had looked at the conversion from petroleum based fuel to natural gas and setting up the rules and regulations along that line. Even if you look at the available information that's out there, all our utilities, they're converting the coal fired plants, the TVA's just converted to natural gas at some of their largest, some of their largest facilities over to natural gas and then with all of the reports about how much natural gas is available in this country with all the finings (?) or the shale gas and the fracking and all of this, have we looked at a comprehensive study of Tennessee looking at the use of natural gas and also as a transportation fuel? Because I think the last statistic that I saw that natural gas on a BTU level would cost about \$1.29 per gallon if we switched over from gas that's costing what \$4.40 a gallon now. Has this agency looked at going in that direction for natural gas fueling and for

providing those infrastructures?

**Jim Allison:** There's a lot of talk nationally about, not only natural gas, but other alternative fuels. For example, I drove up here from Shelbyville in an electric car yesterday. So, it's an emerging part of the technology of our country. At the TRA we have had some limited experience with natural gas as a motor fuel, we do have at least one and I think perhaps 2 natural gas companies that have established refueling stations. They are not on the side of the interstate where everybody knows where they are but they are for people who have limited natural gas vehicles already and we've established tariffs for those dispensing facilities already so we have looked at it in a limited sense but I would have to say in a comprehensive sense we have not had a formal study like you're suggesting.

**Representative Joe Armstrong:** And when you mention tariffs, we know we've got taxes on our fuel to pay for road costs but when it comes to electric vehicles, when it comes to natural gas vehicles, there's no money being collected for the infrastructure and I'm kind of following along with the Chairman was talking about. Certainly we can even get into how other states actually distribute gas to not only commercial but to residential, you know, in Georgia an individual gets to choose which company, which market they buy gas from and the utility is only the deliverer of that. In Tennessee we've got a different type of structure and I didn't know if you were looking at that, where the utility only charges you for the transportation but you pay a commodity price from someone else. And Texas has a totally deregulating both electric and natural gas. Are we looking at some of these because there's a significant difference in natural gas prices to consumers in Georgia is a big difference than what we pay here in Tennessee. In Tennessee we pay different rates in between different consumers. The only ones subject to any type of hedge, whether it's low or high, are the private companies but certainly those utilities out here that are making money off the commodity price, have we looked at basically talking to them and saying, hey, put in your infrastructure cost and let the consumer have a choice and let the businesses have a choice where they buy their natural gas?

**Jim Allison:** There is some of that going on in the natural gas industry all, already in Tennessee. For example, we have a number of large users of natural gas that buy directly from alternative sources and then use the local distribution company just for a delivery mechanism so there are situations in place in Tennessee where that's occurring as well. It hasn't been penetrated to the individual homeowner level. I used to work in Georgia it's got its plusses and minuses, to deal with that. It becomes a very complex arena but it hasn't penetrated down to the individual level here in Tennessee yet but we do have a number of large consumers who already do just that.

**Representative Joe Armstrong:** Okay, but your experience in Georgia, certainly, I think it would benefit the residential consumers to look at that option and see if it would be some savings on that residential user. And I didn't know if you had plans within the TRA to look at things of that nature.

**Jim Allison:** We don't have anything specifically planned but we'll certainly talk about it after the discussion today.

**Chairman Michael Harrison:** Any further questions for the Chairman? Seeing none. Thank you for being with us today. Without objection, we're back in session. Leader McCormick?

**Representative Gerald McCormick:** I renew my motion Mr. Chairman.



**Chairman Michael Harrison:** Any further questions. Seeing none. Is there objections to questions? Hearing none, all in favor of moving house bill 191 to full finance, say aye, those opposed. Bill moves out.

