

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

July 25, 2022

IN RE:)	
)	
PETITION OF PIEDMONT NATURAL GAS)	DOCKET NO.
COMPANY, INC. TO ADOPT AN ANNUAL)	21-00135
REVIEW OF RATES MECHANISM PURSUANT TO)	
TENN. CODE ANN. § 65-5-103(d)(6))	

ORDER DENYING PROPOSED ANNUAL REVIEW OF RATES MECHANISM

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This matter came before Chairman Kenneth C. Hill, Vice Chairman Herbert H. Hilliard, Commissioner Robin L. Morrison, Commissioner Clay R. Good, and Commissioner John Hie of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on May 9, 2022, to consider the revised Service Schedule No. 318 proposed tariff authorizing an annual rate review mechanism (“ARRM”) and subsequent supporting pre-filed testimony (“*New Petition*”)¹ filed on February 18, 2022, by Piedmont Natural Gas Company, Inc. (“Piedmont” or “Company”) and the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate”).

In summary, the hearing panel denied the *New Petition*, finding the proposed ARRM was not in the public interest. Consistent with Tenn. Code Ann. §§ 65-5-103(d)(1) and (d)(6), should Piedmont decide to amend its proposed ARRM Tariff, the hearing panel found that the following modifications must be made as a condition of approval:

¹ *Order Acknowledging Filing as New Petition and Setting New Statutory Deadline* (February 24, 2022).

1. The Weather Normalization Adjustment (“WNA”) methodology for computing and updating base load and heat sensitive factors shall be the simple linear regression analysis methodology ordered by the Commission for Atmos Energy Corporation in Docket No. 14-00146 and Chattanooga Gas Company in Docket No. 18-00017.

2. The HomeServe Warranty Program net margins shall be included as other regulated revenues for computing the Historic Base Period (“HBP”) Reconciliation and Annual Base Rate Reset.

3. Pension and other post-employment benefits (“OPEB”) expenses included in the Historic Base Period Reconciliation and Annual Base Rate Reset shall be based on the Tennessee jurisdictional portion of the actuarially-determined minimum contribution requirement.

4. Pension and other post-employment benefits loadings to construction projects accounted for in Construction Work in Progress (“CWIP”) shall be accounted for consistent with how such expenses are recoverable in the Historic Base Period as previously set forth.

5. The unamortized portion of previously-approved deferred pension contributions and environmental costs shall be recoverable under the annual rate review mechanism (“ARRM”) through amortization expense in accordance with the previously-approved amortization period. Notwithstanding any prior rate or accounting orders issued by the Commission or its predecessor agencies, Piedmont must seek and obtain express approval to defer pension contributions, environmental costs, or any other deferred debit into a regulatory asset for ratemaking purposes.

6. Other operating and maintenance (“O&M”) expenses for computing the Historic Base Period Reconciliation and Annual Base Rate Reset shall exclude lobbying expenses and promotional and advertising expenses in accordance with the Commission’s rules.

7. While the hearing panel found the initial rate design proposed in the revised AARM tariff reasonable, the annual rate review mechanism shall contain a provision providing for the reasonable exercise of discretion in designing customer rates in each annual filing based on attendant

circumstances. The provision shall authorize Piedmont to make a proposal for how to allocate any revenue excess or deficiency among rate classes and the specific design for how rates are to be decreased or increased for each class. The provision shall also authorize any intervenor party to make its own alternative rate design proposal. Based upon a final determination that rates need to be increased or decreased, the Commission shall order such rate adjustments based upon the proposals of the parties or such other revenue allocation and rate design decision as the Commission may find to be in the public interest.

In addition to the ruling summarized above, the hearing panel found numerous other issues contained in the *New Petition* in which the parties agreed were reasonable and, within the context of any new proposed ARRM by the Company, such agreements, which are more fully described herein, are in the public interest.

BACKGROUND

Piedmont is a subsidiary of Duke Energy Corporation and is a public utility under the jurisdiction of the Commission. The Company is in the business of transporting, distributing, and selling natural gas to approximately 191,000 residential, commercial, and industrial customers in the State of Tennessee. The Company provides service to Tennessee households, businesses, and communities in Cheatham, Davidson, Robertson, Rutherford, Sumner, Trousdale, Williamson, and Wilson counties.²

On July 2, 2020, Piedmont filed the *Piedmont Natural Gas Company Inc. Petition for an Adjustment of Rates, Charges, and Tariffs Applicable to Service in Tennessee* (“Rate Case Petition”) in Commission Docket No. 20-00086 (“2020 Rate Case”) seeking an increase in rates; revisions to rate and service schedules, service regulations, and depreciation rates; and amortization of certain

² *Petition of Piedmont Natural Gas Company, Inc. to Adopt an Annual Review of Rates Mechanism Pursuant to Tenn. Code. Ann. § 65-5-103(d)(6)* (“Initial Petition”), p. 2 (November 5, 2021).

deferred regulatory assets. The *Rate Case Petition* sought to increase base service rates, inclusive of certain Integrity Management Rider (“IMR”) charges, by \$29.9 million annually.³ A multitude of issues and methodologies were challenged by the Consumer Advocate.

On February 3, 2021, the *Stipulation and Settlement Agreement* (“*Rate Case Settlement*”) was filed by Piedmont and the Consumer Advocate to resolve the Company’s rate petition in that docket. The settlement proposed an increase in service rates of \$16.25 million and was ultimately approved by the Commission on February 16, 2021.⁴ In approving the *Rate Case Settlement*, the Commission found the following:

Settlements entail give-and-take negotiations, the end result of which may see a long-standing Commission precedent on a particular issue set aside by the parties for purposes of reaching an agreement. Approving such settlements is not a rejection of a Commission precedent, although parties should be mindful that abandoning long-standing Commission precedents and practices in the name of settlement will only court greater uncertainty and may result in modification or rejection of a proposed settlement. While the Commission may not have ruled in the same manner or adopted the same methodology after a hearing on the merits, after careful consideration of the *Settlement Agreement* submitted on February 3, 2021, the Hearing Panel found the *Settlement Agreement*, when taken in its entirety, contains settled issues which lead to a revenue deficiency that falls within the zone of reasonableness. The Hearing Panel voted unanimously to approve the *Settlement Agreement*.⁵

In addition, the Commission ruled in the 2020 Rate Case that in the event the Company sought an alternative regulatory mechanism, such as an annual rate review, the forward-looking methodologies adopted in the settlement would be reviewed for appropriateness for application.⁶

TRAVEL OF THIS CASE

On November 5, 2021, Piedmont initially filed a petition requesting approval of an ARRM pursuant to Tenn. Code Ann. § 65-5-103(d)(1)(a) and Tenn. Code Ann. § 65-5-103(d)(6). In its filing,

³ *In Re: Petition of Piedmont Natural Gas Company, Inc. For Approval of An Adjustment of Rates, Charges, and Tariffs Applicable to Service in Tennessee*, Commission Docket No. 20-00086 (“2020 Rate Case”), *Order Approving Settlement Agreement Setting Rates and Approving the Procedures for Refunds to Customers*, p. 3 (May 6, 2021).

⁴ *Id.* at. 6-9.

⁵ *Id.* at 6.

⁶ *Id.* at 7.

Piedmont asserted it had met the statutory requirements of engaging in a general rate case within the previous five (5) years and the methodologies utilized were consistent with those approved in its most recent rate case in TPUC Docket No. 20-00086. The Company submitted a proposed Service Schedule No. 318.⁷ Piedmont proposed to make its first ARRM filing on or before May 20, 2022, using calendar year 2021 as the HBP, with new rates becoming effective October 1, 2022. Further, the Company proposed to withdraw its IMR mechanism contingent upon approval of this ARRM.

Intervention and Position of the Consumer Advocate

On November 19, 2021, the Consumer Advocate filed a petition to intervene in the docket, which was subsequently granted.⁸ In accordance with the procedural schedule, the Consumer Advocate submitted the pre-filed direct testimony of David Dittmore. Mr. Dittmore asserted the proposed ARRM does not resolve all the current and prospective revenue requirement issues of the Company, and there are distinct differences between the structure of this ARRM and those of other gas utilities. Mr. Dittmore generally agreed with Piedmont's ARRM model, that Piedmont should continue to submit performance metrics, and that the traditional regulatory objectives to ensure just and reasonable rates will remain intact.⁹ Nevertheless, he claimed the accounting records of the Company do not correspond with the precision requested in the ARRM filing. For instance, there is a delay in adjusting the books to reflect the Accumulated Deferred Income Tax ("ADIT") balance, the Income Tax Expense balance, and the Company's equity balance results in these balances being an estimate. However, to reduce regulatory lag, the proposed ARRM Deferred Regulatory Asset included deferred incremental depreciation and carrying charges on all plant investment placed into service subsequent to the HBP on a monthly basis.¹⁰

⁷ Pia Powers, Pre-Filed Direct Testimony, Exh. PKP-1 (November 5, 2021).

