

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 5, 2015

IN RE:)	
)	
PETITION OF PIEDMONT NATURAL GAS)	DOCKET NO.
COMPANY, INC. FOR APPROVAL OF A CNG)	14-00086
INFRASTRUCTURE RIDER TO ITS APPROVED)	
RATE SCHEDULES AND SERVICE REGULATIONS)	

ORDER GRANTING, IN PART AND DENYING, IN PART PETITION

This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones and Director James M. Allison of the Tennessee Regulatory Authority (“Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on February 9, 2015, for the consideration of the *Petition of Piedmont Natural Gas Company, Inc. for Approval of a CNG Infrastructure Rider to its Approved Rate Schedules and Service Regulations* (“*Petition*”).

BACKGROUND

Piedmont Natural Gas Company, Inc. (“Piedmont” or the “Company”) is a public utility subject to TRA jurisdiction that is engaged in the business of transporting, distributing, and selling, natural gas in Tennessee. On August 29, 2014, Piedmont filed a *Petition* seeking approval under Tenn. Code Ann. § 65-5-103(d)(6) and TRA Rule 1220-4-1-.04¹ of a Compressed Natural Gas (“CNG”) Infrastructure Rider to recover capital costs and expenses related to the construction and

¹ Under TRA Rule 1220-04-01-.04, any changes to a public utility’s tariff must be filed with the Authority at least thirty (30) days before the effective date. The proposed changes go into effect at the end of such period, unless the Authority suspends the effectiveness thereof pending further investigation (*see also* TRA Rule 1220-04-01-.06(4) and (5) and Tenn. Code Ann. § 65-5-103(a)).

expansion of CNG infrastructure and equipment to offer and provide CNG as an alternative motor vehicle transportation fuel.²

During the regularly scheduled Authority Conference held on September 15, 2014, the voting panel of Directors appointed General Counsel or her designee to act as Hearing Officer to prepare this matter for hearing.³ In an order issued October 2, 2014, the Hearing Officer granted the petitions to intervene filed by the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate” or “CAPD”) and the Tennessee Fuel and Convenience Store Association (“TFCA”) on September 18, 2014 and September 29, 2014, respectively. On November 6, 2014, the Hearing Officer issued an order consolidating TRA Docket Nos. 14-00086 and 14-00087 stating that the subject matters of the two dockets are interrelated, and consolidating the dockets would be the most efficient way to proceed.⁴

THE PETITION

In its *Petition*, Piedmont seeks to implement a CNG Infrastructure Rider (“CNG IR”) to recover, on an intra-rate case basis, costs associated with capital expenditures incurred in the expansion of existing CNG infrastructure and construction of new CNG filling stations.⁵ Piedmont states these expansions are necessary in order to “increase accessibility and improve safety in response to the growing demand for natural gas as an alternative motor vehicle transportation fuel in Tennessee.”⁶ Along with its *Petition*, Piedmont filed Proposed Service Schedule No. 318, which is the CNG IR. On September 4, 2014, Piedmont filed a tariff amending its existing Rate Schedule 342, which was initially approved in the Company’s last rate case, TRA

² *Petition*, p. 3 (August 29, 2014).

³ *Order Convening a Contested Case and Appointing a Hearing Officer* (September 24, 2014).

⁴ *See Order Consolidating Dockets and Amending Procedural Schedule*, pp. 1-2 (November 6, 2014).

⁵ *Petition*, p. 3 (August 29, 2014).

⁶ *Id.*

Docket No. 11-00144, related to Natural Gas Vehicle (“NGV”) fuel.⁷ The Company also filed Rate Schedule 343, which is experimental and designed to determine the need for NGV fuel.