## TENNESSEE GENERAL ASSEMBLY

### House Business and Utilities Sub Committee, March 6, 2013

**Chairman Pat Marsh:** Alright, we'll go to item number seven, House Bill 191. Leader McCormick, you're recognized.

**Representative Gerald McCormick:** thank you Mr. Chairman and I thought I'd come up here because we'll probably need to call on a couple of folks to come up here and give their opinions on the Bill, of course, with the permission of the Committee. This is the TRA Bill that's brought really jointly by the Administration and the TRA and it does several things and if I could, I'll go over the basic outline of it and focus in on one section that I think will have the most discussion on but I think this is the place to have the discussion. There are basically 5 sections that make changes, Section 1 would say that the TRA Directors are eligible for state employee health insurance benefits and those type things. That was the original intention and this makes that more clear. The second Section also clarifies some, there's actually some ambiguity relative to the conflict of interest prohibitions for the Directors, this does not make it easier, it just makes it clearer what they can and can't do and it's clean up language. Section 3 talks about implementing optional cost based services at the request of the utility and cover the cost for doing so. Again, that's not a huge change. Section 4 will realign the fee structure basically to reflect who is being regulated and let them pay the fees rather than have companies that are not being regulated, any or very much, and reduce their fees. This will also result in a savings of a little over a million dollars a year in the budget, which the TRA has worked very hard to make sure they could meet that and hopefully save rate payers over a million dollars a year in the process. Now, Section 5 is the section that I'm sure that our folks here will want to focus in on and what this does, it creates a new section authorizing the implementation of alternative regulatory methods for utility rate reviews and cost recovery. And this is in lieu of the current process where they have general rate cases every few years. Sometimes they settle them, sometimes they hire lots of lawyers and spend lots of money and take a lot of time and we read a lot about it in the newspaper and they have very contentious issues. Basically, what they are wanting to do in this is have more of an annual review and rather than having those big rate cases. Now, it won't keep us from having rate cases, we can still have them, but hopefully, we'll have less of them. In my opinion, I think a good way to say it is, is we're bringing in CPAs to review it more regularly and probably not using lawyers as much to have big rate review cases.

**Chairman Pat Marsh:** We have a motion on the Bill, do I hear a second? We have a motion and second. And we do have an amendment on it; do you want to talk about it?

**Representative Gerald McCormick:** I believe that's what I just explained, was the amendment.

**Chairman Pat Marsh:** Ok, alright do we have a motion on the amendment? We have a motion and second on the amendment. Does anybody have any questions on the amendment? Representative Pody?

**Representative Mark Pody:** Uh, yes, I've got one. Where it says it's going to empower the TRA to make these rules, are these rules come before Gov Ops? Who oversees the rules that they're making to make sure, who check them?

**Representative Gerald McCormick:** I think all rules have to come through Gov Ops at some point for review.

**Representative Mark Pody:** Even the TRA, so these rules will come? Okay.

**Representative Gerald McCormick:** Yes, they'll come through and I'll let them, if that's not correct they'll get a chance in a second. That is correct. And Mr. Chairman, I think it's only fair, we have had some objections to the Bill, especially for that last Section, from the Attorney General's office and with your permission I'd like to have them come up and state their case and then hopefully have the TRA Directors come up and state theirs.

**Chairman Pat Marsh:** We want to go ahead; do we have any more questions on the amendment? If not, I think we're going to go ahead and vote the amendment. Without objection, we'll go ahead and vote on the amendment. All in favor say aye, opposed? And that is amendment number 3640. The amendment passes, now we're back on the Bill. I think if it's okay with you Leader we'll go out of recess and hear from whoever you want to bring up or however you want to work it. We want to hear from the Attorney General? Is anybody here from the Attorney General's Office? Would you all like to come up and let us hear from you please? If you wouldn't mind stating your name and your position and then we'll hear your testimony. Turn your microphone on please sir.

**Vance Broemel:** My name's Vance Broemel, I'm with the Consumer Advocate and Protection Division of the Office of the Attorney General and with me here today is Ryan McGehee who is also from the Consumer Advocate and Protection Division and under the statute that created us we have the duty and authority to have cases at the Tennessee Regulatory Authority and also to participate in legislative and judicial proceedings and that's why we're here today here on this House Bill 191 and in particular, Section 5. As Leader McCormick pointed out there are numerous sections here. We are not speaking on the inspection fee portion of the Bill which has to do with fees paid by regulated companies, they're going down for some and up for others but we're not speaking on that. We simply note that those fees whatever they are can be recovered by the companies by rate payers. We're here today to speak on Section 5 which changes greatly the way rates will be set in Tennessee if it's passed. What this does, in our opinion, is make it more likely that rates will increase for businesses and households who are customers of regulated companies. And the reason for this is that this Bill greatly reduces the risk that the regulated companies/utilities, gas and water in particular, will have as businesses because they'll be allowed to recover, virtually immediately, their expenses in capital investments. Now heretofore, as was pointed out by Leader McCormick we had rate cases and in that you have a general hearing, you consider all the expenses, all the capital investments of a company and



