

STATE OF TENNESSEE

Office of the Attorney General



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December 7, 2020

**VIA ELECTRONIC FILING**

Kenneth Hill, Chairman  
c/o Ectory Lawless  
Tennessee Public Utility Commission  
502 Deaderick Street, Fourth Floor  
Nashville, TN 37243  
[tpuc.docketroom@tn.gov](mailto:tpuc.docketroom@tn.gov)

***Re: TPUC Docket No. 20-00130, Petition of Piedmont Natural Gas Company, Inc.  
for Approval of an Integrity Management Rider to its Approved Rate Schedules  
and Service Regulations***

Dear Chairman Hill:

The Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General ("Consumer Advocate") has reviewed the *Petition of Piedmont Natural Gas Company, Inc. for Approval of an Integrity Management Rider to its Approved Rate Schedules and Service Regulations* ("IMR Petition") along with the *Pre-filed Direct Testimony of Ms. Pia Powers* filed on November 30, 2020. After reviewing these filings, and taking into account this Office's involvement in Piedmont's ongoing general rate case – Docket No. 20-00086 – we write to inform you that the Consumer Advocate does not intend to intervene in the 2020 IMR filing at this time and under the current circumstances. Instead, as discussed *inter alia* in the Consumer Advocate's *Response to Piedmont's Notice of Intent to Implement Rates Subject to Refund* (attached as **Exhibit A**) – and due to the ramifications of Piedmont's interim rates and their impact on the existing IMR surcharge – we urge the Commission to approve Piedmont's *IMR Petition* as filed, subject to a reconciliation at a later date for the months of November and December.

Piedmont initiated its IMR in Docket No. 13-00118. In each subsequent year, Piedmont has submitted monthly filings along with an annual petition for approval of that year's appropriate costs for recovery. The costs approved by the Commission each year are added to a customer's bill via a surcharge, which is represented as a percentage of a customer's bill. Ultimately, when Piedmont receives new base rates in the wake of a general rate case, approved IMR assets will transfer into Piedmont's rate base, and the IMR surcharge will reset to zero.

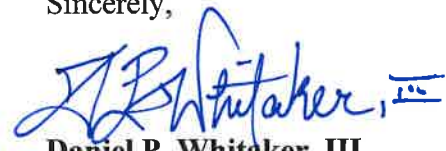
Piedmont filed a general rate case on July 2, 2020. On November 6, 2020, Piedmont submitted a notice to the Commission and Consumer Advocate that it intended to implement interim rates – which represent the entirety of the Company’s proposed \$29.9 million rate increase – beginning on January 2, 2021. The Consumer Advocate filed a response to Piedmont’s filing on December 3, 2020, and the response includes a proposal on how to address the 2020 IMR filing.

Specifically, when the proposed interim rates go into effect on January 2, the IMR will be reset to zero<sup>1</sup> – with the reconciliation credit continuing – as the entirety of the IMR will be enveloped into base rates, as advocated by the Company in its general rate case testimony. Therefore, the additional surcharge added to consumers’ bills should be reset to zero. Ensuring that a 2020 IMR order includes a directive to reset the IMR to zero at the same time interim rates go into effect is crucial to ensuring that the timing of rate implementation does not become out-of-sync.

To achieve this timing, the Consumer Advocate writes to inform this Commission that it does not intend to intervene in the IMR docket so long as Piedmont is pressing forward with implementing interim rates. We instead urge the Commission to enter an order approving the 2020 *IMR Petition*, subject to a reconciliation for November and December data, and ordering that the IMR surcharge be adopted as filed by the Company. In making this determination, the Consumer Advocate does not intend to give up any rights going forward in any current or upcoming dockets, and this position should not be construed as agreement with the Company’s calculation. Instead, due to the related nature of the dockets – both concern what to do with the Company’s IMR assets and how to account for the IMR surcharge – and taking into consideration the large increase to interim rates sought by the Company and the implication of such a large increase in the midst of winter, the Consumer Advocate respectfully requests that the Commission consider the Consumer Advocate’s position on this matter by means of this Office’s *Response* in Docket No. 20-00086.

Thank you very much for your time.