According to the *Petition*, Piedmont currently operates two (2) CNG filling stations in Tennessee that are accessible to the public.⁸ Piedmont states that it spent \$1.2 million to upgrade the facilities at its Resource Center to improve access and \$3.5 million in construction costs for the new station on Spence Lane, which amounts to a total capital investment of \$4.7 million from March 2012 to June 2014.⁹ Based on market demand, the Company anticipates constructing one additional filling station for public access and another to be located on the site of an existing commercial business, such as a convenience store.¹⁰ The Company projects costs of these new projects to be approximately \$4.6 million.¹¹ Piedmont states that such investment is consistent with the intent of the new state legislation to support the expanding market for alternative motor vehicle transportation fuel and may provide opportunities for economic development benefits for the areas served.¹²

CNG IR Tariff (Proposed Rate Schedule 318)

According to Piedmont, expanding existing CNG infrastructure is an investment that does not generate additional incremental revenues sufficient to guarantee an offset to the costs incurred.¹³ As a result, Piedmont states its opportunity to earn its allowed return on investment is negatively impacted.¹⁴ Piedmont’s proposed solution is a rider to its tariff implementing a recovery mechanism to recoup its costs associated with these types of investments on an intra-rate

⁷ *In re: Petition of Piedmont Natural Gas Company, Inc. for an Adjustment to its Rates, Approval of Changes to its Rate Design, Amortization of Certain Deferred Assets, Approval of New Depreciation Rates, Approval of Revised Tariffs and Service Regulations, and Approval of a New Energy Efficiency Program and GTI Funding*, Docket No. 11-00144 (September 2, 2011).

⁸ One station is located at Piedmont’s Nashville Resource Center on Century Blvd. and the newest station located at 541 Spence Lane in Nashville. *Petition*, p. 5 (August 29, 2014).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 3-4 (referring to the Energy Independence Act of 2013).

¹³ *Id.* at 6.

¹⁴ *Id.*

case basis.¹⁵ The recovery mechanism will include a return on investment, depreciation and taxes, consistent with the cost of service treatment approved by the Authority in its last full rate case.¹⁶ Cost recovery will be allocated to the customer classes based on the revenue allocation percentages used in the last rate case proceeding and applied volumetrically to customer usage.¹⁷ Piedmont states it will file quarterly reports with the Authority, detailing the amount of capital expenses that are recorded in a deferred account.¹⁸ Annually, the Company will file a petition requesting to update its rates in order to recover these costs.¹⁹

Piedmont asserts the CNG IR mechanism is in the public interest and benefits the Company as well, since it allows for smaller more frequent adjustments to its rates, and enhance public safety and accessibility to CNG distribution in Tennessee.²⁰

Natural Gas Vehicle Fuel Tariffs (Rate Schedules 342 and 343)

Piedmont filed a revised Rate Schedule 342 NGV Fuel tariff and a new Rate Schedule 343 Experimental Motor Vehicle Fuel Service tariff. Both tariffs address the sale of natural gas for the purpose of compressing it for resale as CNG for use as transportation fuel. Rate Schedule 342 was approved in the Company's last rate case, and Rate Schedule 343 is experimental for a period of three (3) years, after which the tariff may be discontinued, extended, or modified upon a proposal by an interested party. The tariff is designed to determine the relative need for sales/transportation service to meet the NGV fuel needs and whether the Company's existing facilities can accommodate such need.²¹

¹⁵ *Id.* at 7.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Petition*, p. 8 (August 29, 2014).

²¹ Rate Schedule 343, *Applicability and Character of Service*, p. 1.

JANUARY 12, 2015 HEARING, APPEARANCES AND POST-HEARING FILINGS

A Hearing in this matter was held before the voting panel on January 12, 2015, as noticed by the Authority on January 2, 2015. Pursuant to the Procedural Schedule and its modifications issued by the Hearing Officer, the parties filed Supplemental Direct Testimony on October 31, 2014, Direct Testimony on December 5, 2014 and December 11, 2014, and Rebuttal Testimony on December 19, 2015. Participating in the hearing were the following parties and their respective counsel:

Piedmont Natural Gas Company, Inc. – James H. Jeffries, IV, Esq., Moore and Van Allen PLLC, 100 North Tryon Street, Suite 4200, Charlotte, NC 28202.

Consumer Advocate – Wayne Irvin, Esq. & Vance Broemel, Esq., Office of the Attorney General, 425 Fifth Avenue North, Fourth Floor, John Sevier Building, P.O. Box 20207, Nashville, TN 37202.