then you project going forward what they think their expenses will be for the coming year and a rate is set on that with the addition that any investment that the company has made they get to recover a rate of return on that. And this is similar to any business. If you have a start-up company and it's difficult to attract capital you would want a high rate of return. Similarly, if you had a safe investment in bonds or a CD the rate of return would be less. What the TRA does is look at the company and decide what level of risk does it have and then that's expressed as a percentage, usually, let say just take a round figure, a utility could get a rate of return of 10%, that means that on all their investments, if they have \$50 million in investments, they get their projected expenses plus a rate of return on that \$50 million and each side presents testimony, our group has accountants that we have, now they are contract accountants and they present testimony, the TRA has a hearing and then decides the case, sets the rates. What this Bill does, is it takes the last rate case and that's still in effect, that's still there but in addition it allows companies to come and say we want recovery for this expense, we had some new project or whatever, well in traditional rate cases all those things are suppose to be figured into their projected rates and they're covered in the rates. Here what we're afraid of is that the risk, since the company is recovering these expenses virtually immediately, the risk should go down but there's nothing in the Bill to reflect that decrease or decline in risk. Therefore, we think rates will be unnecessarily high for consumers. We would point out that the TRA has full authority to do this without this Bill. They have set what's called alternative rate making mechanisms in the past, they could do this today and we think it would be better to do that because then you'd have input from concerned persons. You would have more flexibility and it wouldn't necessarily be the Legislature's framework, it would be the TRA, who, that's their responsibility to set rates and they have expertise to say how this should be done. We think it would be better in that kind of hearing. We would also point out, and I know this is fairly complicated, this Office did send a letter with a memo attached and we hope you all have it and if not we'd be glad to get it to you and the idea is that we are concerned about this potential increase in rates and we would also point out that by and large, the utilities of Tennessee, particularly the larger ones are doing very well financially. If you look at their stock prices from 2008 to the present in some cases it's virtually doubled and so they're not under financial stress, there's no idea in the Bill that that is the reason it is being done. Our concern, another one of our major concerns is not only will this likely increase rates but the way rate cases work, once this rate is set and you have a rate of return on it, if the company can become more efficient they get the benefit of the savings. In other words if you set a rate and the customer is charged say \$50 a month and the company gets real efficient and can do things for, you know, it costs them less than they projected, they get that savings. Under this system where they just simply submit a Bill and say we want reimbursement, we think they'll lose that efficiency. So in summary, that's our concern that this is a really big shift in the way rates are set. I know there's been some concern about rate case expense we agree that that can be a problem. We think that can be addressed at the TRA. I would point out that we've had three major cases with Tennessee American Water, Atmos, and Piedmont in the last few years. We've settled them. There were no hearings. The expenses were rather minimal. The expenses come when there's problems in discovery as we call it, it's kind of a legal term, we try to get information from the company. But that, we're very aware of that, we're very conscious of it and we do try to hold the expenses down. So, if there are any

questions, we'd be glad to entertain them. Either myself or Mr. McGehee. That concludes our remarks.

**Chairman Pat Marsh:** Okay. Mr. Broemel, in your testimony I thought you just said that they can currently do this now?

**Vance Broemel:** Yes.

**Chairman Pat Marsh:** If they can do it now, why do you object to them doing it in the Bill?

**Vance Broemel:** Well, because we think that it would be more input from more concerned parties and there could be more flexibility. In the Bill itself, it states that they can develop rules and procedures. We think it would be better to do that all at the same time. In the past, there was a Bill here about something called decoupling where the idea was that if consumers conserve there was concern that the companies would not be making their projected rate of return, the Legislature made a general policy statement about the TRA should hear cases where the companies can present this concern with conservation and then they will make a determination and they did that and they developed a system to cover those cases. So in other words until you really have a full case with all the implications, we think it is not a wise idea to set this kind of framework as it were in a vacuum. It would be better to have them do it when there's much more to consider.