Sincerely,



**Daniel P. Whitaker, III**  
Assistant Attorney General

cc: Paul S. Davidson  
James H. Jeffries, IV  
Brian S. Heslin  
Kelly Cashman Grams  
David Foster  
Joe Shirley

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<sup>1</sup> Notwithstanding the credit of \$.03699 per therm as contained in the Company’s proposed Billing Rates, Docket No. 20-00130 filed November 30, 2020, to be effective January 1, 2021, pdf p. 8 (Sixty-Eighth Revised Sheet No. 1).

# **EXHIBIT A**

IN THE TENNESSEE PUBLIC UTILITY COMMISSION  
AT NASHVILLE, TENNESSEE

IN RE: )  
)  
PIEDMONT NATURAL GAS COMPANY, ) Docket No. 20-00086  
INC. PETITION FOR AN ADJUSTMENT )  
OF RATES, CHARGES, AND TARIFFS )  
APPLICABLE TO SERVICE IN TENNESSEE )

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CONSUMER ADVOCATE'S RESPONSE TO PIEDMONT'S NOTICE OF INTENT TO  
IMPLEMENT RATES SUBJECT TO REFUND

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Comes now the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General ("Consumer Advocate") and hereby submits its *Response to the Notice of Intent to Implement Rates Subject to Refund Pursuant to Tenn. Code Ann. § 65-5-103(b)(1) of Piedmont Natural Gas Company, Inc.* The Consumer Advocate would show as follows:

1. On July 2, 2020, Piedmont Natural Gas Company, Inc. ("Piedmont" or "Company"), a subsidiary of Duke Energy Corporation and a utility regulated by the Tennessee Public Utility Commission ("TPUC" or "Commission"), filed a *Petition for an Adjustment of Rates, Charges, and Tariffs Applicable to Service in Tennessee*. The Company's *Petition* seeks *inter alia* an increase to its base rates of \$29.9 million. The Consumer Advocate filed a *Petition to Intervene*, which was granted by the Hearing Officer on August 24, 2020.

2. On November 10, 2020, Piedmont submitted a notice in this Docket indicating that the Company intended to put new rates into effect subject to a refund beginning on January 2, 2021. Tennessee Code Ann. § 65-5-103(b) permits a public utility to implement new rates (subject to bond if the Commission so requires) before the conclusion of a general rate case. However, the Consumer Advocate is unaware of any cases where such a step has been taken in the history of TPUC or its predecessor agencies.

3. The new rates Piedmont proposes to charge beginning January 2 consist of the entirety of the rate increase advocated by Piedmont in this general rate case; in other words, the new rates that could go into effect represent the full \$29.9 million revenue deficiency the Company proposed. All positions advocated in testimony by Piedmont, many of which may become contested issues argued before TPUC, under the Company's proposal will become effective through rates on January 2 as if every issue were decided by this Commission in Piedmont's favor.

4. Piedmont proposes to put the entirety of its proposed rate increase into effect not only during the coldest months of the year with the highest natural gas bills but also during a pandemic that has caused widespread economic uncertainty across the country.

5. The Consumer Advocate respectfully requests the Commission to consider the following items to ensure that if Piedmont proceeds with its plans to implement the entirety of its rate hike before Commission approval, certain safeguards are effectuated:

***Under the Circumstances, Piedmont's Recently Filed Integrity Management Rider Should Go into Effect at the Same Time as Piedmont's Proposed Interim Rates.***

a. On November 30, 2020, Piedmont submitted its annual Integrity Management Rider (IMR) filing to the Commission in Docket No. 20-00130. The filing seeks to implement IMR rates and recover historic costs for the 2020 calendar year.

b. According to the accompanying testimony of Piedmont witness Ms. Pia Powers:

the integrity management investment amount must be an investment amount that is not otherwise included in current base rates. A return on the Company's integrity management investments through October 31, 2020 will be in tariff base rates resulting from this general rate case because the cost of service in the general rate case covers an attrition period ending December 31, 2021. Given these circumstances, and given that Piedmont notified the TPUC on November 06, 2020 of its intent, pursuant to Tenn. Code Ann. § 65-5-103(b)(1), to implement its proposed tariff base rates on January 2, 2021 subject to refund, it is appropriate to reset the IMRR to zero in January 2021.<sup>1</sup>

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<sup>1</sup> Pre-filed Direct Testimony of Pia Powers, p. 5, TPUC Docket No. 20-00130 (November 30, 2020).