⁸ *Order Granting the Petition to Intervene Filed by the Consumer Advocate* (January 20, 2022).

⁹ David N. Dittmore, Pre-Filed Direct Testimony, pp. 1-5 (January 26, 2022).

¹⁰ *Id.* at 5-6.

Mr. Dittmore recommended approval of an ARRM for Piedmont subject to seven proposed modifications, some of which entailed major adjustments:

1. Approval of the ARRM as proposed would utilize 2021 operating results, which ends in retroactive ratemaking and in a possible double recovery of losses because Piedmont currently has a tariff in place that covers 2021. For this reason, the Consumer Advocate recommended the initial HBP to be calendar year 2022.¹¹

2. Mr. Dittmore asserted that the Commission's rules regarding customer notice are out of date and insufficient. He asserted very few customers read a newspaper today. In a comparison of the average Piedmont residential customer's bill in 2021 to the estimated bill in 2022, Mr. Dittmore recommended that Piedmont be required to include a bill insert identifying the proposed increase as a percentage of the customer's bill.¹²

3. Mr. Dittmore recommended that the Commission require Piedmont to submit the following schedules: (1) monthly balances of short-term debt, long-term debt and equity at December 31st of the month preceding the beginning of the HBP as well as month end balances throughout the HBP; (2) a report identifying the amount of accrued expenses recorded in the HBP; (3) provide a description of each Operating Unit, Allocation Pool ID, Resource Type ID, Source CD JD and Project ID CB included within its Operation and Maintenance workpaper; (4) include a description of each Duke Energy Business Services Corporation ("DEBS") asset whose costs to Piedmont-Tennessee operations is \$50,000 or more annually; (5) provide a schedule of its HBP accounting entries made for the 'return to provision' transaction reflecting the impacts of its filed tax return, which is made in the year subsequent to the HBP; and (6) provide operating metrics for (a) response time to emergency calls, (b) age of natural gas leaks, and (c) number of natural gas leaks by grade.¹³

¹¹ *Id.* at 6-10.

¹² *Id.* at 10-16.

¹³ *Id.* at 16-17.

4. Mr. Dittmore proposed the following changes if a tariff is adopted: (1) a disclaimer be inserted recognizing the Commission's ability to modify the tariff, (2) language inserted stating the exclusion of gains and losses related to gas supply hedging and various other non-jurisdictional activities from the Company's level of equity, (3) language requiring that ARRM rider rates be set forth separately on customer bills, (4) the initial ARRM filing be made using 2022 as the initial HBP, and (5) additional clarification as he has recommended be inserted regarding ARRM Regulatory Asset, Interest Deferrals and Depreciation Expense Deferrals.¹⁴

5. Mr. Dittmore recommended that revenues generated from warranty programs should be considered regulatory income and all net margins generated by Piedmont's participation in the Home-Serve Program should be used to reduce the revenue requirement.¹⁵ Changes recommended by Mr. Dittmore to the operating expense section include identification of Lobbying Expenses, deletion of Amortization Expenses for Deferred Environmental costs, deletion of the language for Amortization Expense for Deferred Pension Costs and Other Pension Costs and recognition of cash payments for OPEB costs within the determination of HBP. Net Operating Income and Rate Base should include confirmation that DEBS assets will be allocated on the basis of the application of the Company's return applied to plant in service, use of the specific Tennessee state tax rate in the determination of State Income Tax Expense, state the Company has the burden of proof to ensure that all plant classified as Plant in Service is actually providing service to customers, require pension and OPEB loadings to construction projects to be accounted for consistent with how such costs are recorded to expense, and apply the state tax rate to ADIT balances. There should be synchronization of the measurement of capital costs with the way that Rate Base is measured. The Base Rate Reset Section should include language consistent with the proposed HBP revenue requirement.¹⁶

¹⁴ *Id.* at 18-23.

¹⁵ *Id.* at 23-24.

¹⁶ *Id.* at 23-27.

6. The Consumer Advocate asserted that there are unresolved revenue requirement issues such as the initial HBP period, treatment of pension expense, how the Company's overall cost of Capital shall be determined, should interest deferrals be recognized as operating income, should Home Serve margins be recognized as operating income, how lobbying costs are defined, how environmental costs should be recovered, the appropriate state tax rate, and modifications made to the ARRM in order to reflect the impacts of the delayed tax provision true-up entries recorded after the HBP.¹⁷

7. Mr. Dittmore recommended that the Commission open a generic docket, applicable to all utilities, to determine an appropriate rate cap on annual ARRM increases.¹⁸ Mr. Dittmore attached a red-line and clean version of the Piedmont ARRM tariff as Exhibits DND5 and DND5.1 to his testimony.

Company Rebuttal Testimony

In pre-filed rebuttal testimony filed on February 7, 2022, Ms. Powers asserted that the use of 2021 as the initial HBP uses actual results from a historical period, which is consistent with the Atmos Energy and Chattanooga Gas Company ARRM, and harmonious with how rates are set in general rate cases. Ms. Powers disagreed with the assertion that use of 2021 would result in the Company double-recovering costs for 2021 because the ARRM calculates an entirely prospective rate adjustment which takes effect for monthly cycle bills rendered on and after October 1, 2022.¹⁹ Ms. Powers argued the adoption of 2022 as the HBP would result in a one-year delay in the implementation of an ARRM, which is contrary to the statutory process of the statute authorizing ARRM mechanisms.²⁰

With respect to the Consumer Advocate's customer notice proposal, Ms. Powers affirmed that the Company would abide with any directive of the Commission regarding customer notice and that

¹⁷ *Id.* at 27-28.

¹⁸ *Id.* at 34-35.

¹⁹ Pia K. Powers, Pre-Filed Rebuttal Testimony, pp. 3-7 (February 7, 2022).

²⁰ *Id.* at 6.

the current practice of the Company complies with Commission rules. The bill insert, as recommended by the Consumer Advocate, would result in more expense.²¹ Piedmont provided six additional schedules as recommended by the Consumer Advocate.²²

The Company explained its concerns with certain other Consumer Advocate recommendations: (1) The proposed language stating intervenors or the Commission are not precluded from identifying errors, omissions, or inconsistencies in the Company's ARRM is unnecessary, (2) separately identifying the ARRM rates on the customer's bill cannot be accomplished with the Company's current billing system, (3) treating interest deferrals as operating revenues is not necessary because there is no conceivable way for the Company to over-earn in the HBP as the Consumer Advocate asserts, (4) the definition proposed by the Consumer Advocate to ensure no double counting of the application of Interest Deferral and the recording of Allowance for Funds Used During Construction ("AFUDC") is not needed since the tariff already makes the necessary clarifications, (5) Home-Serve revenues are non-jurisdictional and should not be included in revenues, (6) based on the settlement of the parties in the Company's last rate case, Piedmont should be allowed to recover through rates any remaining amortization of the deferred pension balance, (7) the proposal of the Consumer Advocate to change the wording of "actual expenses" to "actual payments" regarding OPEB expenses is confusing and arbitrary, (8) modifying the language of lobbying expense to include indirect costs is not necessary since the Company will exclude all lobbying expenses consistent with the amounts reported to the Tennessee Ethics Commission, (9) the issue of using a composite state tax rate has already been resolved in previous proceedings before the Commission and the Consumer Advocate has not provided any justification for re-litigating this issue, (10) in the Company's last rate case, the Consumer Advocate did not raise an issue with the

²¹ *Id.* at 7-8.

