

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION  
AT NASHVILLE, TENNESSEE**

**IN RE:**

**EXPEDITED PETITION OF SONTARA  
OLD HICKORY, INC. FOR APPROVAL  
OF AN ASSET PURCHASE  
AGREEMENT AND FOR THE  
ISSUANCE OF A CERTIFICATE OF  
CONVENIENCE AND NECESSITY.**

**DOCKET NO. 19-00071**

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**DIRECT TESTIMONY**

**OF**

**DAVID N. DITTEMORE**

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**October 2, 2019**

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**AFFIDAVIT**

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I, David N. Dittmore, Financial Analyst, on behalf of the Consumer Advocate Unit of the Attorney General's Office, hereby certify that the attached Direct Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate Unit.

  
**DAVID N. DITTEMORE**

Sworn to and subscribed before me  
this 2nd day of October, 2019.

  
NOTARY PUBLIC



My commission expires: 9/28/2022

**Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION FOR THE RECORD.**

**A1.** My name is David N. Dittmore. My business address is Office of the Tennessee Attorney General, War Memorial Building, 301 6<sup>th</sup> Ave. North, Nashville, TN 37243. I am a Financial Analyst employed by the Consumer Advocate Unit in the Financial Division of the Tennessee Attorney General's Office ("Consumer Advocate").

**Q2. PLEASE PROVIDE A SUMMARY OF YOUR BACKGROUND AND PROFESSIONAL EXPERIENCE.**

**A2.** I received a Bachelor of Science Degree in Business Administration from the University of Central Missouri in 1982. I am a Certified Public Accountant licensed in the state of Oklahoma (#7562). I was previously employed by the Kansas Corporation Commission ("KCC") in various capacities, including Managing Auditor, Chief Auditor and Director of the Utilities Division. For approximately four years, I was self-employed as a Utility Regulatory Consultant representing primarily the KCC Staff in regulatory issues. I also participated in proceedings in Georgia and Vermont, evaluating issues involving electricity and telecommunications regulatory matters. Additionally, I performed a consulting engagement for Kansas Gas Service ("KGS"), my subsequent employer during this time frame. For eleven years I served as Manager and subsequently Director of Regulatory Affairs for KGS, the largest natural gas utility in Kansas serving approximately 625,000 customers. KGS is a division of One Gas, a natural gas utility serving approximately two million customers in Kansas, Oklahoma and Texas. I joined the Tennessee Attorney General's Office in September 2017 as a Financial Analyst. Overall, I have thirty years' experience in the field of public utility regulation. I have presented testimony as an expert witness on many occasions. Attached as Exhibit DND-1 is a detailed overview of my background.

**Q3. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION (TPUC)?**

**A3.** Yes. I have submitted testimony in a number of TPUC dockets.

1 **Q4. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 **A4.** The purpose of my testimony is to provide the Consumer Advocate's recommendations  
3 regarding the request by Sontara to provide water and wastewater service under a  
4 Certificate of Public Convenience and Necessity ("CCN"). Sontara, through its Petition,  
5 discovery responses, and testimony of Mr. Jeff Adams, has summarized the proposed  
6 transaction. In the interest of brevity, I will not further summarize their request here, but I  
7 will instead focus on identifying required modifications and clarifications for this  
8 transaction to be in the public interest.

9 **Q5. DO YOU BELIEVE THERE ARE PUBLIC INTEREST STANDARDS THAT**  
10 **SHOULD BE MET AS PART OF THE REGULATORY APPROVAL OF UTILITY**  
11 **ACQUISITIONS?**

12 **A5.** Yes. However, as I will discuss below, this transaction is very unique in terms of its scope  
13 of service. Therefore, I do not recommend the Commission view this transaction under  
14 traditional merger review standards. I will not discuss those proper standards in this  
15 testimony and will leave that issue for future acquisition transactions.