TCFA - Melvin J. Malone, Esq., Butler, Snow, O'Mara, Stevens & Cannada, PLLC, 1200 One Nashville Place, 150 Fourth Avenue North, Nashville, Tennessee 37219.

Ken Valentine and Pia Powers appeared as witnesses for Piedmont. William H. (“Hal”) Novak and Christopher C. Klein appeared as witnesses for the CAPD. TFCA presented Ron Jones and Scott M. Carr as its witnesses. The witnesses were subject to cross-examination by the other parties and questions from the panel. In addition, at the start of the Hearing, members of the public were given an opportunity to present comments to the panel, but no one came forward to comment. Following the Hearing, the panel took the matter under advisement, and the parties filed Post-Hearing Briefs on January 22, 2015.

POSITIONS OF THE PARTIES

The parties have set forth their arguments in full in the record of this docket, in their pre-hearing memoranda, in the presentation of their cases at the Hearing, and in their Post-Hearing Briefs. The following section is intended as a brief summary of the positions of Piedmont, the CAPD, and TFCA in this matter.

Piedmont

According to Piedmont witness Pia Powers, the legal basis for its *Petition* is Tenn. Code Ann. § 65-5-103, which allows alternative regulatory methods for expansion of economic development infrastructure, and which may include cost for infrastructure associated with alternative motor vehicle fuel.²² Ms. Powers testifies the proposed CNG IR mechanism is similar to the Company's Integrity Management Rider ("IMR") (Rate Schedule 317), which was approved by the Authority in Docket No. 13-00118.²³ Ms. Powers asserts that the structures are the same and the CNG mechanism operates like the IMR, except for the annual date that the rate changes occur under each mechanism.²⁴ The IMR rate changes are effective each January and the CNG IR rate changes are proposed to be effective each November.²⁵ Ms. Powers testifies that:

[I]n my view the proposed rider mechanism has the following attributes to support it:

1. [I]t is expressly authorized by Tennessee law;
2. [I]t relates directly to efforts by Piedmont to enhance economic development by providing additional CNG infrastructure;
3. [I]t is an efficient, targeted, and limited mechanism to deal with intra-rate case costs that might otherwise generate repeated rate case filings;
4. [I]t benefits Piedmont, its customers, the TRA and Staff by reducing expense and administrative burden associated with serial and otherwise unnecessary general rate case proceedings; and
5. [I]t is in the public interest.²⁶

Piedmont maintains that it is authorized to provide CNG sales and/or transportation service as a regulated utility service within its service territory in Tennessee.²⁷ To substantiate this claim, the Company points to Rate Schedule 342, which was approved by the Authority in its last rate

²² Pia Powers, Pre-filed Direct Testimony, pp. 4 of 7 - 5 of 7 (October 7, 2014).

²³ *Id.* at 5 of 7.

²⁴ *Id.* at 5 of 7 - 6 of 7.

²⁵ *Id.* at 5 of 7.

²⁶ *Id.* at 6 of 7.

²⁷ Piedmont's Responses to the TRA's 1st Set of Data Requests, Response #5 (October 23, 2014).

case, and under which it has been operating since April 2012.²⁸ The Company states that due to a current lack of a competitive market for CNG within its service territory, the intrinsically identical nature of CNG and natural gas and Piedmont's status as a regulated provider of natural gas, it is appropriate for Piedmont to offer CNG to the public as a regulated service.²⁹ Piedmont also points to the fact that it is currently providing CNG sales as a regulated service in its North and South Carolina service territories.³⁰

Piedmont's justification for spreading any cost under-recovery related to the provision of CNG service across its total customer base is that (1) it is a developing market and has the potential for future significant contributions to the Company's revenue requirements; and (2) utility rates are not based solely on cost and potential cross-subsidization between customer classes already exists.³¹ Piedmont points out that the purpose of the recovery mechanism is to accelerate Piedmont's ability to earn a return on its invested capital in CNG-related equipment, and much of the services offered will be wholesale service to customers providing their own compression equipment.³²

In her Rebuttal Testimony, Ms. Powers testifies that the Authority's approval of the Stipulation between Piedmont and the Consumer Advocate in the last rate case established that Piedmont's CNG sales for motor vehicle fuel is a regulated service.³³ Based upon the approval of Rate Schedule 342, Ms. Powers testifies that Piedmont moved forward with the development of the CNG market assuming that its approximate \$5 million investment would be recovered through

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at Response #6.