²² *Id.* at 8-9.

elimination of non-cash items from the lead-lag study for the purposes of determining the appropriate balance of Cash Working Capital in Rate Base and non-cash items have 0.00 lag days in the lead-lag study, (11) the Consumer Advocate provides no justification for changing the pension and OPEB loadings to construction projects represented in rate base, (12) Piedmont uses a 13-month average rate base for the purposes of the HBP Reconciliation computation under the ARRM and Ms. Powers provides clarifying language on page 25 of her testimony, and (13) the Consumer Advocate already has the right to request modification or termination of the ARRM; therefore, the proposed language is unnecessary.²³

Ms. Powers asserted that many of the Consumer Advocate's proposed changes to the ARRM in Mr. Dittmore's redlined tariff proposal were not discussed in the testimony of its witness. The additional language regarding the treatment of AFUDC for the purpose of the HBP reconciliation is, in Ms. Power's opinion, unclear and confusing. Moreover, Ms. Powers argued there is little to no explanation for requiring Piedmont to record revenues for the ARRM Rider Rates on an accrual basis.²⁴

Nevertheless, there were some recommendations that the Company did not oppose. Ms. Powers did not object to (1) proposed clarification regarding the Company's authorized Return on Equity ("ROE"); (2) the added sentence to the definition of Depreciation Expense; (3) the additional terms, as proposed by the Consumer Advocate, for employee salaries and wages, expense for allocated return on DEBS assets, other O&M expenses, Depreciation Expenses, Utility Plant in Service and Other Working Capital; (4) striking the referral to the Company's 2020 rate case; (5) revisions to language regarding the Company's treatment of Environmental Costs; (6) wording clarifying the items included in ADIT; and (7) providing variance reporting.²⁵

²³ *Id.* at 9-27.

²⁴ *Id.* at 28-31.

²⁵ *Id.* at 33-34.

Ms. Powers disagreed with the Consumer Advocate that certain issues cited from the 2020 Rate Case were left unresolved.²⁶ Ms. Powers disagreed with the Consumer Advocate's assertions that the Company does not have the proper incentives to control costs under the ARRM as the Company is always subject to a prudence review.²⁷ With respect to the Consumer Advocate's proposal to initiate a generic proceeding to establish annual rate caps for Piedmont's, Atmos's and Chattanooga Gas's respective ARRMs, Ms. Powers asserted there is no evidence of excessive rate adjustments as a result of the ARRMs or any statutory support for such a recommendation. The Company stated that the Commission has the inherent ability to limit rate increases based upon rate shock.²⁸

NEW PETITION FOR REVISED ARRM TARIFF

As the scheduled hearing in this matter approached, the parties filed a letter on February 18, 2022, informing the Commission that there were no outstanding disputed issues remaining between the parties and that the parties agreed to the submission of this matter to the Commission for approval based upon the docket record. The letter was accompanied by a revised ARRM Tariff and an Issues Matrix outlining the parties' resolution of forty-three issues. On February 23, 2022, the parties filed the supplemental testimonies of Ms. Powers and Mr. Dittmore explaining the resolution of the issues and the terms of the agreed-upon ARRM Tariff filed on February 18, 2022.

On February 24, 2022, the Hearing Officer issued an *Order Acknowledging Filing as New Petition and Setting New Statutory Deadline*, wherein the Hearing Officer found that there was insufficient time for the Commission Staff to analyze the new information and make a recommendation to the voting panel of Commissioners and that the Issues Matrix and revised ARRM Tariff filed on February 18, 2022, constituted a new petition filed in this docket. Accordingly, the

²⁶ *Id.* at 34.

²⁷ *Id.* at 35.

²⁸ *Id.* at 36-37.

Hearing Officer ordered that the Issues Matrix, revised ARRM Tariff, and supplemental testimony filed by Piedmont and the Consumer Advocate shall be considered a new petition, and that the 120-day statutory deadline for ruling on the new petition shall begin to run on February 18, 2022.²⁹

The revised ARRM Tariff, submitted as the *New Petition* on February 18, 2022, outlined a two-step reconciliation and rate update process. Using approved ARRM methodologies, the reconciliation process will compare the Company's actual performance during an HBP to its authorized ROE approved in its last rate case, Docket No. 20-00086, to determine any HBP earnings deficiency or sufficiency. Under the new tariff proposal, the HBP earnings deficiency or sufficiency, including carrying costs as defined in the ARRM Tariff, shall be booked to a regulatory asset or liability account, and recovered or refunded through ARRM Rider Rates.³⁰ Further, interest and depreciation expense deferrals associated with plant in service that have not yet been included in rate base shall be deferred into an ARRM Regulatory Asset account. The deferrals recorded into this account will be segregated by HBP and will be amortized to expense evenly over the depreciable life of the underlying plant assets.

The proposed rate update process includes an Annual Base Rate Reset. Using approved ARRM methodologies, the Base Rate Reset revenue requirement sufficiency or deficiency is computed as the difference in the net operating income for the Annual Base Rate Reset period and the net operating income required to produce the authorized ROE. Base rates would be adjusted accordingly to produce the Base Rate Reset revenue requirement. Under the proposed tariff, an annual ARRM filing will be made no later than May 20 each year, with the initial filing submitted by May 20, 2023, for the results of the initial HBP of calendar year 2022.³¹ New rates under the ARRM would become effective October 1 each year, with the initial ARRM rates to become effective

²⁹ *Order Acknowledging Filing as New Petition and Setting New Statutory Deadline*, p. 2 (February 24, 2022).

³⁰ *New Petition*, Service Schedule No. 318, p. 5 (February 18, 2022).

³¹ *Id.* at 1.

October 1, 2023. Further, the Company proposes to withdraw its IMR mechanism contingent upon approval of the ARRM.

In support of the new ARRM tariff proposal in the *New Petition*, Ms. Powers submitted supplemental pre-filed testimony in which she averred that the Issues Matrix, filed as part of the *New Petition*, sets forth the agreement and resolution of the parties. Ms. Powers stated the Company agreed to delay the implementation of the ARRM and make its first ARRM filing in May 2023. The Company also agreed to the inclusion of language concerning the identification of errors, omissions, and inconsistencies in the Company's ARRM calculations.³² The parties agreed that the Company's annual "return to provision" tax entries would be provided with an annual ARRM filing, but the issue of whether these entries would be considered in ratemaking adjustments would remain an open issue.³³

According to Ms. Powers, the Consumer Advocate agreed to withdraw its recommendation concerning the following: (1) the inclusion of equity impacts associated with gains and losses associated with Piedmont's gas supply, (2) the ratemaking treatment for capital structure and cost rates under the ARRM's Base Rate process, (3) separate identification of ARRM Rider Rates on customer bills, (4) consideration of annual rate caps in this proceeding, and (5) inclusion of revenue accruals for which customers have yet to be billed.³⁴

Ms. Powers testified that the parties agreed to: (1) new wording on the calculation of AFUDC, (2) customer notice related to the Company's ARRM filings and any Commission approved rate adjustments, (3) use of the composite tax rate when computing State Income Taxes, and (4) withdrawal of the Consumer Advocate's proposal for the Company to include Interest Deferrals for

³² Pia K. Powers, Pre-Filed Supplemental Testimony, p. 3 (February 23, 2022).

³³ *Id.* at 3-4.

³⁴ *Id.* at 4-5.

the ARRM Regulatory Asset as Other Income.³⁵ Ms. Powers testified the parties agreed to address the following in a future generic docket:

- Definition of Lobbying Expenses,
- Treatment of Non-Cash items in Working Capital,
- Treatment of Home-Serve and other third-party warranty-related revenues, and
- Requirements for including Pension and OPEB costs for ratemaking.³⁶

Ms. Powers affirmed that the agreed upon changes were memorialized in the Revised ARRM Tariff. This tariff was developed using the tariff from Ms. Powers' rebuttal testimony and modified to incorporate the agreement of the parties and make agreed upon non-substantive wording and reference modifications.³⁷ In closing, Ms. Powers stated that there are no unresolved issues between Piedmont and the Consumer Advocate. Further, Ms. Powers requested that the Commission to accept the new ARRM Tariff as provided on February 18, 2022. In addition, the Company requested that the Commission approve the termination of the Company's IMR Tariff effective January 1, 2022, which is the proposed effective date of the Revised ARRM Tariff.³⁸

On behalf of the Consumer Advocate, Mr. Dittmore provided supplemental testimony indicating the "settlement" among the parties did not resolve all issues but does resolve those matters that are necessary to allow Piedmont to implement an ARRM. Specifically, the settlement addresses the recovery of legacy pension costs and the initial HBP, which had to be resolved before the initiation of any ARRM. Mr. Dittmore averred both parties reserve their rights to litigate the unresolved issues in a future proceeding.³⁹

³⁵ *Id.* at 5-6.