16 **Q6. IN YOUR VIEW, WHAT ARE THE UNIQUE ASPECTS OF THIS TRANSACTION**  
17 **THAT JUSTIFY A MORE LIMITED REVIEW THAN IN MORE TRADITIONAL**  
18 **ACQUISITIONS?**

19 **A6.** The majority of water and wastewater service provided by Sontara will be used for its own  
20 industrial purposes.<sup>1</sup> The CCN will also allow Sontara to provide water and wastewater  
21 service to three non-affiliate entities.<sup>2</sup> These services will be provided under terms that are  
22 more favorable than the contract terms that currently exists between DuPont and these non-  
23 affiliate entities. The primary objective for Sontara operating the water utility operations  
24 currently owned and operated by DuPont is to ensure service continues for its own  
25 industrial purposes. It appears that the provision of service to the three non-affiliate  
26 customers is not driven by the profit motive to the extent normally found within investor-  
27 owned utility operations as utility service is not the primary source of net income for  
28 Sontara. The primary motive of Sontara with the acquisition of the water/wastewater

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<sup>1</sup> Sontara indicates it operates a plant for the manufacture of nonwoven fabrics and consumes approximately 80% of the water and wastewater services provided by DuPont. *Petition* at 2.

<sup>2</sup> DuPont will maintain an office in the area for a time and will be a third customer of Sontara.

1 facilities of DuPont is to ensure it has access to these essential services so it may continue  
2 its manufacturing operations. Therefore, this request is unique, and I believe justifies  
3 different standards of review than of more typical acquisition transactions.

4 **Q7. DO YOU WISH TO IDENTIFY ITEMS THAT YOU BELIEVE WOULD**  
5 **NORMALLY BE REVIEWED IF NOT FOR THE LIMITED SCOPE OF REVIEW**  
6 **DESCRIBED ABOVE?**

7 **A7.** Yes. DuPont has been providing utility service to Sontara and two other customers. This  
8 provision of public utility service should have been conducted under the oversight of  
9 TPUC. As such, the gain on the sale of utility assets associated with this transaction would  
10 be subject to assignment between the selling entity and its ratepayers.<sup>3</sup> However, given the  
11 limited nature of utility service in this case, coupled with the customer-friendly terms of  
12 the agreements between Sontara and its customers, I don't believe the Commission needs  
13 to weigh in on the gain on the sale issue in this matter. And for these reasons, I also do not  
14 believe the Commission needs to investigate why DuPont has been providing service  
15 without a CCN.

16 The transaction is believed to result in a significant Acquisition Premium ("AP").<sup>4</sup>  
17 Normally, the regulatory treatment of the AP is an important issue both to the acquiring  
18 utility as well as other interested stakeholders in considering whether the transaction is in  
19 the public interest. This concern is lessened in this case because Sontara seeks to depreciate  
20 existing assets, including the AP, over a five-year period, matching the term of its customer  
21 contracts. Absent extraordinary circumstances, or a new customer seeking service, the AP  
22 should be fully amortized by the time of the next Sontara rate proceeding.

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<sup>3</sup> Rates are established to provide utility shareholders the opportunity to earn a reasonable return. Retaining proceeds of a sale of utility asset in excess of book value permits returns in excess of those required to adequately compensate utility shareholders. For background on this regulatory policy issue see *Democratic Central Committee of the District of Columbia v Washington Metropolitan Area Transit Commission*, U.S. Court of Appeals, District of Columbia Circuit, Order No. 21865.

<sup>4</sup> An Acquisition Premium is the difference between the asset purchase price and the underlying book value of the acquired asset. Since rates are established on the book value of the assets, the acquisition premium represents a potential write-up of asset values that may result in an increased rate base and thus increased rates for ratepayers. There are limited records available from DuPont; however, informal statements made by the applicant indicate the acquired assets (other than land) are nearly fully depreciated.

**Q8. IDENTIFY THE CONDITIONS YOU BELIEVE SHOULD BE ADOPTED TO ENSURE THIS TRANSACTION IS IN THE PUBLIC INTEREST.**

**A8.** I recommend the Commission approve the Sontara request for a CCN under the following conditions:

1. Any modifications to contracts with existing customers should be submitted for approval to TPUC. For purposes of this term, the Consumer Price Index calculation or any contract renewals at identical terms as the original contract should not constitute “modifications”;
2. The CCN is granted in this Docket for the three non-affiliate customers to be served by Sontara. Any new customers seeking service would require a new or modified CCN request along with a proposed rate, which will require Commission approval;
3. Sontara will maintain its books and records in compliance with the NARUC Uniform System of Accounts;
4. Sontara will submit an annual report to the Commission detailing operating results;
5. Sontara will identify its volume of affiliate and non-affiliate water and wastewater volumes. Sontara will also allocate its operating expenses between affiliate and non-affiliate operations and provide an explanation for the basis of the allocation within its Annual Report;
6. Sontara will depreciate its existing non-land assets over five years, on a straight-line basis. Any subsequent capital expenditures should be depreciated as follows:
  - a. Vehicles, Computers, software, etc. – 5 years; and
  - b. Piping, pumping equipment, and other expenditures unique to the water/wastewater industry – 20 years.
7. There is no determination in this proceeding for the following items:
  - a. The basis by which Sontara’s rates will be determined in future Commission dockets (whether that be based upon a rate base rate of return calculation, an operating margin calculation, or some other method);
  - b. Whether it is appropriate to recover environmental remediation costs from Sontara’s customers;