**Ryan McGehee:** If I may, if you lock in the specific mechanisms that you have here now, with the guaranteeing the return on equity along those, the procedures that encompass that, it makes it difficult for the TRA and our office to present safeguards for consumers, to prevent over-earning, to adjust the return on equity because the risk is being shifted to the customers. Here you're locking them in under the old system when they were slightly more riskier. Here we're moving to a system where you are shifting the risk and there should be an adjustment there, the return on equity. We actually had a company on the record agree with us in the past case that these things do shift risk but this Bill does address that and does not allow for that flexibility. Another aspect of this, of the Bill, is that it does not have a rate cap which previous legislation, in 2009, legislation or this Committee or the Commerce Committee chose to put a summer study. There was a rate cap in there but there's not one here so there are some things that are locked-in that are going to limit flexibility in the future.

**Chairman Pat Marsh:** I believe we have a question from Representative Curtiss?

**Representative Charles Curtiss:** Thank you Mr. Chairman. Toward the end of your statement you made the, I believe I heard this correctly, that in estimating what their expenses are going to be they could end up overestimating what their expense is going to be and if they were to conserve and had a savings they would keep that, retain that profit.



**Vance Broemel:** Right.

**Representative Charles Curtiss:** Then I understood that correctly. Is there anything that you can think of, we're giving through the rule making authority; the TRA is going to have to go through rule making procedures. Is there anything in this statute that's being proposed that would prevent them through rule making to recapture that money?

**Vance Broemel:** I don't, it's ah, I suppose they could try it but it, there's nothing in the statute that allows them to do that and we just don't know how that would work.

**Representative Charles Curtiss:** I'll just ask that question when they're presenting.

**Chairman Pat Marsh:** Leader McCormick.

**Representative Gerald McCormick:** Thank you Mr. Chairman and I've got a couple of questions. Did y'all say that the TRA could do this without legislation? They could basically implement this program right now? Or just that Section?

**Vance Broemel:** A large part, Section 5, in the past they have done extensive regulation in I believe it was the early 90s with phone companies going to what we would call an alternative form of rate making where they allowed them to have a projected rate of return and if they were over earning then they would have a review of that and recapture it. They did that all without legislation, yes.

**Representative Gerald McCormick:** Okay.

**Ryan McGehee:** There are a number of items they've already done as well like the commodity cost of gas is passed on to consumers, rates are adjusted annually for gas companies based on the weather, you know if you have a mild winter the rates go up if you have a very cold winter the rates can go down. There are already a number of pass-throughs already in effect and that's all without legislative authority. Specific, ...

**Representative Gerald McCormick:** And I'll ask the same question when the TRA folks get up but if they can go ahead and implement this without legislation I'd rather get 3 votes than 50 so we'll see what the TRA folks say about that. I know in Section c of 5 it says, talking about recovery operational expenses, capital cost or both associated with the investment in other programs including the rate of return approved by the Authority at the public utility's most recent general rate case, now could I take that to mean that if, let's say that the water company's electric rates go up because TVA raises them and the power board raises them in return, and they have to pay an extra \$10,000 you know, in their Bill next year, are you saying that they'll be able to charge \$11,000 if they get a 10% rate of return on a simple Bill, a simple expense like that? Or is it just things that have to do with capital improvements.

**Vance Broemel:** Yeah, I think it would be capital improvements and they would get a recovery of that increase, perhaps, depending on the circumstances and that's one of our concerns. When you have a rate case you take into consideration all the expenses.

Here they're singling out one that went up but see they may have gotten more efficient with their labor cost and that's gone down but there's no provision in this Bill to look at what went down. It's only what goes up and that's our concern. In a rate case you look at all expenses, some go up, some go down, you come to a global understanding but here, that's a good example. Say if electric went up they could come in with a high electric Bill and say we need to raise rates but they wouldn't be telling you that they've got a new computer system or smart meters that read meters more efficiently and they don't need as many people doing that and there's no off-set. So that's the very kind of thing we're very concerned with. About just looking at what goes up.

**Representative Gerald McCormick:** Would the TRA not be able to take that into account? Or would they be legally prohibited from taking that into account?

**Vance Broemel:** Well, there's nothing in the Bill, it just talks about you're authorized to get this expense. And in fact, it just says you look at the rate of the last rate case, there's nothing about other expenses. That's another concern, when you quoted the last rate case, we all know that capital markets can change. Some of these companies haven't been in for years and years, they might have a rate of return of say 12% and the TRA is prohibited from adjusting that and so you need, this Bill says you look at what happened at the last rate case and as we all know with the economy you need much more current financial data. And that's another concern of ours.

**Representative Gerald McCormick:** Okay so you're saying if a company had a good rate case 5 or 6 years ago they might never want a rate case.