³⁶ *Id.* at 7.

³⁷ *Id.* at 7-8.

³⁸ *Id.* at 8.

³⁹ David N. Dittmore, Pre-Filed Supplemental Testimony, p. 2 (February 23, 2022).

Mr. Dittmore testified that, under the agreement in the *New Petition*, the Consumer Advocate retains its right to challenge whether the ARRM remains in the public interest in the future. According to Mr. Dittmore, the ARRM continues to involve complex and cumbersome calculations and that while the parties have endeavored to resolve as many mechanical issues as possible, there may be issues that arise in the future. The Consumer Advocate sought to retain its right to identify errors, omissions, or inconsistencies in Piedmont's ARRM calculations in future filings.⁴⁰ Mr. Dittmore identified the following issues as resolved consistent with the position of the Company:

- ARRM Rider Rates will not be identified separately on customer bills,
- Reducing the level of equity used in the ARRM calculation for gains associated with gas supply-related activities and other non-regulated transactions,
- Opening a docket to address the need of a rate cap applicable to ARRM mechanisms, and
- Inclusion of accrued ARRM revenues in the HBP calculation.⁴¹

Mr. Dittmore then explained the following issues which had been modified:

- AFUDC shall be calculated as the overall cost of capital applied to the thirteen-month average balances of CWIP,
- Use of a composite tax rate with any change in the ADIT balance resulting from a tax change being addressed in a subsequent proceeding,
- Interest Deferrals on the Deferred Regulatory Asset will not be reflected as operating income,
- The Company will exercise caution not to double count the application of AFUDC and interest deferrals,
- Acceptance of the Company's recommendation to use December 31st balances of capitalization for the Base Rate Reset calculation,

⁴⁰ *Id.*

⁴¹ *Id.* at 3-4.

- Customer Notice to be provided on the customer's bill,
- Continuation of the recovery of deferred pension amortization costs adopted in Docket No. 20-00086 until the costs are fully amortized,
- The Company carries the burden of proof when seeking recovery of Environmental Costs,
- The initial HBP will be 2022 with the filing being made in May 2023,
- The issue of a true-up entry to reconcile the estimated tax accounting entries with actual tax return calculations will be addressed in a future ARRM proceeding,
- Piedmont shall continue providing information on leaks, emergency response times, and costs of newly installed services,
- Six additional schedules will be provided by Piedmont,
- Clarification of the Company's ROE,
- Clarification on the accounting of depreciation expense,
- References to the 2020 rate case removed from the ARRM tariff,
- Retention of the Consumer Advocate's right to argue employee compensation,
- Additional terms related to the recovery of DEBS costs,
- Clarifications that O&M costs shall be the costs necessary to provide natural gas service,
- Company carries the burden to prove the assets included in Rate Base are truly used in the provision of gas service,
- Describes the components of the balance of ADIT which shall be consistent with how those related components are treated in revenues and costs,
- Company may seek to include deferred Pension and OPEB costs in rate base but will carry the burden of proof to defer such costs,
- The modifications shall apply to the HBP and Base Rate Reset calculations, and

- The Company will provide additional variance reporting.⁴²

Mr. Dittmore testified that the Consumer Advocate withdrew its recommendation on the following three issues:

- Expanding the definition of Lobbying Expenses to include Indirect Costs,
- Exclusion of non-cash items from the cash working capital calculation, and
- Treatment of HomeServe Margin.⁴³

PRE-HEARING MOTION AND ORDER

On May 3, 2022, the Company filed the *Motion for Substitution of Witness* to allow Mr. Bruce Barkley to adopt the direct, rebuttal, and supplemental pre-filed testimony of Ms. Powers due to her unavailability for the hearing on the *New Petition*. No objection was filed. The motion was subsequently granted.⁴⁴

THE HEARING

The hearing on the *New Petition* was noticed by the Commission on April 29, 2022 and held during the regularly scheduled Commission Conference on May 9, 2022. Appearances were made by the following:

Piedmont Natural Gas Company, Inc.— James Jeffries IV, Esq., McGuire Woods, LLP, 201 N. Tyron Street, Suite 3000, Charlotte, NC 28202; Paul S. Davidson, Esq., Waller Lansden Dortch & Davis, 511 Union Street, Suite 2700 Nashville, Tennessee 37219-2498.

Consumer Advocate Unit—Karen Stachowski, Esq., Vance Broemel, Esq., Financial Division of the Office of the Tennessee Attorney General and Reporter, Post Office Box 20207, Nashville, Tennessee, 37219.

⁴² David N. Dittmore, Pre-Filed Supplemental Testimony, pp. 6-7 (February 23, 2022).

⁴³ *Id.* at 8.

⁴⁴ *Order Granting Motion for Substitution* (May 12, 2022).

The *New Petition* was presented to the hearing panel and summarized by Mr. Barkley. Mr. Dittmore was present on behalf of the Consumer Advocate and was available for questions. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

FINDINGS & CONCLUSIONS

Based on the administrative record in its entirety, the hearing panel concluded that the *New Petition* filed by Piedmont is not in the public interest and voted unanimously that the proposed ARRM be denied. In denying the *New Petition*, pursuant to Tenn. Code Ann. § 65-5-103(d)(1)(C), the hearing panel must set forth with specificity the reasons for denial so as to allow for modifications for any refile of the proposal. Consistent with Tenn. Code Ann. §§ 65-5-103(d)(1) and (d)(6), should Piedmont decide to amend its proposed ARRM Tariff, the hearing panel found that the following modifications be made as a condition of approval:

1. The Weather Normalization Adjustment (“WNA”) methodology for computing and updating base load and heat sensitive factors shall be the simple linear regression analysis methodology ordered by the Commission for Atmos Energy Corporation in Docket No. 14-00146 and Chattanooga Gas Company in Docket No. 18-00017.
2. The HomeServe Warranty Program net margins shall be included as other regulated revenues for computing the Historic Base Period (“HBP”) Reconciliation and Annual Base Rate Reset.
3. Pension and other post-employment benefits (“OPEB”) expenses included in the Historic Base Period Reconciliation and Annual Base Rate Reset shall be based on the Tennessee jurisdictional portion of the actuarially-determined minimum contribution requirement.
4. Pension and other post-employment benefits loadings to construction projects accounted for in Construction Work in Progress (“CWIP”) shall be accounted for consistent with the way such expenses are recoverable in the Historic Base Period as previously set forth.

5. The unamortized portion of previously-approved deferred pension contributions and environmental costs shall be recoverable under the annual rate review mechanism (“ARRM”) through amortization expense in accordance with the previously-approved amortization period. Notwithstanding any prior rate or accounting orders issued by the Commission or its predecessor agencies, Piedmont must seek and obtain express approval to defer pension contributions, environmental costs, or any other deferred debit into a regulatory asset for ratemaking purposes.

6. Other operating and maintenance (“O&M”) expenses for computing the Historic Base Period Reconciliation and Annual Base Rate Reset shall exclude lobbying expenses and promotional and advertising expenses in accordance with the Commission’s rules.

7. While the hearing panel found that the initial rate design proposed in the Revised AARM Tariff was reasonable, the annual rate review mechanism shall contain a provision providing for the reasonable exercise of discretion in designing customer rates in each annual filing based on attendant circumstances. Such provision shall authorize Piedmont to make a proposal for how to allocate any revenue excess or deficiency among rate classes and the specific design for how rates are to be decreased or increased for each class. The provision shall also authorize any intervenor party to make its own alternative rate design proposal. Based upon a final determination that rates need to be increased or decreased, the Commission shall order such rate adjustments based upon the proposals of the parties or such other revenue allocation and rate design decision as the Commission may find to be in the public interest.

Each of these areas is discussed further with reference to the Issues Matrix submitted by the parties on February 18, 2022.