Therefore, beginning in January of 2021 and corresponding with Piedmont's intention to put into effect interim rates, the approved IMR will reset to zero, notwithstanding the \$6.9 million true-up credit.<sup>2</sup>

c. Piedmont included in its *Notice* that it intended to put the full \$29.9 million rate increase, as set forth in Exhibit KAC-4, into effect beginning on January 2, 2020. Included in these interim base rates will be the entirety of the IMR investment from 2014 to the present. It is important to note that this level of increase is net of the previously approved IMR surcharge. Absent immediate action by the Commission, the \$29.9 million base rate increase would understate the true impact to consumers. With continuation of the IMR surcharge, ratepayers would be paying twice for the costs of approved IMR investments, once through base rates and a second time through the Commission approved IMR surcharge revenue of nearly \$21.9 million.<sup>3</sup>

d. While the Consumer Advocate has regularly intervened and participated in previous IMR annual filings, the current situation – with a new IMR filing that will be reset to zero at the beginning of the year and a pending general rate case – requires a different approach. Instead of initiating a contested case and establishing a procedural schedule, in order to ensure that there is no double-count of IMR assets, this 2020 annual IMR filing should be approved contemporaneously with Piedmont's implementation of interim rates. In other words, TPUC should enter an order approving the IMR being reset at the same time interim rates go into effect.

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<sup>2</sup> *Pre-filed Direct Testimony of Pia Powers*, p.6, TPUC Docket No. 20-00130 (November 30, 2020).

<sup>3</sup> Schedule 3, Revised 2019 IMR Annual Report Docket 19-00107, (December 11, 2019).

e. There is one further caveat that the Commission should take into consideration concerning the 2020 IMR. The current filing “trues up” or reconciles the data through October. But the Commission should also include in its order a requirement that Piedmont also true up the months of November and December at a later date. This will ensure that the 2020 IMR is appropriately reconciled.

***The Higher Rates Proposed by Piedmont Should Only Apply to Gas Consumed After the Statutory Six-Month Period.***

f. Next, the Commission should clarify the effective date of these rates. The Consumer Advocate proposes that the increase should be applied to any usage incurred on or after the effective date. Doing so would preclude usage incurred in December being billed at the higher rates charged on January 2, which is a logical solution as the gas was consumed by customers prior to the six-month period set forth in Tenn. Code Ann. § 65-5-103(b)(1). For example, if a customer were to be served during a bill cycle covering the period December 3, 2020 through January 2, 2021, its usage would be prorated such that 30 days of usage would be billed at the lower Commission-authorized rates, while one day of usage would be billed at the higher rates proposed by the Company. Usages would then be allocated between the two periods under a simple pro-rata approach, which is standard in the industry. This clarification concerning the implementation date of the new rates is also necessary to ensure all customers are treated equally. Absent this provision, one customer on a bill cycle with billing occurring on December 31 would have all of their usage billed at the lower rates, while another customer with billing occurring on January 4 – which bill would be almost exclusively December usage – would have their usage priced at the significantly higher interim rates.

*In the Event of a Refund, Consumers Should Be Made Whole.*

g. Piedmont proposes to put into effect new rates that have not been approved by the Commission and which will likely include multiple positions that become contested during this case. In the event that a refund must occur, customers will have over-paid for natural gas service until a final order by this Commission, and Piedmont will have benefitted by receiving more money than it is entitled to recover. Any funds overpaid by consumers for natural gas service during this interim period are akin to a short-term loan. Consumers will have paid charges not approved by this Commission and which the Commission may reject in a final written order. Thus, consumers will have provided additional monies for natural gas service, and Piedmont will be obligated to pay them back.

h. Piedmont's request to put the entirety of the proposed rate hike into effect prior to a TPUC final order also includes risks. If TPUC determines at the conclusion of this case that less than a \$29.9 million rate increase is appropriate, all rates for usage incurred after January 2<sup>4</sup> will be unjust and unreasonable; in other words, while the law allows rates to be put into effect subject to refund, the rates customers have paid for natural gas service – during the coldest months of the year and in the midst of economic turmoil and high unemployment – will be rates determined by this Commission to be unlawful. Therefore, any money owed to customers should be subject to a carrying charge equal to the Company's approved rate of return.