1 c. The appropriate regulatory treatment associated with the recovery of AP  
2 costs to Sontara's ratepayers (other than such costs shall be amortized over  
3 a five-year period); and

4 d. Acknowledgement that a sale of facilities shall be subject to approval of the  
5 Commission.

6 **Q9. DISCUSS YOUR FIRST CONDITION CONCERNING OVERSIGHT OF RATES**  
7 **CHARGED TO THE THREE NON-AFFILIATE CUSTOMERS.**

8 **A9.** Service to the three non-affiliate customers will be provided under individual contracts at  
9 a discount, contrasted with the rates currently paid to DuPont, and modified to increase  
10 rates at an annual Consumer Price Index inflator over its five-year term. I don't see a  
11 compelling reason to require Sontara to justify the contract rate given this set of  
12 circumstances. However, if Sontara wishes to seek a rate increase or otherwise negate the  
13 terms of the contract, it should be required to gain approval of the new rates from the  
14 Commission.

15 **Q10. TURN TO THE SECOND CONDITION RELATED TO HOW RATES WOULD BE**  
16 **DETERMINED IF A NEW CUSTOMER SEEKS SERVICE FROM SONTARA?**

17 **A10.** The Company has agreed to limit this CCN request to the customers currently served by  
18 DuPont.<sup>5</sup> If additional customers seek service, the Company should be required to seek  
19 approval of that rate from the Commission.

20 **Q11. ADDRESS CONDITION THREE RELATED TO HOW THE BOOKS AND**  
21 **RECORDS OF SONTARA SHOULD BE MAINTAINED.**

22 **A11.** Sontara should maintain its water and wastewater operating results consistent with the  
23 NARUC Uniform System of Accounts (USoA) for Water Utilities. This requirement  
24 includes not only the specific accounts used to record operating results but also compliance  
25 with accounting methods and instructions contained within the USoA.

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<sup>5</sup> See Sontara's Response to Consumer Advocate Discovery Request Nos. 1-2 and 1-16.

**Q12. DISCUSS CONDITION FOUR RELATED TO ANNUAL REPORTING REQUIREMENTS.**

**A12.** Sontara should be required to submit its annual operating results and balance sheet information consistent with the Commission's Form 303. I do not believe more frequent submissions, such as monthly reports, are necessary given the small scope of Sontara's regulated operations.

**Q13. CONTINUE WITH A DISCUSSION OF CONDITION FIVE RELATED TO ADDITIONAL INFORMATION TO INCLUDE IN THE ANNUAL FILING TO THE COMMISSION.**

**A13.** As mentioned earlier, Sontara will be providing service on behalf of its own manufacturing operations as well as that of three non-affiliate entities. This situation is somewhat unique in that most utility's primary function is the provision of utility service to customers. As mentioned earlier, Sontara's utility operations are a secondary line of business primarily designed to support its own manufacturing operations. It is important, however, that Sontara's non-affiliate customers are not disadvantaged, either in terms of cost or quality of service. Sontara should include, within its annual report, the volume (or some measure of quantity) of its affiliate usage, as well as that of non-affiliate customers. Further, the annual report should allocate plant and results between its affiliate and non-affiliate operations with a description of how such assignments were made.

**Q14. PLEASE ADDRESS CONDITION SIX RELATING TO DEPRECIATION RATES ASSOCIATED WITH CURRENT AND FUTURE SONTARA PLANT.**

**A14.** Sontara has requested to depreciate its acquired non-land assets on a straight-line basis over five years.<sup>6</sup> There are benefits to customers and prospective customers with this rapid depreciation approach. I support this request by Sontara and urge the Commission to adopt a five-year depreciation life on existing assets, including any acquisition premium associated with this transaction.