Pension and Other Post-Employment Benefits (“OPEBs”) (Issue Matrix Nos. 18-21, 40)

In the *Rate Case Settlement* in the 2020 Rate Case, the parties agreed to allow the Company to include a regulatory asset in rate base for an unamortized deferred pension expense of \$11,862,981,

which is to be amortized to operating expenses over eight years and recovered from customers in base rates.⁴⁵ With regard to future pension deferrals, the parties' settlement provided that the Company may capitalize future pension contributions as a deferred debit; however, deferral of such contributions does not limit the right of the Consumer Advocate or other parties to challenge the amount of incremental deferred pension costs that the Company seeks to recover.⁴⁶

In this docket, Piedmont proposes to continue the *Rate Case Settlement* provisions as the ARRM methodology for recovering pension and OPEB expenses, whereas the Consumer Advocate initially proposed several modifications. However, in the Issues Matrix filed on February 18, 2022, and the supplemental testimonies of Ms. Powers and Mr. Dittmore, the parties agreed to resolve the conflict by the Consumer Advocate's withdrawal of its proposed modifications and mutual agreement to address recovery of pension and OPEBs in a future docket. Nevertheless, the Commission finds little value in delaying a determination on these issues and the parties and customers incurring the expense of an additional proceeding to address an issue for which the Commission has already established a practice and precedent followed by the State's major public utilities.

In the 2020 Rate Case, Piedmont relied on orders issued in its 1996 rate case, Docket No. 96-00977, to argue that the Commission had authorized its deferred pension contribution accounting for ratemaking purposes, which Piedmont claimed was upheld in its subsequent rate cases in Docket Nos. 99-00994, 03-00313, and 11-00144.⁴⁷ According to the Company, the methodology utilized by Piedmont to calculate its deferred pension contribution conforms with the Commission's prior orders issued in Docket No. 96-00977.⁴⁸ Piedmont claimed that the Consumer Advocate's proposal in the rate case to eliminate deferred pension contributions from rate base directly conflicts with these prior

⁴⁵ 2020 Rate Case, *Order Approving Settlement Agreement Setting Rates and Approving the Procedures for Refunds to Customers*, Exh. A, p. 5 (May 6, 2021).

⁴⁶ *Id.* at 7.

⁴⁷ 2020 Rate Case, Quynh Bowman, Pre-Filed Rebuttal Testimony, pp. 37-38 (December 16, 2020).

⁴⁸ *Id.* at 10.

pension deferral authority orders and constitutes a collateral attack on the Commission’s prior orders and Piedmont’s consistent practices regarding the deferral of pension contributions.⁴⁹ Piedmont also proposed to change how OPEB expenses and related accruals are treated by this Commission.⁵⁰ With regard to recovery of deferred OPEB expenses, the Company recommended using the accounting standards for pensions and OPEBs issued by the Financial Accounting Standards Board (“FASB”) to determine the amount of pension and OPEB costs for ratemaking purposes.⁵¹

In the 2020 Rate Case, the Consumer Advocate maintained that pension and OPEB expenses should be limited to minimum cash contributions only, as determined by the pension plan’s actuarial report, which would result in no accrued pension and OPEB regulatory assets in rate base.⁵² Consumer Advocate witness, Mr. Novak, testified correctly in that case that the Commission has a long-established ratemaking policy of allowing rate recovery of only the minimum required cash contributions for pension and OPEB expenses as determined by the relevant actuarial report;⁵³ and he further testified correctly that there is no requirement for the Commission to follow the accounting principles established by other authorities, including the “generally accepted accounting principles” for pensions and OPEBs promulgated by FASB, as requested by the Company.⁵⁴

The record in the 2020 Rate Case indicated that the deferred pension contributions computed by the Company were greater than the minimum contributions required to keep the pension plan fully funded, essentially meaning that the Company did not demonstrate that its pension contributions were necessary under the Commission’s long-standing policy for recovering pension expense.⁵⁵ The Consumer Advocate maintained that the deferred contributions Piedmont included in rate base

⁴⁹ *Id.*

⁵⁰ *Id.* at 38.

⁵¹ *Id.*

⁵² 2020 Rate Case, William H. Novak, Pre-Filed Direct Testimony, p. 41 (November 30, 2020).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ 2020 Rate Case, David N. Dittmore, Pre-Filed Direct Testimony, pp. 8-12 (November 30, 2020).

contributed to an overfunded pension plan that is producing significant pension expense credits that have accrued to the benefit of Piedmont's shareholders, representing a situation where ratepayers bear the costs of such contributions while shareholders reap the benefits of an overfunded pension plan.⁵⁶

With regard to the pension deferral authority orders relied upon by Piedmont in its last rate case, the Consumer Advocate asserted that nothing in the Commission's orders requires rate base recognition of pension contributions.⁵⁷ Consumer Advocate witness, Mr. Dittemore, cited prior Commission orders for the proposition that while the Commission "will permit [Piedmont] to establish a deferred asset for the difference between the amount of funded pension expense recognized in the Company's last rate case... and the amount of pension expense funded in the future,"⁵⁸ the pension deferral authority was specifically limited to respond "to the fact that [Piedmont's] pension plan could drop below a fully funded position before the Company's next rate filing . . . [thus] allowing the establishment of a deferred regulatory asset and future recovery."⁵⁹

The Commission's pension expense accounting policy of allowing recovery of minimum cash contributions necessary to maintain a fully funded plan was clearly enunciated in Piedmont's 1996 rate case:

The Advocate proposes the pension expense be excluded from the Company's request. The Advocate correctly demonstrated that the Company's plan is fully funded, and no contribution is necessary at this time. For this reason, the Authority finds that to appropriately match the Company's current pension expense with its current ratepayers, the minimum required contribution should be adopted as the current pension expense. Since the pension plan is fully funded, the Company's minimum required contribution for this case is zero dollars (\$0.00), therefore the Authority adopts this dollar amount for the Company's pension expense.⁶⁰

⁵⁶ *Id.* at 8.

⁵⁷ *Id.* at 12.

⁵⁸ *Id.*

⁵⁹ *Id.* at 13.

⁶⁰ *In re: Petition of Nashville Gas Company, a Division of Piedmont Natural Gas Company, Inc. For An Adjustment of Its Rates and Charges*, Docket No. 96-00977, *Order*, p. 14 (Feb. 19, 1997).

In the 1996 case, the Commission also clarified that the permission granted to Piedmont to defer pension costs into a regulatory asset for future recovery was limited to the amount of incremental pension expense incurred between rate cases:

With respect to pension expense, Nashville Gas states that the February 19, 1997 Order is not clear regarding the treatment of the deferred regulatory asset for future recovery of its pension costs. The Authority clarifies the Order of February 19, 1997 by deleting the last sentence in the second paragraph on page 14 and replacing it with the following: “Further, the Authority will permit the Company to establish a deferred asset for the difference between the amount of funded pension expense recognized in the Company’s last rate case – in this case, zero – and the amount of pension expense funded in the future. In future rate cases, the amount of funded expense that has been deferred will be recognized and rates awarded to recover it.”⁶¹

In Piedmont’s 1999 rate case, the Commission again further clarified both its pension expense policy and Piedmont’s limited authority to defer certain incremental pension expense between rate cases:

The Authority also approved the Stipulation with a final proviso. The Authority’s decision permitting the amortization of deferred pension costs does not indicate in any way that the Authority is abandoning the rationale for the treatment of pension costs as announced in its Orders of February 19, 1997 and June 9, 1997 in Docket No. 96-00977. In that proceeding, the Authority responded to the fact that the Company’s pension plan could drop below a fully funded position before the Company’s next rate filing by allowing the establishment of a deferred regulatory asset and future recovery. Nevertheless, the Authority has not abandoned the basic and sound regulatory goal of matching current expenses with current ratepayers. To the extent that the Company’s future pension expenses continue to surpass fully funded levels, the Authority will act appropriately to match current expenses with current ratepayers, notwithstanding its actions here.⁶²

The parties’ settlement of pensions in the 2020 Rate Case, which included a pension asset of \$11,862,981 in rate base, at least some of which was due to contributions into a then overfunded plan, does not comply with either (1) the Commission’s long-standing pension expense policy or (2)

⁶¹ *In re: Petition of Nashville Gas Company, a Division of Piedmont Natural Gas Company, Inc. For An Adjustment of Its Rates and Charges*, Docket No. 96-00977, *Order Clarifying “Order of February 19, 1997”*; *Denying Motions for Reconsideration; Dismissing Motion to Strike; and Denying Motion for Stay*, pp. 3-4 (June 9, 1997).