³² *Id.*

³³ Pia K. Powers, Pre-filed Rebuttal Testimony, pp. 2– 3 of 16 (December 22, 2014).

rate base treatment.³⁴ According to Ms. Powers, it is unfair and unjust to retroactively reverse a previous Authority decision and force Piedmont to reclassify prior investments.³⁵

According to Ms. Powers, the intervening parties lack evidence to support the allegations that CNG rates will be subsidized.³⁶ She testifies that in order to support this assertion, there would need to be a thorough review of the revenues and cost for each customer class, similar to a rate case proceeding, and this has not been done.³⁷ Finally, Ms. Powers testifies that it is common for subsidization to occur between customer classes, the contribution to the overall revenue requirement by customer class can vary over time and no evidence has been presented in this case to determine CNG service will be subsidized by other customers.³⁸

Piedmont witness Ken Valentine emphasizes the compression of natural gas does not change the form or chemical composition of gas and the use of natural gas as motor fuel is just another end use of the product.³⁹ Gas may take on a different form or be compressed at a different pound per square inch depending on the use or transport method.⁴⁰ There has not been any differential regulatory treatment of natural gas based on its compression or form.⁴¹ Mr. Valentine points out that there is no difference in the natural gas provided pursuant to Rate Schedule 342 and what is provided under other existing tariffs.⁴² Therefore, its regulatory status should remain unchanged.⁴³ Mr. Valentine testifies that numerous other states promote and regulate the sale of CNG by regulated utilities.⁴⁴ Also, Memphis Gas, Light and Water operates a public CNG

³⁴ *Id.* at 3 of 16.

³⁵ *Id.* at 3 - 4 of 16.

³⁶ *Id.* at 7 of 16.

³⁷ *Id.* at 4-5 of 16.

³⁸ *Id.* at 4-7 of 16.

³⁹ Ken Valentine, Pre-filed Rebuttal Testimony, p. 3 of 17 (December 19, 2014).

⁴⁰ *Id.* at 4-5 of 17.

⁴¹ *Id.* at 5 of 17.

⁴² *Id.* at 6 of 17.

⁴³ *Id.* at 6 of 17.

⁴⁴ *Id.* at 8-9 of 17.

station.⁴⁵ Further, according to Mr. Valentine, public literature supports the requested regulatory treatment of CNG.⁴⁶

In addressing the proposed protective measure of the Consumer Advocate should the *Petition* be approved, Mr. Valentine points out that if the intervening parties' positions are accepted by the Authority, "the impact will be a detriment to the establishment of CNG as a meaningful alternative motor vehicle fuel in Tennessee."⁴⁷ Public interest is best served by allowing Piedmont to proceed with its stated goals of developing the CNG market in Tennessee and restricting Piedmont's actions based possible events in the future would be detrimental to the development of the market in Tennessee.⁴⁸

Consumer Advocate

According to CAPD witness Hal Novak, "CNG is a completely different product than the regulated natural gas... [f]urther, the different customer bases and pricing for CNG and natural gas support this distinction."⁴⁹ Mr. Novak explains the price of natural gas in the Piedmont's monopoly service area is set by tariff, and the Company must get approval from the TRA to change that price.⁵⁰ "On the other hand," testifies Mr. Novak, "the retail price for CNG, although set by tariff at the wholesale level, can fluctuate up or down as determined by Piedmont, and not by the TRA."⁵¹

Mr. Novak acknowledges that the TRA approved a CNG tariff in Piedmont's last rate case, and as a witness for the Consumer Advocate, he recommended approval.⁵² However, according to Mr. Novak, the recommendation was based on a belief that the CNG tariff was intended for

⁴⁵ *Id.* at 9-10 of 17.

⁴⁶ *Id.* at 10 of 17.