**Vance Broemel:** Right.

**Representative Gerald McCormick:** But I suppose you guys could initiate a rate case, couldn't you?

**Vance Broemel:** We have in the past, I mean it's getting into kind of history I suppose, but we did it once with Atmos, it was expensive and very contentious, if I can use that word in the sense that they were over earning some \$5 or \$6 million a year. We did do that and brought it in and did reduce their rates so we do have that power at the current time but with this annual rate review and these trackers, it's to me, very unclear whether we'll be able to do that in the future.

**Ryan McGehee:** and Leader McCormick another big concern here is that not every company can decide to do annual rate review. They can cherry pick with a specific tracker and the rest of their rates would not be looked at, it would just be those expenses that flow into that tracker and the return that's guaranteed on that.

**Representative Gerald McCormick:** But you could still initiate a rate review but you're saying it would be very expensive and very...

**Vance Broemel:** Well, and it would really be a cross-purpose with this Bill. I think the company's would complain that they've chosen an annual rate review and these trackers



and they don't need to have a rate case and I, you know, I guess it just would be up in the air what would happen. We would probably ask for one but whether we would get it, I'll point out with the Atmos case, our initial request that those rates be reduced was dismissed and we had to come back again so if anybody knows the law you can make an argument, whether the agency will accept it, I don't know.

**Representative Gerald McCormick:** Okay. I would certainly want to have the legislative intent that a company couldn't take advantage, well for instance we had a long period of low interest rates and cheap capital and if somebody's hanging on to 14% rate of return from ten years ago, that's something we'd need to guard against and make sure in the legislative intent and if this were to pass we would want to do that. One other question is the rate cap you're talking about, what would be a reasonable rate cap as far as annual increases go, do you think? And again, put it in the law.

**Ryan McGehee:** I would like to see or at least I would, this is me speaking, I haven't discussed this with General Cooper specifically, you know, a rate cap not only on the annual rate review but also on the trackers themselves and you know I think just off the top of my head, a 3% cap would be good.

**Representative Gerald McCormick:** Well, you're not old enough to remember the 70s but if you'd done that in 1974 you could have wiped out some of these, even being monopolies, you could have wiped them out based on that.

**Ryan McGehee:** I know a lot of people speculate that we're heading back that way but you know we're not in that kind of inflationary period just yet.

**Representative Gerald McCormick:** It's coming. Thank you Mr. Chairman.

**Chairman Pat Marsh:** Representative Pody.

**Representative Mark Pody:** Thank you Mr. Chairman. I want to go back to the TRA. I thought if somebody came for a rate increase the TRA had the right to look at their entire budget, their entire profit/loss, they're not going to just look at one section so I'm not following where this would happen. If they had a profit in one area because they recouped that money, the next time they came for a rate increase that would be taken into account. Is that not correct?

**Vance Broemel:** That's correct under the current situation; under a rate case but this Bill changes that entirely. It, for 2 or 3 pages, it goes on and on about all, you can recover for a singled out expense, it will not look at its total expense, no.

**Representative Mark Pody:** So if this goes though the TRA would not have that authority?

**Vance Broemel:** No. I mean, whether they have the, under this Bill they wouldn't. We were speaking to Leader McCormick I suppose we could ask for an entirely new rate case but the intent of this Bill is to avoid or not have rate cases which means you



would not be looking at their entire expenses.

**Ryan McGehee:** And there are several mechanisms under the Bill, not just annual rate review that would allow the company to cherry pick where you don't look at the other operations and revenues.

**Representative Mark Pody:** Thank you.

**Vance Broemel:** I'd just like to point out that this Office is very concerned about investments in Tennessee and to the best of my recollection we've never opposed a capital project to put in pipes, valves, whatever, particularly with a water company in Chattanooga, so it's not that we want to cut down on recovery of capital expenses we just want to do it in a way that we think is fair to all parties.

**Chairman Pat Marsh:** Okay. Do we have any other questions? If not, we will let you all go back and ask the other side to come up and give their side. Is it going to be you Mr. Allison? And Tim?

