

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**March 28, 2016**

|                                        |   |                            |
|----------------------------------------|---|----------------------------|
| <b>IN RE:</b>                          | ) |                            |
|                                        | ) |                            |
| <b>APPLICATION OF DUKE ENERGY</b>      | ) | <b>DOCKET NO. 16-00006</b> |
| <b>CORPORATION AND PIEDMONT</b>        | ) |                            |
| <b>NATURAL GAS COMPANY, INC. FOR</b>   | ) |                            |
| <b>APPROVAL OF A CHANGE IN CONTROL</b> | ) |                            |
| <b>PURSUANT TO T.C.A. § 65-4-113</b>   | ) |                            |

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**ORDER APPROVING CHANGE IN CONTROL**

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This matter came before Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director Robin L. Morrison of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on March 14, 2016, for consideration of the *Application of Duke Energy Corporation and Piedmont Natural Gas Company, Inc., for Approval of a Change in Control Pursuant to T.C.A. § 65-4-113* (the “*Application*”) filed on January 15, 2016 by Piedmont Natural Gas Company, Inc. (“Piedmont”) and Duke Energy Corporation (“Duke”) (Duke and Piedmont together “Applicants”).

**BACKGROUND AND APPLICATION**

Piedmont is a public utility that is engaged in the business of transporting, distributing and selling natural gas in Tennessee and is subject to the Authority’s jurisdiction.<sup>1</sup> Piedmont furnishes natural gas to customers located in Nashville and the remainder of Davidson County, as well as portions of the counties of Cheatham, Dickson, Robertson, Rutherford, Sumner,

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<sup>1</sup> *Application*, p. 1 (January 15, 2016).

Trousdale, Williamson and Wilson and in certain incorporated towns and cities in those counties.<sup>2</sup> Duke is an investor-owned public utility holding company that owns and operates, through various subsidiaries, electric and/or natural gas public utilities within the states of North Carolina, South Carolina, Florida, Indiana, Ohio and Kentucky.<sup>3</sup>

On January 15, 2016, the Applicants filed the *Application* seeking Authority approval of an Agreement of Merger (“Agreement”) entered into by Duke and Piedmont on October 24, 2015. There were no petitions for intervention filed in this docket. Under the Agreement, Piedmont will become a wholly-owned subsidiary of Duke following the consummation of the merger of the two companies.<sup>4</sup> The Agreement provides that Piedmont will remain a fully functional operating subsidiary of Duke and will continue to provide natural gas sales and distribution service to its Tennessee customers pursuant to the tariffs, service schedules, franchise rights and other authorizations under which Piedmont currently provides service.<sup>5</sup> The Applicants assert that the sole difference in Piedmont’s operation in Tennessee following the merger will be the identity of the owner of its common stock.<sup>6</sup>

#### **FINDINGS AND CONCLUSIONS**

Tenn. Code Ann. § 65-4-113 (2015) requires a public utility to obtain TRA approval in order to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) provides:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

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<sup>2</sup> *Id.* at 1-2.

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

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.*

Tenn. Code Ann. § 65-4-113(b) provides the standards by which the Authority shall consider an application for transfer of authority as follows:

Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

In the *Application*, the Applicants have asked the Authority's approval of a change in control which results in Piedmont becoming a wholly-owned subsidiary of Duke. Pursuant to Tenn. Code Ann. § 65-4-113, such a change in control requires Authority approval. Tenn. Code Ann. § 65-4-113 is applicable to the transaction proposed in the Agreement of Merger because the transaction results in the transfer of authority or control from Piedmont to its new parent company, Duke, which does not currently hold a Certificate of Public Convenience and Necessity in Tennessee.<sup>7</sup> The Authority must consider the suitability, financial responsibility, and capability of Duke to acquire and operate Piedmont as well as the transaction's benefit to consumers. The Authority will approve such transfer only upon finding that it furthers the public interest.

Duke already operates extensively in the public utility space and currently provides natural gas services, through its subsidiaries, to over 500,000 customers.<sup>8</sup> Duke is a Fortune 250 company with a market capitalization of approximately \$50 billion and, as such, has the financial

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<sup>7</sup> See e.g. *In re: Petition of Americatel Corporation d/b/a 1010 123 Americatel Collect to Complete a Transfer of Control of an Authorized Carrier*, Docket No. 06-00120, Order (June 28, 2006); and *Joint Petition of Level 3 Communications, Inc., Apollo Amalgamation Sub, Ltd., Level 3 Communications, LLC, Broadwing Communications, LLC, Wiltel Communications, LLC, Telcove Operations, LLC, and Global Crossing North America, Inc., Global Crossing Telecommunications, Inc., and Global Crossing Local Services, Inc. for Approval of the Transfer of Control and Related Transactions including Certain Financing Arrangements*, Docket No. 11-00054, Order (October 5, 2011).

<sup>8</sup> *Application*, p. 4 (January 15, 2016).

ability to support the continued operations and expansion of the Piedmont system.<sup>9</sup> The Applicants claim that there will be effectively no change in the identity of Piedmont in Tennessee following the merger, and Piedmont has demonstrated that it has the required technical and managerial capabilities to provide service pursuant to its tariffs and service schedules. The public interest is served by this transaction because Piedmont should see quantifiable economic benefits such as decreased market risk and increased financial strength and stability, which can be passed on to customers in future rate proceedings.

For these reasons, the panel found that Duke has the technical, managerial and financial qualifications to acquire and operate Piedmont. Furthermore, the Authority found that this transfer furthers the public interest. Based upon the *Application* and the record as a whole, the panel voted unanimously to approve the *Application*, and the Agreement of Merger contained therein, contingent upon approval of the transfer by the North Carolina Utility Commission. Additionally, the panel required that Duke and/or Piedmont file a status report with the Authority within one year of the final approval of the change in control concerning Piedmont's management, budget, income, and general operations under Duke.

**IT IS THEREFORE ORDERED THAT:**

1. The *Application of Duke Energy Corporation and Piedmont Natural Gas Company, Inc., for Approval of a Change in Control Pursuant to T.C.A. § 65-4-113* filed on January 15, 2016 is approved, contingent upon approval by the North Carolina Utilities Commission.

2. Within one year after the final approval of the change of control or merger transaction, the parties are directed to file a status report in the docket file concerning Piedmont's

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<sup>9</sup> *Id.* at 5.

management, budget, income, and general operations under its new parent company, Duke Energy Corporation.

3. Any person who is aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.

4. Any person who is aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

**Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director Robin L. Morrison concur.**

**ATTEST:**



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**Earl R. Taylor, Executive Director**