

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 2, 2014

IN RE:

PETITION OF PIEDMONT NATURAL GAS  
COMPANY, INC. FOR APPROVAL OF A CNG  
INFRASTRUCTURE RIDER TO ITS APPROVED  
RATE SCHEDULES AND SERVICE REGULATIONS

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)  
) DOCKET NO.  
) 14-00086  
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ORDER GRANTING PETITIONS TO INTERVENE FILED BY THE  
CONSUMER ADVOCATE AND TENNESSEE FUEL & CONVENIENCE STORE ASSOC.

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This matter is before the Hearing Officer of the Tennessee Regulatory Authority (“Authority” or “TRA”) upon the petitions to intervene filed by the Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) on September 18, 2014, and the Tennessee Fuel and Convenience Store Association (“TFCA”) on September 24, 2014, which was amended thereafter on September 29, 2014.<sup>1</sup>

**BACKGROUND**

Piedmont Natural Gas 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 of Piedmont Natural Gas Company, Inc. for Approval of a CNG Infrastructure Rider to Its Approved Rate Schedules and Service Regulations* (“*Petition*”) seeking approval under Tenn. Code Ann. § 65-5-103(d)(6)<sup>2</sup> and TRA Rule 1220-

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<sup>1</sup> For purposes of this Order, the Hearing Officer notes that TFCA’s *Amended Petition to Intervene* modifies its earlier-filed *Petition to Intervene* by adding only one additional sentence to paragraph 3. Therefore, when considering the content or substance of TFCA’s request, this Order will refer only to the *Amended Petition to Intervene*.

<sup>2</sup> Tenn. Code Ann. § 65-5-103(d)(6), enacted on April 29, 2013, empowers the Authority to consider and implement alternative regulatory mechanisms outside the context of a rate case and, upon finding that such

4-1-.04<sup>3</sup> of a Compressed Natural Gas (“CNG”) Infrastructure Rider to recover capital costs and expenses related to the construction and expansion of CNG infrastructure and equipment to offer and provide CNG as an alternative motor vehicle transportation fuel.<sup>4</sup>

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.<sup>5</sup> Due to the rigorous mandatory deadline set forth in Tenn. Code Ann. § 65-5-103(d)(6), a *Notice of Filing & Deadline for Participation in Discovery* was issued on September 17, 2014, establishing September 26, 2014, as the deadline for party participation in discovery. On September 18, 2014, the Hearing Officer suspended the effectiveness of Piedmont’s proposed CNG tariff through December 1, 2014.<sup>6</sup> On September 24, 2014, a *Notice of Status Conference* was entered setting a status conference with the parties on September 30, 2014. During the status conference, the Hearing Officer heard and considered the petitions to intervene discussed below.

## **PETITIONS TO INTERVENE**

### ***Consumer Advocate***

In its *Petition to Intervene*, the Consumer Advocate seeks to intervene in the docket pursuant to Tenn. Code Ann. § 65-4-118, which qualifies the Consumer Advocate to intervene in proceedings before the Authority for the purpose of representing the interests of

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mechanisms are in the public interest, allow public utilities to recover certain costs and expenses. The statute requires that the Authority act on any request for alternative regulation within 120 days of the utility’s filing.

<sup>3</sup> 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)).

<sup>4</sup> *Petition* (August 29, 2014).

<sup>5</sup> *Order Convening a Contested Case and Appointing a Hearing Officer* (September 24, 2014).

<sup>6</sup> *Order Suspending Tariff through December 1, 2014* (September 18, 2014); *and see Amended Order Suspending Tariff through December 1, 2014* (September 22, 2014) (correcting a clerical error in the original Order).

Tennessee consumers of public utility services. The Consumer Advocate asserts that customers may be adversely affected by the proposed rate increase that would result from the implementation of the rider mechanism proposed in Piedmont's *Petition* and the determinations of the Authority related thereto. As such, it seeks to intervene in these proceedings to represent the interests of Piedmont consumers. In conclusion, the Consumer Advocate states that only by participating in this proceeding can it work to adequately protect the interests of consumers.<sup>7</sup>

During the Status Conference, the Hearing Officer noted that no response or objection was filed in the docket file, and Piedmont stated that it had no objection to the Consumer Advocate's intervention into these proceedings.