**Jim Allison:** I'm Jim Allison, I'm the Chairman of the Tennessee Regulatory Authority and with me today are Jean Stone, our General Counsel and Ed Taylor, our Executive Director. I'll make some comments and we'll do our best to answer any comments you may have. This Bill basically does 2 things. The first thing it does is reduce the regulatory burden on the utility companies in the state of Tennessee by about \$1.1 million a year by reducing our regulatory fees. The second primary piece of the Bill is what was just discussed, the alternative regulation. I want to make it clear to the Committee that this is not new stuff. Georgia, South Carolina, Mississippi, Alabama, Virginia and a whole host of other states across this country have already done a number of these things. It's procedural in nature. It does not substantively change what the TRA can do or cannot do. Now the Attorney General's office is focused in a very narrow sense of what the Bill says on the rate of return. What they've missed is that before the Regulatory Authority will allow a company to enter into one of these alternative rate making processes is that we have to go through a process to establish and conclude that going into one of these alternative methods is in the public interest. In doing that, we will look at a whole variety of things, including the rate of return. Now, there's another piece of the alternative field that will permit company's and it's all permissive, none of the company's have to do any of this and the TRA does not have to accept any of this, we have to agree that it's in the public interest before we enter into any of these alternative methods. But another piece of the Bill would require, if a company opts into it, is annual rate, an annual rate filings. By making an annual rate filing, it will keep up more up to date on the cost, the returns, the expenses of all of these companies so that when we're dealing with the rate of return issue that was brought up earlier we're not going to being a apposition of not having looked at it for 5 or 6 or 8 years, in fact, the law requires them to have a general rate case in the last 5 years to enter into this rate review, so we'll be looking at their rates every year if they opt into this annual rate review. If their rate of review gets out of kilter with the current market conditions then the Authority can, and we have in the past, brought proceedings to open up the entire rate spectrum and we can do that here even if they go into this. As far as the trackers are concerned, again these are

in wide use around the country, it's an effort to streamline the regulatory process, the example that was used here earlier was a good one. If a water company uses a lot of power to pump their water, has a major rate increase from TVA, why open up every piece of their rates just to look at that? Now, again we would have to certify that it's in the public interest before we do that, but why not have a proceeding that would allow you to just look at that one piece. You may have just had a general rate increase last year, again we can stay on top of that on a regular basis by this annual review and we will look at that. We've got a staff that will be looking at that on a regular basis. If the rate of return gets out of kilter we can open up a rate case to look at the rate of return. There's nothing in here that prohibits us from doing that and we will continue to do that just like we've done in the past. I'm going to kind of shut-up and try to answer any questions you have but the bottom line is that the Authority has looked at this we're very comfortable that we can continue to carry out our responsibilities with this Bill as it's written. Again, it's permissive, both on the part of the utility system to opt into it and it's permissive on our part to allow them to opt into it because we have to certify that it's in the public interest.

**Chairman Pat Marsh:** Thank you very much. I have a question, when I heard about some of the parts of this Bill I understood that this change should help do away with a lot of legal expenses on both sides by bringing up a host of lawyers to argue and all that savings, as I understand it will go back to the rate payers? Is that correct?

**Jim Allison:** That's correct. The intent of this Bill is to make the process more accounting driven, analyst driven more than it is attorney driven. Again, I know there's a lot of attorneys in the Legislature so I don't want to say too much bad about attorneys but, I've been on both sides of rate cases now. I've spent my career working in the utility district, I've testified before regulatory agencies in 6 states. I know how frustrating it is to write those million dollar checks to the law firms and I also know how frustrating it is on the part of the regulator for us to have to say, okay, it's okay for you to go recover that million dollar check that you wrote to the law firm from your rate payers and what we're interested in doing is trying to make government more efficient, more streamlined and we're prepared to do everything we can at the Tennessee Regulatory Authority to make that happen and we think this Bill moves us in that direction.

**Chairman Pat Marsh:** I have one other question that might be a little off. I was asked to ask this by the Fuel and Convenience Store Association, is it the intent of this legislation to permit regulated, natural gas companies to subsidize their retail or wholesale alternative motor vehicle transportation fuel operations with rate payer funds?

**Jim Allison:** The answer to that is no. The Bill, again, is procedural in nature, there's no substantive change to policy to the State of Tennessee other than the fact that it will hopefully streamline the regulatory process.

**Chairman Pat Marsh:** Thank you. Leader McCormick.

**Representative Gerald McCormick:** Thank you Mr. Chairman and I need to ask



some questions. I'm the sponsor of the Bill and I support the Bill but also have an obligation, well not only to the rate payers of my area but to the members of my caucus and the General Assembly so I want to ask a couple of questions along those lines. You talked a minute ago, let's say about Chattanooga, the water company had a bigger electric Bill and it went up and you can look at the line item and see where it went up, would that be considered an operational expense?