⁴⁷ *Id.* at 15 of 17.

⁴⁸ *Id.* at 16 of 17.

⁴⁹ William H. Novak, Pre-filed Direct Testimony, p. 4 (December 5, 2014).

⁵⁰ *Id.* at 5.

⁵¹ *Id.*

⁵² *Id.* at 8.

service to the Company's own vehicle fleet, using its own existing facilities and that it would be only a small sideline business.⁵³ Mr. Novak testifies that "[i]t is now apparent that the scope and scale of the Company's plans for CNG exceed that of the sideline business activity that was anticipated in their last rate case."⁵⁴

Mr. Novak points out that Piedmont failed to inform the TRA of its material investment in CNG infrastructure in the last rate case and failed to inform the TRA of its CNG expansion plans until the present *Petition*, despite the fact that TRA Rule 1220-4-1-.01(1)(a) requires the annual filing of a capital budget outlining capital construction projects both routine and specific for the current year.⁵⁵ Therefore, the risk of cost recovery falls to the shareholders.⁵⁶

According to Mr. Novak, the intent of the legislation relied on by Piedmont is that the statute not result in any cross-subsidization.⁵⁷ Mr. Novak testifies that the mechanism proposed by Piedmont clearly requires utility ratepayers to subsidize the cost of the unregulated retail sale of CNG at a rate of approximately \$558,000 per year.⁵⁸ Therefore, Mr. Novak recommends that the proposed Rate Schedule 318 be denied.⁵⁹ Further, Mr. Novak recommends that Rate Schedule 342 be discontinued and any sales of natural gas for the purpose of resale as CNG be captured under Rate Schedule 343.⁶⁰ According to Mr. Novak, if the TRA should approve the Company's *Petition* as filed, then a mechanism should be implemented whereby utility ratepayers can recoup their subsidy investment should CNG operations fail or are sold off.⁶¹

The testimony of CAPD Witness, Dr. Klein, primarily addresses the public interest aspect of the Company's proposal. He states that the cost recovery is allowed by statute only if the

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 11.

⁵⁶ *Id.* at 11-12.

⁵⁷ *Id.* at 12.

⁵⁸ *Id.* at 12-13.

⁵⁹ *Id.* at 12.

⁶⁰ *Id.* at 12-13.

⁶¹ *Id.* at 13.

Authority finds that it is in the public interest.⁶² Dr. Klein recommends that the TRA “treat Piedmont’s provision of CNG as a vehicle fuel at retail as an unregulated service.”⁶³ According to Dr. Klein, if the TRA does not accept his recommendation to treat CNG as an unregulated service, the TRA should put several safeguards in place “to protect regulated ratepayers from subsidizing a profitable service.”⁶⁴

Dr. Klein concludes that the provision of CNG by Piedmont should be an unregulated service because the CNG fuel market is not a monopoly, nor does it possess characteristics that would lend itself to regulation.⁶⁵ Secondly, subsidizing the Company’s retail CNG operations could retard development of the CNG market by giving Piedmont a cost advantage over any other potential competitor.⁶⁶ According to Dr. Klein, any shortfall in revenues for Piedmont would be reimbursed by ratepayers up to the CNG capital costs, which would likely discourage the entry of others into the market in Piedmont’s service territory.⁶⁷

Dr. Klein’s recommendation is that Piedmont’s CNG retail business should be unregulated and its *Petition* for a CNG infrastructure recovery mechanism be denied.⁶⁸ Further, Dr. Klein recommends that Rate Schedule 342 for retail CNG sales be denied, but Rate Schedule 343 to provide natural gas to customers for resale as CNG should be approved, since it will promote the development of the CNG retail vehicle fuel market.⁶⁹

If the TRA approves Piedmont’s *Petition*, as filed, Dr. Klein recommends that safeguards be put in place to protect the ratepayers, since the provisions of the *Petition* shifts recovery of

⁶² Dr. Christopher Klein, Pre-filed Direct Testimony, p. 6 (December 5, 2014).

⁶³ *Id.* at 5.

⁶⁴ *Id.*

⁶⁵ *Id.* at 10.