***Tennessee Fuel and Convenience Store Association ("TFCA")***

According to its *Amended Petition to Intervene*, TFCA represents more than 250 member companies, including wholesalers, retailers, truck stops, heating oil businesses, lubricant distributors and bulk storage facilities, in competition with other businesses in offering varieties of vehicular fuel for sale to the general public throughout the State of Tennessee.<sup>8</sup> In addition, TFCA states that, "many TFCA members are natural gas customers of Piedmont."<sup>9</sup> As such, TFCA asserts that it should be permitted full intervention in these proceedings because the legal rights, duties, privileges, immunities or other legal interests of its members will be determined and may be adversely affected in this proceeding.<sup>10</sup> Finally, TFCA contends that only by participating as a party can it work adequately to protect its

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<sup>7</sup> *Petition to Intervene* (September 18, 2014).

<sup>8</sup> TFCA *Amended Petition to Intervene*, pp. 1-2 (September 29, 2014).

<sup>9</sup> *Id.* at 2 ¶ 3.

<sup>10</sup> During the Status Conference held on September 30, 2014, counsel for TFCA clarified its position so as to assert that the TFCA, the Association, is acting on behalf of its members in this proceeding and does not assert an interest apart from that of its members.

members' direct interests, and that its request will not impair the interests of justice or the orderly and prompt conduct of the proceedings.<sup>11</sup>

During the Status Conference, the Hearing Officer noted that no response or objection was filed in the docket file, and Piedmont stated that, upon the filing of the *Amended Petition to Intervene*, it had no objection to the TFCA's intervention into these proceedings.

#### **APPLICABLE LAW**

TRA Rule 1220-01-02-.08 sets forth the ways in which requests to intervene in contested cases before the Authority are to be made and considered, as follows:

- (1) Petitions for intervention shall be granted in accordance with T.C.A. § 4-5-310 and T.C.A. § 65-2-107.
- (2) A petition for intervention shall set forth with particularity those facts that demonstrate that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Intervention may be denied or delayed for failure to provide such specific facts.
- (3) A petition for intervention shall be filed at least seven (7) days prior to the date of the contested case hearing.<sup>12</sup>

In addition to its own Rules and statutes, contested case proceedings before the Authority are governed by the provisions of the Uniform Administrative Procedures Act ("UAPA") found at Tenn. Code Ann. § 4-5-101, *et. seq.* As noted in subsection (1) of the above Rule, the Authority shall grant petitions to intervene according to the standards provided under the UAPA, Tenn. Code Ann. § 4-5-310, and Tenn. Code Ann. § 65-2-107.

Tenn. Code Ann. § 4-5-310 establishes the following criteria for mandatory and permissive, or discretionary, intervention as follows:

- (a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

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<sup>11</sup> *Id.* at 2-3.

<sup>12</sup> Tenn. Comp. R. & Regs. 1220-01-02-.08.

- (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
  - (2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
  - (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.
- (b) The agency may grant one (1) or more petitions for intervention at any time, upon determining that the intervention sought is in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.<sup>13</sup>

In addition, the Hearing Officer may, at any time, limit or impose conditions upon an intervenor's participation.<sup>14</sup> Finally, under TRA Rule 1220-1-2-.06, any party opposing a motion in a contested case must file and serve a response to the motion within seven (7) days of service of the motion.

## **FINDINGS & CONCLUSIONS**

Under Tenn. Code Ann. § 4-5-310(a)(1) and TRA Rule 1220-01-02-.08(3), to be considered timely, a petition for intervention must be filed at least seven (7) days prior to the date of the contested case hearing. Also, the Hearing Officer established September 26, 2014, as the deadline by which petitions to intervene must have been received in order to be considered timely for participation in discovery. Therefore, as the petitions filed by the Consumer Advocate and TFCA date were filed in accordance with the requirements set forth above, the Hearing Officer considers the petitions to be timely.