i. Careful consideration must also be given when determining to whom and to what extent refunds are owed. Tennessee Code Ann. § 65-5-103(b)(2) requires that

[w]here increased rates or charges are thus made effective, the interested utility shall maintain its records in such a manner as will enable it, or the

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<sup>4</sup> The Consumer Advocate strongly urges the Commission to issue an order specifying that the rate increase should only apply to usage incurred on or after January 2 rather than the Company's method of charging the higher rates for any bill issued on or after January 2.



commission, to determine the amounts to be refunded and to whom due, in the event a refund is subsequently ordered by the commission as provided in this subdivision (b)(2).

Therefore, in addition to a carrying charge on any refunds owed to customers, TPUC should require Piedmont to maintain its records in such a way that each individual customer will be refunded the precise amount to which he or she is entitled. This will allow low-income and elderly consumers, many of whom strictly control gas usage in order to cut costs, to be refunded the full amount owed to them by Piedmont. Refunds should *not* take place on a customer class basis as doing so would underpay these consumers.

***TPUC Should Impose a Bond Requirement on the Interim Rates Subject to Refund.***

- j. As discussed above, the Consumer Advocate is unaware of any other case where a utility has put rates into effect subject to refund in the history of TPUC or its predecessor agencies. Thus, additional precautions should be undertaken to ensure that this process is fair and in the public interest. A bond requirement, which is clearly contemplated in the statute, can provide such a precaution.
- k. While Piedmont maintains that a bond is unnecessary due to its status as a subsidiary of Duke Energy Corporation and its credit rating, there is still a significant element of risk associated with Piedmont's proposed course of action. Chief among the risks is the nature of a general rate case and the impetus of Piedmont's request to raise rates. Piedmont maintains in its initial petition that it believes it must increase rates by \$29.9 million to operate the natural gas system and make necessary capital investments to safely and effectively provide natural gas service to customers. Moreover, Piedmont avers that its current "*pro forma*" level of return will not permit the Company to compete for debt and equity capital on reasonable terms, and, therefore, will not enable the Company to continue to invest in new plant, add new customers and provide adequate,

safe, and reliable service to existing customers.”<sup>5</sup> Therefore, Piedmont’s ability to issue refunds to consumers – especially in the event Piedmont receives less of an increase than its request in this Docket – is anything but certain. This is an especially important point in light of the Consumer Advocate’s testimony, which proposes that a rate *decrease* is actually merited under the circumstances. If the Commission agrees with the positions taken by the Consumer Advocate, the refund owed to consumers in the wake of the interim rates will be significant.

1. A bond requirement provides a level of certainty to Piedmont’s request to bill its consumers for the entirety of its proposed rate increase prior to Commission approval, and Piedmont’s *Notice* includes no analysis of why it cannot seek such a bond. If the Company believes that it is unlikely to succeed in securing a bond for the proposed interim rates, this only further undercuts Piedmont’s requested action to impose the rates.

WHEREFORE, the Consumer Advocate respectfully requests that the Commission consider establishing these safeguards if Piedmont intends to proceed with implementing interim rates.

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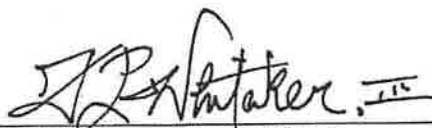
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<sup>5</sup> *Piedmont Natural Gas Company, Inc. Petition for an Adjustment of Rates, Charges, and Tariffs Applicable to Service in Tennessee*, p. 4, TPUC Docket No. 20-00086, July 2, 2020.

RESPECTFULLY SUBMITTED,

**HERBERT H. SLATERY III**

Attorney General and Reporter

A handwritten signature in black ink, appearing to read "D. P. Whitaker, III", with a horizontal line underneath.

**DANIEL P. WHITAKER III**

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**CERTIFICATE OF SERVICE**


I hereby certify that a true and correct copy of the foregoing *Petition to Intervene* was served via U.S. Mail or electronic mail upon:

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This the 3<sup>rd</sup> day of December, 2020.

  
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DANIEL P. WHITAKER III  
Assistant Attorney General