⁶⁶ *Id.*

⁶⁷ *Id.* at 12.

⁶⁸ *Id.*

⁶⁹ *Id.* at 12.

capital costs to the ratepayer, as well as the risks associated with the CNG operations.⁷⁰ Should the operations fail, or generate net revenue and become deregulated, then Dr. Klein testifies that ratepayers should be repaid the amount of subsidies paid with interest.⁷¹ All remaining undepreciated CNG investment should be removed from rate base at that time.⁷²

Tennessee Fuel and Convenience Store Association

TFCA's witness, Ron Jones, testifies that the Tenn. Code Ann. § 65-5-103(d) does not allow for recovery of CNG capital costs from regulated Piedmont customers. To arrive at this conclusion, he states the statute does not "specifically permit a regulated utility to offer competing CNG motor fuel services and recover its investment and cost of operations from captive ratepayers."⁷³ Additionally, Mr. Jones testifies that he reviewed the legislative record to determine if Piedmont's application of the statute complied with the intent of the General Assembly in the passage of the statute. Mr. Jones testifies that based on the record, it is clear that the intent was that regulated utilities not be permitted to subsidize their retail operations with regulated ratepayer funds.⁷⁴

Based on Piedmont's testimony, Mr. Jones concludes that the Company has failed to demonstrate significant benefits accruing as a result of its retail operations to support approval of its *Petition*. According to Mr. Jones, Piedmont conducted little research or analysis to quantify the impact of any benefits to the local economy.⁷⁵

Mr. Jones cites two (2) other relevant statutes that prohibit regulated public utilities from engaging in unfair practices. Tenn. Code Ann. § 65-4-115 prohibits public utilities from engaging

⁷⁰ *Id.* at 12-13.

⁷¹ *Id.* at 13.

⁷² *Id.*

⁷³ Ron Jones, Pre-filed Direct Testimony, p. 6 (December 11, 2014).

⁷⁴ *Id.* at 8.

⁷⁵ *Id.* at 9-10.

in unjust, unduly preferential, or discriminatory practices.⁷⁶ Tenn. Code Ann. § 65-4-122 prohibits public utilities from charging different rates to similarly situated customers.⁷⁷ Mr. Jones testifies that Piedmont, by its proposal, violates both of these statutes. According to Mr. Jones, Piedmont would recover the capital costs of the CNG operations from captive regulated customers and gain unfair advantage in the retail market by its ability to charge lower rates than could its competitors.⁷⁸ As a result, Mr. Jones testifies that CNG customers in its retail market would benefit from higher rates charged to ratepayers who are subsidizing the operations, and because of these unfair practices, Piedmont would have an advantage over any other competitor or potential competitor who may choose to enter the market.⁷⁹

Addressing the public interest criteria, Mr. Jones states the General Assembly provided the policy direction inherent in the legislative language of Tenn. Code Ann. § 65-5-103(d) to use as a guiding principle.⁸⁰ Further, Mr. Jones testifies that it is clear that while certain motorists may receive a level of benefits from Piedmont's CNG services, they may or may not be Piedmont natural gas customers.⁸¹ Ratepayers, however, will fund any benefit because Piedmont's infrastructure costs would be funded by commercial and residential users of natural gas.⁸² Since the cross-subsidy proposed in the recovery mechanism is prohibited by statute, Mr. Jones concludes that the public interest standard has not been met.⁸³

According to Mr. Jones, if the Authority approves Piedmont's *Petition*, certain safeguards for ratepayers should be put in place.⁸⁴ These safeguards include (1) develop a cost allocation methodology to transfer gains from the CNG operations to the ratepayers, (2) create a non-

⁷⁶ *Id.* at 10.

⁷⁷ *Id.* at 11-12.

⁷⁸ *Id.* at 12.

⁷⁹ *Id.* at 11-13.

⁸⁰ *Id.* at 13-14.

⁸¹ *Id.* at 15-16.

⁸² *Id.* at 13.

⁸³ *Id.* at 14.