**Jim Allison:** That is an operational expense, yes sir.

**Representative Gerald McCormick:** Well the law says that any operational expenses can be recovered plus the rate of return so if they're going to make it 10% or 12% profit on paying their water Bill? That's what I'm reading here.

**Jim Allison:** No sir. The rate of return is on invested capital. It's intended to cover for the cost of the capital, is the way we apply it to a rate case so if there is a capital component to that and I don't specifically what section you're looking at but it involves operating expenses as well as capital expenditure but the rate of return is on capital expenses not operating expenses.

**Representative Gerald McCormick:** Well I better read it to you then, it's in Sections 5 c and it says the Authority shall grant recovery and shall authorize a separate recovery mechanism or adjust rates to recovery operational expenses, capital costs, or both, association with the investment of other programs. So maybe that's how you get out of just paying the Bill, but certainly if I were the company I would say that my light Bill is associated investment and other programs including the rate of return approved by the Authority at the public utility's most recent rate case. Maybe we need to get somebody from the industry to come up here and say that if your light Bill goes up by \$10,000 are you going to give us a Bill for \$11,000 and let the rate payers pay for it, that's the real question.

**Jim Allison:** If you want the industry to address it you're welcome but it's well settled in rate case methodology that the rate of return is applied only to capital expenditures and it involves both debt as well as equity return so you have both elements of the return in there.

**Representative Gerald McCormick:** It may be well settled but we're changing it with this right here from the way I'm reading it, but I'm not a lawyer we may need to go to the senate and find some lawyers to come over here but I mean that's what it says so I think we probably need to find out if it says what it means or if it means something else but it specifically says recover operational expenses including the rate of return approved by the Authority of a public utility's most recent general rate case so I'll ask some of the people that are with some of these companies maybe after the meeting if they can give me some feedback.

**Jim Allison:** Well our attorney is here with us, she can address it more detailed if you wish too but the rate of return is intended to apply to the capital cost piece of that

paragraph. It says to recover operational expenses capital cost or both including the rate of return approved by the Authority at the public utility's most recent general rate case pursuant to, that rate of return would apply only to the capital investment not the operation expenses.

**Representative Gerald McCormick:** Okay. Thank you very much.

**Chairman Pat Marsh:** Representative Curtis.

**Representative Charles Curtiss:** Thank you Mr. Chairman. You heard the question I asked the Attorney General's office, they made the comment that an entity before the TRA on a rate review case they would say they were going to do some capital expenditures, there's going to be X amount of dollars and the rate was based upon that but through efficiencies they brought in way under the budget uh, you would have the ability to still look at that, that they calculated that incorrectly? I mean without that ability the incentive would be to always overestimate your expenditures to have a higher rate and reap the profits.

**Jim Allison:** Not only will we still have the opportunity we'll have an enhanced opportunity with the annual rate filing. Otherwise in the current situation we may look at it every three, four, five, six years now all of our utilities except I have been in within a fairly recent period of time for a general rate case so we don't have anybody out there that's gone 20 years without a general rate case or anything like that but this Bill would give us an enhanced opportunity to look at those expenses.

**Representative Charles Curtiss:** Right. The other thing that occurred to me while they were testifying, you're not preventing the Attorney General's office to ask questions about a rate setting or something of that nature? They're still going to have the ability to bring something to your attention, am I correct?

**Jim Allison:** That's correct and at any time and we focused earlier on some comments on the rate of return, anytime they feel like a company's rate of return is excessive they are certainly permitted by statute to file a petition requesting us to look at that and we have historically have always accepted those.

**Representative Charles Curtiss:** Thank you sir. I think the fact there's a little bit, it seems like it's vague, the Bill, in places but the fact that you're going to have rule making authority, that's not preventing you from being able to address all these areas that are not spelled out.

**Jim Allison:** That's correct sir.

**Representative Charles Curtiss:** Thank you.

**Chairman Pat Marsh:** Representative Hill.

**Representative Hill:** Thank you Mr. Chairman and of course Mr. Chairman thank you



so much for being here and I appreciate the intent of the legislation. Just a couple of quick questions, you said earlier in your statement, you said that this is really conforming into what other states are doing? And that, you know I think some of the questions on, I believe it's Section 5 of the legislation, do other states do that as well? As it sits?