Next, Tenn. Code Ann. 4-5-310(a)(2) and TRA Rule 1220-01-02-.08(2) require that a petition to intervene state facts, with particularity, demonstrating that a legal right or interest

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<sup>13</sup> Tenn. Code Ann. § 4-5-310.

<sup>14</sup> Tenn. Code Ann. § 4-5-310(c).

held by the petitioner may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. As concerns the Consumer Advocate's petition, Tenn. Code Ann. § 65-4-118(b)(1), provides a general basis for the Consumer Advocate's qualification as an intervenor for the purpose of representing those consumers of public utility services that have legal rights or interests that may be determined in a proceeding before the TRA, as follows:

The consumer advocate division has the duty and authority to represent the interests of Tennessee consumers of public utilities services. The division may, with the approval of the attorney general and reporter, participate or intervene as a party in any matter or proceeding before the authority or any other administrative, legislative or judicial body and initiate such proceeding, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the rules of the authority.<sup>15</sup>

Thus, subject to the approval of the Attorney General, and upon demonstrating compliance with the UAPA and the TRA's Rules, Tenn. Code Ann. § 65-4-118(b)(1) qualifies the Consumer Advocate to intervene as a party in proceedings before the TRA to represent the interests of the utility consumers. It is important to note, however, that the statute does not confer an automatic or absolute right to the Consumer Advocate to participate in this or any other of the Authority's proceedings.

In its *Amended Petition to Intervene*, the TFCA asserts that its members both compete in the sale of vehicular fuel to the general public, and that, "many TFCA members are natural gas customers of Piedmont." In addition, during the Status Conference, counsel for TFCA agreed to file by October 6, 2014, a notice of disclosure specifically listing the TFCA members that are also customers of Piedmont. Upon such filing, the Hearing Officer agrees that TFCA meets the requirements set forth in Tenn. Code Ann. 4-5-310(a)(2) and TRA Rule 1220-01-02-.08(2).

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<sup>15</sup> Tenn. Code Ann. § 65-4-118(b)(1).

Finally, Tenn. Code Ann. 4-5-310(a)(3) requires that the Hearing Officer grant a petition for intervention only upon determining that “the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing intervention.” At various times throughout the Status Conference, each of the parties affirmed its commitment to work together to efficiently move the proceedings forward to a hearing and final resolution on the merits of this matter within the statutory requirements of Tenn. Code. Ann. § 65-5-103(d)(1)(B). Therefore, the Hearing Officer finds that allowing the interventions of the Consumer Advocate and TFCA are consistent with the conditions set forth in Tenn. Code Ann. 4-5-310(a)(3).

In addition, as noted above, Piedmont stated that it had no objection to the Consumer Advocate’s petition or to the TFCA’s petition, as amended, to intervene in these proceedings. Therefore, upon due consideration and for all of the foregoing reasons, the Hearing Officer concludes that the requests of the Consumer Advocate and TFCA to intervene in this matter should be granted.

**IT IS THEREFORE ORDERED THAT:**

1) The Consumer Advocate and Protection Division of the Office of the Attorney General’s *Petition to Intervene* is granted. In accordance with its intervention, the Consumer Advocate and Protection Division of the Office of the Attorney General may participate as a party in this proceeding and is entitled to receive copies of any notices, orders, and other documents filed in the docket file.

2) The Tennessee Fuel and Convenience Store Association shall file a notice disclosing its representation in this matter of those specific members of its association that are natural gas customers of Piedmont by October 6, 2014.

3) Conditioned upon the timely filing of the notice of disclosure noted above in clause 2, the Tennessee Fuel and Convenience Store Association's *Petition to Intervene*, as amended, is granted. In accordance with its intervention, the Tennessee Fuel and Convenience Store Association may participate as a party in this proceeding and is entitled to receive copies of any notices, orders, and other documents filed in the docket file.

  
Kelly Cashman-Grams, Hearing Officer