⁶² *In re: Application of Nashville Gas Company, a Division of Piedmont Natural Gas Company, Inc. For An Adjustment of Its Rates and Charges, Approval of Revised Tariffs and the Approval of Revised Service Regulations*, Docket No. 99-00994, *Order Approving Application*, pp. 4-5 (July 18, 2000).

Piedmont’s grant of limited authority to defer certain incremental pension expenses. The Commission nonetheless approved inclusion of the pension asset in rate base, but in doing so, stated:

Settlements entail give-and-take negotiations, the end result of which may see a long-standing Commission precedent on a particular issue set aside by the parties for purposes of reaching an agreement. Approving such settlements is not a rejection of Commission precedent, although parties should be mindful that abandoning long-standing Commission precedents and practices in the name of settlement will only court greater uncertainty and may result in modification or rejection of a proposed settlement.⁶³

While the Commission approved the parties’ settlement of Piedmont’s last rate case, which included a pension regulatory asset in rate base that was calculated inconsistent with the Commission’s prior ratemaking precedents and orders, the Commission did not abandon its long-standing policy with respect to Piedmont’s accounting for pensions.

In this docket, Consumer Advocate witness, Mr. Dittmore, initially recommended to modify Piedmont’s proposed ARRM with regard to pensions and OPEBs as follows:

1. Modify the HBP Reconciliation section for Operating Expenses to state that “the Company may seek recovery of pension costs based upon the jurisdictional portion of the minimum cash contributions necessary to avoid the Variable Rate Premium and the minimum annual contribution otherwise payable to the Pension Benefit Guaranty Corporation.”⁶⁴

2. Modify the HBP Reconciliation section for Operating Expenses to state that Other Employee Benefit Expenses, including OPEB shall reflect such “actual payments incurred during the HBP.”⁶⁵

3. Modify the HBP Reconciliation section for Operating Expenses to state that expense for Allocated Return on DEBS Assets “shall exclude any such expense related to the return on DEBS pension assets.”⁶⁶

⁶³ 2020 Rate Case, *Order Approving Settlement Agreement Setting Rates and Approving the Procedures for Refunds to Customers*, p. 6 (May 6, 2021).

⁶⁴ David N. Dittmore, Pre-Filed Direct Testimony, Exh. DND 5, p. 6 (January 26, 2022).

⁶⁵ *Id.*

⁶⁶ *Id.* at 6-7.

4. Modify the HBP Reconciliation section for Rate Base Components to state that for CWIP “Pension and OPEB loadings to construction projects should be accounted for consistent with how such expenses are recoverable in the HBP.”⁶⁷

5. Modify the HBP Reconciliation section for Rate Base Components to state that for Other Working Capital “the Company may request recovery of any Deferred Debits for . . . Pension Costs [and] it shall bear the burden of proof that such costs are appropriately included in Rate Base.”⁶⁸

6. Modify the Annual Base Rate Reset section for Operating Expenses to state that the “Company may seek recovery of pension costs based upon the jurisdictional portion of the minimum cash contributions necessary to avoid the Variable Rate Premium and the minimum contribution required by the Pension Benefit Guaranty Corporation.”⁶⁹

7. Modify the Annual Base Rate Reset section for Operating Expenses to state that “Other Employee Benefit Expenses, including OPEB shall reflect such actual payments incurred during the HBP.”⁷⁰

8. Modify the Annual Base Rate Reset section for Operating Expenses to state that the Expense for Allocated Return on DEBS Assets shall be “exclusive of any such expense related to return on DEBS pension assets.”⁷¹

9. Modify the Annual Base Rate Reset section for Rate Base to state the “Company may request recovery of any Deferred Debits for . . . Pensions Costs [and] it shall bear the burden of proof that such costs are appropriately included in Rate Base.”⁷²

Mr. Dittmore testified that recognition of pension costs in the ARRM is a material issue that was not addressed in the parties’ rate case settlement in the 2020 Rate Case. The Consumer

⁶⁷ *Id.* at 8.

⁶⁸ *Id.*

⁶⁹ *Id.* at 11.

⁷⁰ *Id.*

⁷¹ *Id.* at 12.

⁷² *Id.* at 14.

Advocate’s recommended pension adjustments to Piedmont’s proposed ARRM, according to Mr. Dittemore, are necessary to ensure that Piedmont may recover pension contributions to the extent they are necessary to meet minimum funding contributions and, if applicable, contributions necessary to avoid variable rate premium payments. Mr. Dittemore stated that his recommendations are consistent with the Commission’s precedent in the Atmos Energy ARRM case. Regarding Piedmont’s legacy pension contributions, Mr. Dittemore recommended that Piedmont should demonstrate that such contributions avoided future variable rate premium payments (i.e. late payment penalty) in the Commission’s evaluation of whether such contributions should be recovered.⁷³

Piedmont asserted that based on the *Rate Case Settlement*, Piedmont should be able to include in the ARRM computations and recover through rates any remaining amortization of the \$11,862,981 pension asset included in rate base in the 2020 Rate Case. Regarding Piedmont’s ability to recover incremental pension deferrals, the parties agreed in the rate case to address this matter in a future rate proceeding; however, according to Ms. Powers this is “not a rate proceeding” and, as such, the issue of recovery of incremental pension deferrals should not be addressed in this docket.⁷⁴ Ms. Powers, therefore recommended that Mr. Dittemore’s recommended pension adjustments to the ARRM should be rejected.

Ms. Powers also claimed that the Company’s OPEB costs are not the subject of any special ratemaking orders of the Commission and that changing the ARRM to require that “actual payments” of OPEBs rather than “actual expenses” is inconsistent with the purpose of the HBP Reconciliation.⁷⁵ Ms. Powers asserted that the purpose of the HBP Reconciliation is to represent the Company’s actual financial performance during the historical base period and that including actual OPEB *expenses* instead of actual OPEB *payments* is necessary to accomplish this purpose. Ms. Powers also stated

⁷³ *Id.* at 28-29.

⁷⁴ Pia K. Powers, Pre-Filed Rebuttal Testimony, p. 17 (February 7, 2022).

⁷⁵ *Id.* at 18.

that Mr. Dittmore's proposed adjustment, namely to ensure that pension and OPEB loadings to CWIP are accounted for in a manner consistent with how such costs are recorded to expenses, does not appear to be an accepted ratemaking practice before the Commission. Ms. Powers, therefore, recommended Mr. Dittmore's proposed adjustments be rejected.⁷⁶

As stated herein, the parties agreed to address their disagreement over recovery of pension and OPEB expenses in a future docket. Nevertheless, in totality with the other changes required by this order, the Commission concludes this matter is properly addressed in the present docket to establish the appropriate recovery methodology prior to implementation of the ARRM. Given the additional modifications to the proposed ARRM required under this order and the burden to the parties and customers in deferring the issue to a future proceeding, it is not in the public interest for the Commission to accept the resolution proposed by the parties. The pension and OPEB modifications to the ARRM, as outlined above, are consistent with the Commission's ratemaking policies. Additionally, the modifications bring Piedmont's proposed ARRM in line with how pensions and OPEBs are accounted for in the approved ARRM for Chattanooga Gas Company and Atmos Energy Corporation. In Chattanooga's last rate case, Docket No. 18-00017, the Commission stated:

. . . for decades this Commission has recognized the expense of pension and post-retirement benefits in service rates in accordance with the actuarially-determined minimum contribution requirement, as opposed to the FASB accounting standards proposed by the Company. The panel found that this long-standing ratemaking policy should be maintained going forward. Further, the panel agreed with the Consumer Advocate that determining service rates based on minimum required contributions for pensions and post-retirement benefits is appropriate policy, because it: (1) applies consistently to all utilities, (2) most closely matches today's costs with today's customers, (3) is not subject to the same changes in assumptions for market conditions as the actuary's recommended contribution, and (4) is a more stable and consistent amount for setting rates in the near-term. Therefore, the panel voted unanimously to adopt pension and OPEB assets of zero for the attrition year in this case, consistent with established Commission precedent.⁷⁷

⁷⁶ *Id.* at 15-18; 23-24.

⁷⁷ *In re: Petition of Chattanooga Gas Company for Approval of An Adjustment in Rates and Tariff; The Termination of the AUA Mechanism and The Related Tariff Changes and Revenue Deficiency Recovery; And an Annual Rate Review Mechanism*, Docket No. 18-00017, *Amended Order*, pp. 45-46 (January 15, 2019).