⁸⁴ *Id.* at 22.

regulated subsidiary for the negotiated transfer of assets after a designated period of time, (3) require filing of Capital Budgets in compliance with TRA Rule 1220-4-1-.01 and prior TRA review of infrastructure costs, (4) shorten the term of the experimental tariff to less than three (3) years, and (5) deny all tariffs that include pricing and/or discounts that are at the sole discretion of the Company.⁸⁵ Additionally, Mr. Jones recommends amending the proposed tariffs in this case, to strike provisions that allow Piedmont to determine what rates and discounts should be offered, as these types of decisions should be made by the Authority after proper review and approval.⁸⁶

TFCA's witness, Dr. Scott Carr, provides testimony that evaluates Piedmont's *Petition* in the context of Tenn. Code Ann. § 65-5-103(d) and the public interest requirement. To this end, he addresses whether the CNG fueling operations are a regulated public utility service and whether the Company's proposal would result in cross-subsidization of unregulated CNG operations by its regulated natural gas business. Dr. Carr also looked at the implications of a resulting anticompetitive environment.⁸⁷

First, Dr. Carr concludes that Piedmont's proposal would result in the aforementioned cross-subsidization.⁸⁸ Dr. Carr testifies that the CNG services contemplated by Piedmont clearly do not have the characteristics of a public utility.⁸⁹ Unlike natural gas distribution, CNG fueling services is a competitive industry.⁹⁰ Under Piedmont's proposal, Dr. Carr testifies that rates for Piedmont's natural gas customers would necessarily go up to cover the capital costs of the CNG business so that CNG customers would enjoy a lower rate.⁹¹ According to Dr. Carr, Piedmont does not offer any reasonable justification for this cross-subsidization.⁹²

⁸⁵ *Id.*

⁸⁶ *Id.* at 22-23.

⁸⁷ Dr. Scott M. Carr, Pre-filed Direct Testimony, p. 3 (December 11, 2014).

⁸⁸ *Id.* at 4.

⁸⁹ *Id.* at 6.

⁹⁰ *Id.* at 7.

⁹¹ *Id.* at 7-8.

⁹² *Id.* at 8.

In his testimony, Dr. Carr concludes that this cross-subsidization would result in the Company's competitive advantage that is not available to other CNG competitors.⁹³ Dr. Carr testifies that regulation of the public utility can make predatory pricing easier, which would lead to a reduction of the number of competitors entering the market.⁹⁴ Further, Dr. Carr believes that the Company's policy objectives of expanding the CNG market could possibly be achieved through incentives or other governmental or economic mechanisms that would be available to all CNG market participants.⁹⁵ Based on his conclusions, Dr. Carr concludes that Piedmont's proposal does not serve the public interest.⁹⁶

FINDINGS AND CONCLUSIONS

Tenn. Code Ann. § 65-5-103(d)(1)(A) empowers the Authority to consider and implement alternative regulatory mechanisms outside the context of a rate case, and upon finding that such mechanisms are in the public interest, allow public utilities to recover certain costs and expenses. Further, Tenn. Code Ann. § 65-5-103(d)(2) provides:

(A) A public utility may request and the authority may authorize a mechanism to recover the operational expenses, capital costs or both, if such expenses or costs are found by the authority to be in the public interest, related to any one (1) of the following:

- (i) Safety requirements imposed by state or federal government;
- (ii) Ensuring the reliability of the public utility plant in service; or
- (iii) Weather-related natural disasters.

(B) The authority shall grant recovery and shall authorize a separate recovery mechanism or adjust rates to recover operational expenses, capital costs or both associated with the investment in such safety and reliability facilities, including the return on safety and reliability investments at the rate of return approved by the authority at the public utility's most recent general rate case pursuant to § 65-5-101 and subsection (a), upon a finding that such mechanism or adjustment is in the public interest.

⁹³ *Id.* at 12.

⁹⁴ *Id.* at 14-15.

⁹⁵ *Id.* at 13.

⁹⁶ *Id.* at 18-19.