While this resolves the appropriate depreciation approach for legacy assets, the Commission needs to adopt depreciation rates associated with assets that may be acquired

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<sup>6</sup> See Company's Response to Consumer Advocate Discovery Request No. 1-1.



1 or installed in the future, and I recommend the Commission adopt depreciation rates in this  
2 Docket. Depreciation rates for larger utilities are normally approved in conjunction with a  
3 study conducted by a Depreciation expert. Requiring such an approach would necessarily  
4 increase costs to Sontara and its customers. The limited size and scope of Sontara's  
5 operations warrant a departure from the standard approach to require a formal depreciation  
6 study.

7 **Q15. WHAT IS YOUR RECOMMENDATION CONCERNING DEPRECIATION**  
8 **RATES THAT SHOULD BE APPLIED TO ANY SUBSEQUENT PLANT**  
9 **ACQUIRED OR CONSTRUCTED BY SONTARA?**

10 **A15.** I recommend that any vehicles, computer equipment, or software be depreciated over a  
11 five-year period. For other tangible facilities, I recommend assets be depreciated over a  
12 twenty-year period. While this period is shorter than the period adopted for similar  
13 equipment for larger utilities, I believe it is reasonable due to the limited scope of Sontara's  
14 service. This proposed service will be provided to three non-affiliate commercial  
15 customers. There is a risk that the operations of these three entities may not extend  
16 indefinitely due to any number of commercial reasons. Thus, there is a risk of stranded  
17 costs associated with any new equipment installations that is not present to the same extent  
18 with assets for larger utilities serving hundreds of thousands of homogenous customers. A  
19 shorter depreciation period such as twenty-years strikes a balance between the potential  
20 life of the asset versus the risk that customers may discontinue service before the end of  
21 the useful life of the asset.

22 **Q16. NOW TURN TO CONDITION SEVEN CONCERNING ITEMS WHERE THERE**  
23 **IS NO SPECIFIC FINDING IN THIS DOCKET AND AS SUCH THE ITEM MAY**  
24 **BE ADDRESSED IN A FUTURE PROCEEDING.**

25 **A16.** The Consumer Advocate has worked to identify some consumer protections within this  
26 Docket, while at the same time working under a time schedule that fits the commercial  
27 needs of Sontara. There are several issues I wish to identify where there is no stated or  
28 implied agreement on how such items may be addressed in future regulatory dockets.

29 The first relates to the basis upon which future Sontara's customer rates may be established.  
30 Existing customers will be served under rates established in negotiated contracts. For

1 potential future customers, such rates may be determined under a rate base rate of return  
2 approach, an operating margin calculation, or perhaps under terms within a specific  
3 customer contract which the Commission determines to be just and reasonable. There is  
4 no agreement among the parties on how such rates may be determined in a subsequent  
5 proceeding based upon the facts and circumstances present at that time.

6 The next condition I am supporting is for the Commission to make an explicit finding that  
7 it is not taking any position at this time regarding the possibility of rate recovery associated  
8 with future environmental remediation costs. I have previously been involved in a  
9 regulatory proceeding involving environmental remediation costs and believe that the  
10 possibility exists that not all environmental issues associated with the property upon which  
11 the water and wastewater facilities sit are known at this time. Occasionally environmental  
12 issues – sometimes very significant – may arise at locations which were former industrial  
13 sites. The Commission should make clear that there is no implicit approval of the pass-  
14 through to Sontara's customers of environmental costs it may inherit as a result of this  
15 transaction.

16 I recommend that the Commission acknowledge there is no implied approval of a return  
17 of, or on, the Acquisition Premium in this case. Both parties may argue the merits of  
18 regulatory recovery of the AP in future proceedings. However, given that the AP is to be  
19 amortized over a five-year period, coupled with the five-year contract term associated with  
20 existing customers, it is unlikely to be an issue impacting existing customers. I do agree,  
21 for purposes of this Docket, to permit the Amortization Expense associated with the AP to  
22 be included as an Operating Expense and recoverable from existing customers. I support  
23 this regulatory treatment with the understanding that even with such increase in  
24 Amortization Expense, existing customers will be served at a discounted rate from that  
25 provided by the prior owner, DuPont.

26 Finally, I recommend the Commission clarify that any such sale of utility assets must be  
27 approved by the Commission.