In addition, Chattanooga Gas Company's ARRM plainly provides that it shall compute its earnings deficiency or sufficiency by "Excluding Pension and Other Post-Employment Benefits computed in accordance with GAAP and including actual contributions."⁷⁸ It is therefore clear that the regulatory accounting for pension and OPEB costs for Chattanooga Gas Company is consistent with the Commission's longstanding pension and OPEB ratemaking precedents.

Further, Atmos Energy Corporation's regulatory accounting for pensions and OPEBs is also consistent with Commission precedents. In Atmos Energy's last rate case, Docket No. 14-00146, the Commission approved the parties' settlement that required the Company to remove any amounts related to FASB accruals of pension expense and instead allow the Company to recover actual cash contributions to its pension fund in the years such contributions were made based on the liability defined by the Company's actuary.⁷⁹ In that case, the Commission allowed Atmos Energy, pursuant to the parties settlement, to continue amortizing as an expense its existing pension regulatory asset until it was fully amortized. The Company, however, could not establish any further pension regulatory asset without the Commission's approval and adoption of related ratemaking methodologies.⁸⁰

Based on the foregoing, the hearing panel determined that the Consumer Advocate's recommended modifications to Piedmont's proposed ARRM for pensions and OPEBs, specifically with regard to computing pension and OPEB expense accounted for in O&M and loading of pension and OPEB costs into construction projects accounted for in CWIP, are generally consistent with the Commission's policies and precedents. Moreover, these modifications are generally consistent with

⁷⁸ *In Re: Petition of Chattanooga Gas Company to Opt Into An Annual Review of Rates Mechanism Pursuant to Tenn. Code Ann. § 65-5-103(d)(6)*, Docket No. 19-00047, *Order Approving Settlement Agreement*, Exh. A, p. 4 (Oct. 7, 2019).

⁷⁹ *In re: Petition of Atmos Energy Corporation for a General Rate Increase Under T.C.A. 65-5-103(a) And Adoption of An Annual Rate Review Mechanism Under T.C.A. 65-5-103(d)(6)*, Docket No. 14-00146, *Order Approving Settlement*, Exh. A, p. 14 (Nov. 4, 2015).

⁸⁰ *Id.* at 22.

the regulatory accounting for pensions and OPEBs in the ARRM approved for Chattanooga Gas Company and Atmos Energy Corporation.

Regarding the Consumer Advocate's recommended modifications concerning deferred pension costs, the hearing panel rejected the Consumer Advocate's suggestion that the Commission could require Piedmont to demonstrate further that its legacy deferred pension contributions approved in the settlement of the 2020 Rate Case were necessary to avoid future variable rate premiums payments. The 2020 Rate Case ended with the authorization of a regulatory asset of \$11,862,981 to be amortized over an eight-year period, and there is no indication in the record here of circumstances that would compel a previously authorized regulatory asset to be modified. Rather, the ARRM should be modified to clarify that Piedmont may continue to amortize for rate recovery the remaining unamortized balance of the pension asset of \$11,862,981 included in the agreed-upon rate base in the 2020 Rate Case.

In summary, the following pension and OPEB adjustments to the proposed ARRM are a condition of approving any future ARRM filing:

1. Pension and OPEB Expense. The amount of pension and OPEB expenses included in the HBP shall be the actuarially-determined minimum contribution requirement. A copy of the pension/OPEB actuarial reports covering the results associated with the historic base period shall be included in the ARRM filing. This adjustment recognizes that minimum cash contributions, as opposed to accrued costs pursuant to generally accepted accounting principles, are to be used to determine recovery of pension and OPEB costs for ratemaking purposes, consistent with the Commission's long-standing policy.

2. Capitalized Pension and OPEB Costs. The amount of pension and OPEB cost loadings to construction projects and accounted for in CWIP shall be accounted for consistent with how such expenses are recoverable in the HBP. This adjustment recognizes that, just as pension and OPEB

expenses, the capitalized portion of pension and OPEB costs shall be determined in accordance with the Commission's general pension and OPEB regulatory accounting policies for ratemaking rather than generally accepted accounting principles.

3. Deferred Pension Contributions. Piedmont shall be allowed to recover through the ARRM the unamortized balance of the pension regulatory asset included in the agreed-upon rate base in the Company's last rate case in Docket No. 20-00086 through annual expense amortizations over the remaining portion of the authorized eight-year amortization period. No additional regulatory asset for pensions or OPEBs above the amount that was authorized in Piedmont's last rate case shall be established for ratemaking purposes unless the Company first obtains express approval from the Commission.

HomeServe Warranty Program (Issue Matrix Nos. 16 & 17)

In this docket, Piedmont proposed to exclude HomeServe Warranty Program net margins from the calculation of the ARRM's HBP Reconciliation and Annual Base Rate Reset. The Consumer Advocate initially recommended that HomeServe margins be included in these calculations, however, with the filing of the *New Petition*, the parties resolve this issue with the Consumer Advocate's withdrawal of its recommendation and an agreement to address the treatment of HomeServe margins in a future docket.

As part of the Consumer Advocate's initial recommendation, Mr. Dittmore testified that Piedmont has partnered with HomeServe to provide warranty service on natural gas lines and certain appliances and that Piedmont earns a commission when customers subscribe and/or renew warranty plans through HomeServe.⁸¹ HomeServe receives customer information from Piedmont without the consent of the Company's customers. Mr. Dittmore concluded that revenues would not be generated by Piedmont without providing such customer information and more importantly this information is

⁸¹ David N. Dittmore, Pre-Filed Direct Testimony, pp. 23-24 (January 26, 2022).

obtained by Piedmont through its monopoly status. Hence, the Consumer Advocate recommended that the net margin, which again is derived from Piedmont's monopoly status, should be used to reduce Piedmont's overall revenue requirement within its ARRM.⁸²

In this docket, Piedmont's calculations of total operating revenues do not explicitly indicate that any revenues were included from its contract with HomeServe, which is an independent third-party that provides an optional warranty program for Piedmont customers. In rebuttal testimony, Piedmont witness Powers stated that revenues and expenses associated with the HomeServe warranty programs are non-jurisdictional in nature and that the Company has always recorded these revenues and expenses to accounts which do not affect utility rates.⁸³ Rather than addressing the issue of the proper regulatory treatment of HomeServe revenues and expenses in this docket, Piedmont recommended that the issue be addressed by the Commission in the next Piedmont rate proceeding or separate future generic proceeding.⁸⁴

First, the Commission disagrees with Piedmont's proposal to postpone this issue and decide it in the future. In this filing, the Commission is tasked by statute to either approve Piedmont's ARRM filing or to determine with specificity the changes that Piedmont must make to its ARRM so it can refile for Commission approval. Accordingly, the issue is ripe for consideration because the Commission is attempting to state exactly the method for calculating the Company's ARRM revenue requirement.

Here, the Commission agrees with the Consumer Advocate's position that the margin generated from Piedmont's partnership with HomeServe for a warranty program is properly included in determining Piedmont's revenue requirement within its ARRM filing. Piedmont enjoys a monopoly status within its service territory and uses this status to gather and provide valuable

⁸² *Id.* at 24.

⁸³ Pia K. Powers, Pre-Filed Rebuttal Testimony, p. 14 (February 7, 2022).

⁸⁴ *Id.* at 15.

customer information solely derived from its monopoly status. This information is valuable to third party vendors, and customers should receive the benefit that Piedmont derives directly from use of their information. Piedmont shall file an income statement detailing all revenues and expenses for the program in any future ARRM filing. Piedmont shall also be required to account for its financial activities related to the HomeServe warranty programs in accordance with the Uniform System of Accounts. Moreover, the Commission has a long-standing policy of including net revenues generated from third party vendors as regulated revenues when such revenues are derived from the selling and/or marketing of monopoly customer information.⁸⁵

Having concluded that revenues and expenses associated with the HomeServe warranty program should be included in regulated operations, there are areas of public interest and concern the Commission has regarding the proposed HomeServe warranty program: (1) ratepayers should not be financially burdened; (2) the provisioning of natural gas service will not be adversely affected; and (3) ratepayers will not be misinformed or confused about the warranty program offerings.

With respect to the first issue concerning the financial burden to ratepayers, Piedmont is not providing these warranty services. Thus, the expenses for the HomeServe program should be minimal and primarily limited to billing and collection. Based on confidential responses provided by the Company in the 2020 Rate Case docket, the Company's involvement with the HomeServe warranty programs is financially viable and including these revenues in the revenue requirement calculations in Piedmont's ARRM should serve to offset future rate increases to consumers.