At the regularly scheduled Authority Conference held on February 9, 2015, the panel considered Piedmont's *Petition*. Upon consideration of the record and arguments of counsel, the panel voted unanimously that Piedmont's *Petition* be approved, in part, and denied, in part. Based on the record, the panel made the following findings and conclusions:

1. Piedmont's expansion into the CNG retail market creates a situation where monopoly ratepayers may be required to subsidize a competitive service. Allowing this cross-subsidization, and potentially a lower subsidized rate, would provide Piedmont the opportunity to operate in a competitive market with an unfair advantage over its competitors, and, as stated by the intervenors, would likely create a barrier to entry into an otherwise developing competitive market. The panel found that such cross-subsidization does not serve the public interest and directly conflicts with the intent of the Tenn. Code Ann. § 65-5-103. Thereafter, the panel voted unanimously to discontinue Piedmont's Rate Schedule 342, Natural Gas Vehicle Fuel. The panel noted that it is not prohibiting Piedmont from continuing to operate and even expand its CNG operations. However, such operations will be considered and treated as non-regulated operations for ratemaking purposes and thus, have no impact on regulated operations and ratepayers.
2. The *Petition*, as well as the evidence in the record, clearly indicates that approval of Rate Schedule 318 (CNG IR) would recover from all Piedmont customers, costs incurred to provide CNG service to the public. Consistent with the panel's previous findings for denying Rate Schedule 342, the panel found that the proposed Rate Schedule 318, which is designed to recover future CNG investment, may also result in unfair cross-subsidization of retail CNG services. Accordingly, the panel voted unanimously that the CNG Infrastructure Rider with Proposed Service Schedule 318 be denied. The panel's ruling also eliminates any need for a Conditional CNG Infrastructure Rider Annual Filing.

3. Piedmont acted in good faith pursuant to its approved Tariff Rate Schedule 342 when making the \$4.7 million CNG infrastructure investment. Therefore, the panel found that the issue of Piedmont's infrastructure investment should be given full consideration in Piedmont's next rate case proceeding, and Piedmont should have the opportunity to have its CNG investment considered for rate recovery. The panel voted unanimously that the CNG investment be treated similarly to all other investment added between rate cases, and Piedmont will be allowed to make a proposal to include the \$4.7 million CNG investment in rate base for recovery in the Company's next rate case.
4. Rate Schedule 343 is experimental for a three-year period, and under this tariff, customers can purchase natural gas from Piedmont and resell it after compression as a motor vehicle fuel. Based on the record, the panel found that approval of Rate Schedule 343 will promote the development and expansion of the retail CNG vehicle fuel market and voted unanimously that Rate Schedule 343 be approved. The panel also directed Piedmont to file at least ninety (90) days before the end of the experimental three-year period, a report on the financial and operational activity under Rate Schedule 343 and a recommendation regarding whether Rate Schedule 343 should be continued, discontinued or modified.

IT IS THEREFORE ORDERED THAT:

1. Piedmont Natural Gas Company Inc.'s *Petition of Piedmont Natural Gas Company, Inc. for Approval of a CNG Infrastructure Rider to Its Approved Rate Schedules and Service Regulations* filed on August 29, 2015 is approved, in part and denied, in part.
2. Piedmont Natural Gas Company Inc.'s Rate Schedule 342, Natural Gas Vehicle Fuel, is discontinued.
3. Piedmont Natural Gas Company Inc.'s Compressed Natural Gas Infrastructure Rider with Proposed Service Schedule 318 is denied.

4. Piedmont Natural Gas Company Inc.'s Compressed Natural Gas investment will be treated similarly to all other investment added between rate cases, and Piedmont Natural Gas Company, Inc. will be allowed to request that the \$4.7 million Compressed Natural Gas investment in rate base be included for recovery in the Company's next rate case.
5. Piedmont Natural Gas Company Inc.'s Rate Schedule 343 is approved.
6. At least ninety (90) days before the end of the experimental three-year period for Rate Schedule 343, Piedmont Natural Gas Company, Inc. shall file a report on the financial and operational activity under Rate Schedule 343 and a recommendation regarding whether Rate Schedule 343 should be continued, discontinued or modified.

Chairman Herbert H. Hilliard and Vice Chairman David F. Jones concur. Director James M. Allison concurred in the motion.

Attest:



Earl R. Taylor, Executive Director