28 **Q17. DOES THIS CONCLUDE YOUR TESTIMONY?**

29 **A17.** Yes, although I reserve the right to supplement my testimony if new information becomes  
30 available.

David Dittimore

Experience

**Areas of Specialization**

Approximately thirty-years experience in evaluating and preparing regulatory analysis, including revenue requirements, mergers and acquisitions, utility accounting and finance issues and public policy aspects of utility regulation. Presented testimony on behalf of my employers and clients in natural gas, electric, telecommunication and transportation matters covering a variety of issues.

Tennessee Attorney General's Office; **Financial Analyst September, 2017 – Current**

Responsible for evaluation of utility proposals on behalf of the Attorney General's office including water, wastewater and natural gas utility filings. Prepare analysis and expert witness testimony documenting findings and recommendations.

Kansas Gas Service; **Director Regulatory Affairs 2014 – 2017; Manager Regulatory Affairs, 2007 - 2014**

Responsible for directing the regulatory activity of Kansas Gas Service (KGS), a division of ONE Gas, serving approximately 625,000 customers throughout central and eastern Kansas. In this capacity I have formulated strategic regulatory objectives for KGS, formulated strategic legislative options for KGS and led a Kansas inter-utility task force to discuss those options, participated in ONE Gas financial planning meetings, hired and trained new employees and provided recommendations on operational procedures designed to reduce regulatory risk. Responsible for the overall management and processing of base rate cases (2012 and 2016). I also played an active role, including leading negotiations on behalf of ONE Gas in its Separation application from its former parent, ONEOK, before the Kansas Corporation Commission. I have monitored regulatory earnings, and continually determine potential ratemaking outcomes in the event of a rate case filing. I ensure that all required regulatory filings, including surcharges are submitted on a timely and accurate basis. I also am responsible for monitoring all electric utility rate filings to evaluate competitive impacts from rate design proposals.

Strategic Regulatory Solutions; 2003 -2007

**Principal;** Serving clients regarding revenue requirement and regulatory policy issues in the natural gas, electric and telecommunication sectors

Williams Energy Marketing and Trading; 2000-2003

**Manager Regulatory Affairs;** Monitored and researched a variety of state and federal electric regulatory issues. Participated in due diligence efforts in targeting investor owned electric utilities for full requirement power contracts. Researched key state and federal rules to identify potential advantages/disadvantages of entering a given market.

MCI WorldCom; 1999 - 2000

**Manager, Wholesale Billing Resolution;** Manage a group of professionals responsible

for resolving Wholesale Billing Disputes greater than \$50K. During my tenure, completed disputes increased by over 100%, rising to \$150M per year.

**Kansas Corporation Commission; 1984- 1999**

**Utilities Division Director** - 1997 - 1999; Responsible for managing employees with the goal of providing timely, quality recommendations to the Commission covering all aspects of natural gas, telecommunications and electric utility regulation; respond to legislative inquiries as requested; sponsor expert witness testimony before the Commission on selected key regulatory issues; provide testimony before the Kansas legislature on behalf of the KCC regarding proposed utility legislation; manage a budget in excess of \$2 Million; recruit professional staff; monitor trends, current issues and new legislation in all three major industries; address personnel issues as necessary to ensure that the goals of the agency are being met; negotiate and reach agreement where possible with utility personnel on major issues pending before the Commission including mergers and acquisitions; consult with attorneys on a daily basis to ensure that Utilities Division objectives are being met.

**Asst. Division Director** - 1996 - 1997; Perform duties as assigned by Division Director.

**Chief of Accounting** 1990 - 1995; Responsible for the direct supervision of 9 employees within the accounting section; areas of responsibility included providing expert witness testimony on a variety of revenue requirement topics; hired and provided hands-on training for new employees; coordinated and managed consulting contracts on major staff projects such as merger requests and rate increase proposals;

**Managing Regulatory Auditor, Senior Auditor, Regulatory Auditor** 1984 - 1990; Performed audits and analysis as directed; provided expert witness testimony on numerous occasions before the KCC; trained and directed less experienced auditors on-site during regulatory reviews.

**Amoco Production Company 1982 - 1984**

**Accountant** Responsible for revenue reporting and royalty payments for natural gas liquids at several large processing plants.

**Education**

- B.S.B.A. (Accounting) Central Missouri State University
- Passed CPA exam; (Oklahoma certificate # 7562) – Not a license to practice