**Jim Allison:** Yes, they, and I don't have the exact number but it's a long list of states that have entered into some of these alternative rate making and the Attorney General quoted our last audit report in theirs with some comments. If you read the entire paragraph it will say in there that this is clearly a national trend to move in this direction.

**Representative Hill:** Okay. Thank you so much.

**Chairman Pat Marsh:** Representative Pody.

**Representative Mark Pody:** Two questions. One, what would you say is a good rate of return right now that would be approved?

**Jim Allison:** The overall rate of return will reflect both the cost of debt as well as the cost of equity. The debt cost right now are fairly low, we've seen some rate cases and I'm going to look to staff to correct me if I misspeak here, where the overall rate of return is around 6-7% but the debt component of that is on the low end of that, the equity number's up on the higher end of that. It's set in an individual case depending on the riskiness of it. We've got some utilities that are well established with relatively low equity numbers, return numbers. We've got others that are fairly risky propositions. We've got one that just bought a company out of bankruptcy and it's a pretty risky proposition and has a higher equity rate of return than the others.

**Representative Mark Pody:** Ok and my last question, you said that most of the utilities are fairly current in their, you've audited and such, what's the one that's oldest? What's the longest one out there?

**Jim Allison:** Again, I'm going to ask the staff to correct me if I misspeak but I believe it's Kingsport Power, the electric utility we regulate up in upper East Tennessee and I believe they are somewhere around 8 or 9 years out.

**Jean Stone:** I believe they are more like 18 or 19 years at this point but they're rates are extremely low in comparison with other electric rates in that area.

**Chairman Pat Marsh:** Do we have any other questions while we're out of session? Leader McCormick.

**Representative Gerald McCormick:** Thank you Mr. Chairman and one more and you may have answered this and I was in a sidebar conversation but my question is in Section 5 can the TRA, do you have the authority to this without a vote of the Legislature? To make these changes?

**Jim Allison:** We have instituted some trackers in some fairly limited situation and again I'll defer to our attorney to comment on the legalities of it, but we feel like it's prudent to clarify the nature of these and get legislative authorization before we go further with it and that's the reason we're supporting the Bill. We think it clarifies it and resolves any questions about whether or not instituting some of these trackers is appropriate or not but I would invite Ms. Stone to comment on the legality piece of it.

**Jean Stone:** I think that's absolutely correct and I will just add that rate setting is traditionally a legislative function and so it is entirely appropriate in my opinion to come to the Legislature to ask you all to set the policy and the perimeters for rate setting including alternative methods.

**Representative Gerald McCormick:** Thank you.

**Chairman Pat Marsh:** Do we have any other questions while we're out of session? If not, we'll go back in session. Thank you all for coming up. Representative Towne's we're glad to see you come in today. Welcome. We're back on the Bill do we have any other discussions on the Bill? If not, are we ready to vote on the Bill? All in favor please say aye, opposed? Aye's have it. This Bill moves out to Finance Ways and Means.

**IN THE TENNESSEE REGULATORY AUTHORITY  
AT NASHVILLE, TENNESSEE**

IN RE:

PETITION OF PIEDMONT NATURAL GAS	)	
COMPANY, INC. FOR APPROVAL OF A CNG	)	DOCKET NO. 14-00086
INFRASTRUCTURE RIDER TO ITS AQPPROVED	)	
RATE SCHEDULES AND SERVICE	)	
REGULATIONS	)	
	)	
TARIFF TO REVISE THE NATURAL GAS	)	DOCKET NO. 14-00087
VEHICLE FUEL TARIFF AND INTRODUCE AN	)	
EXPERIMENTAL MOTOR VEHICLE FUEL	)	
SERVICE TARIFF	)	

**AFFIDAVIT**

I, Ron Jones, on behalf of the Tennessee Fuel and Convenience Store Association, hereby certify that the attached Direct Testimony represents my opinion in the above-referenced case.

  
\_\_\_\_\_  
RON JONES

Sworn to and subscribed before me

this 11 day of Dec 2014

  
\_\_\_\_\_

**NOTARY PUBLIC**



MY COMMISSION EXPIRES NOVEMBER 6, 2017

My commission expires: \_\_\_\_\_