The Commission has a longstanding policy that a utility's third-party billing services and other third-party activities shall not negatively impact the provisioning of regulated utility services to ratepayers, including prohibiting the termination of regulated utility service for failure to pay third-

⁸⁵ See *In Re: Petition of Tennessee American Water Company for a General Rate Increase*, Docket No. 10-00189, *Final Order*, pp. 49-52 (April 27, 2012).

party charges included on the bill. HomeServe warranty programs must be clearly identified, set forth separately on customers' bills, and inform customers that failure to pay the nonregulated charges for the HomeServe warranty programs will not affect customers' natural gas service or cause customers' services to be terminated.

To further inform Piedmont customers about the nature of the home warranty programs, a message shall be included annually on the customer's bill stating that the HomeServe warranty programs are optional and do not have to be purchased to receive natural gas service; that HomeServe is not affiliated with Piedmont; and that HomeServe is not regulated or endorsed by the Tennessee Public Utility Commission. These clarifications and disclosures will help protect Piedmont customers from potentially confusing or misleading marketing efforts.

As such, the following conditions shall be placed on the HomeServe Warranty Program to protect consumers:

1. Piedmont shall account for its financial activities related to the HomeServe warranty programs in accordance with the Uniform System of Accounts;
2. All charges billed to customers for HomeServe warranty programs shall be clearly identified separately on customers' bills;
3. Unless otherwise expressly stated by the customer, any partial payment of a total bill shall be applied first to the charges for natural gas services, with the remaining portion, if any, applied to the billed HomeServe charges; and
4. The Company shall include a message on customers' bills annually stating that the HomeServe warranty programs are optional, do not have to be purchased to receive natural gas service, that HomeServe is not affiliated with Piedmont, and that HomeServe is not regulated by the Commission.

With the pervasiveness of technology in today's world, privacy of customer data is becoming a more important issue to customers and the Commission. With respect to sharing customer marketing data, Piedmont shall only provide names and addresses of its customers to avoid creating an exception to consumer marketing protections, such as the Do-Not-Call and Do-Not-Fax laws. Moreover, it is the position of the Commission that a third-party home warranty program offering through a public utility does not create an invitation or permission to solicit Piedmont customers by telephone or fax and does not create a business relationship between Piedmont customers and HomeServe. The Commission's approval of any such program or offering should not be construed as any endorsement or recommendation of the home warranty programs. In 2015, the Commission addressed a similar, if not identical issue, regarding a warranty program offered by HomeServe to electric customers of Kingsport Power Company d/b/a AEP Appalachian Power Company.⁸⁶ In that docket, the Commission adopted the treatment of revenues and consumer protections consistent with those ordered here.

Rate Design (Issue Matrix No. 15)

Piedmont proposed that new base margin rates be established by using the cost allocation and rate design methodologies approved by the Commission in the last rate case, and then Piedmont would prospectively bill customers the approved base margin rates approved in each annual ARRM filing to reflect the deficiency or sufficiency. Ms. Powers testified that rate calculations will be made slightly different than the rate design methodology approved in the last rate case because forward-looking, forecasting methodologies would not be used.⁸⁷

Consumer Advocate witness, Mr. Dittmore, did not object to the Company's method of calculating the rate design to reflect new ARRM revenue calculations, but did recommend that the

⁸⁶ *In re: Petition of Kingsport Power Company d/b/a/ AEP Appalachian Power for Approval of Home Warranty Programs*, Docket No. 15-00064, *Order Granting Petition for Approval of Home Warranty Programs* (November 3, 2015).

⁸⁷ Pia K. Powers, Pre-Filed Direct Testimony, pp. 14-15 (November 5, 2021).

ARRM rider rates be set forth separately on customer bills. Mr. Dittmore asserted that this separate rider will increase customer transparency and may result in customers gaining more knowledge about their natural gas bills, especially given the magnitude of current customer bills.⁸⁸ The Company opposed Mr. Dittmore's suggestion that the ARRM Rider Rate be billed separately on customers' bills. Ms. Powers testified that Piedmont's current billing system provides only limited detail billing, but Piedmont intends to address this limitation with the development of its next generation billing system. Ms. Powers disagreed that a separately billed rider rate will provide more clarity because the rates are likely to be a relatively small portion of the customers' total bills.⁸⁹ With the filing of the *New Petition*, the Consumer Advocate withdrew its recommendation to require the ARRM rider rates to be set forth separately on customer bills. Alternatively, the parties agreed to address this issue in a future docket and work together for prospective implementation upon the establishment of Piedmont's new billing system.

The hearing panel found the rate design proposal submitted by Piedmont, which assesses a per therm charge for the ARRM Rider Rate, is reasonable and consistent with the methodology approved in the 2020 Rate Case. Further, the hearing panel agrees that the issue of disclosing the ARRM Rider Rate on customers' bills would be better addressed in a future docket when Piedmont gets closer to implementing its next generation billing system and all parties become aware of its capabilities.

While the hearing panel does not require a change to Piedmont's proposed rate design, there is a matter of rate design pragmatism that must be addressed in any future ARRM proposal. Over time a utility's mix of customers between rate classes and associated cost of service may change necessitating the Commission to review how revenue is collected from the different customer classes.

⁸⁸ David N. Dittmore, Pre-Filed Direct Testimony, pp. 21-22 (January 26, 2022).

⁸⁹ Pia K. Power, Pre-Filed Rebuttal Testimony, p. 11 (February 7, 2022).

Also, issues such as affordability of residential rates may arise that need review and analysis. For these reasons, there is a practical need for regulatory flexibility in establishing customer rates related to the ARRM. As such, the following rate design language, which is similar to that adopted and approved for Chattanooga Gas Company's ARRM in Docket No. 19-00047, shall be applied to any future ARRM tariff filing:⁹⁰

In its annual rate filing, Piedmont shall make a proposal for how to allocate any revenue excess/deficiency among rate classes and the specific design for how rates are to be decreased/increased for each class in accordance with the approved methodologies. Any intervenor party may make its own proposal for how the revenue excess/deficiency should be allocated to the classes and the rate design for any decrease/increase in rates for the annual base reset. Based upon a final determination that rates need to be decreased/increased, the Commission shall order such decrease/increase in rates be based upon the proposals of the parties or such other rate allocation and rate design decision as it may find to be in the public interest.

Weather Normalization Adjustment ("WNA") Methodology

For its ARRM revenue calculations, Piedmont proposed to use the WNA regression analysis methodology for determining weather-normalized revenues that was adopted by the Commission's approval of the parties' settlement agreement in the 2020 Rate Case.⁹¹ This regression analysis is used to determine the impact/sensitivity that weather temperatures have on customer usage of natural gas. In the 2020 Rate Case, Piedmont's WNA regression analysis methodology differed from the Consumer Advocate's and produced different WNA factors for base load and heat sensitivity. Nevertheless, Piedmont's WNA factors were agreed to by the parties in the *Rate Case Settlement*.

Piedmont also confirmed that its ARRM revenue calculations would not include any WNA adjustment for Rate Schedules 303 (Large General Sales Service – Firm), 304 (Large General Sales Service – Interruptible), 310 (Resale Service), 313 (Large General Transportation Service – Firm),

⁹⁰ In Re: Petition of Chattanooga Gas Company to Opt into an Annual Review of Rates Mechanism Pursuant to Tenn. Code Ann. 65-5-103(d)(6), Docket No. 19-00047, Order Approving Settlement Agreement, p. 6 & Exhibit 1: Stipulation and Settlement Agreement By and Among Chattanooga Gas Company, The Consumer Advocate Unit of the Attorney General, The Chattanooga Regional Manufacturers Association, and Party Staff, pp. 5-6 (July 26, 2019).

⁹¹ Piedmont Natural Gas Company's Response to the Consumer Advocate's First Discovery Request, 1-47 (December 8, 2021).

314 (Large General Transportation Service – Interruptible), and 343 (Motor Vehicle Fuel Service).⁹² Piedmont contended, based on the rebuttal testimony of Piedmont witness Kally Couzens in the 2020 Rate Case, that these rate classes represent large general and industrial customers that use natural gas primarily for process purposes, not space heating; thus, their usage patterns are not driven primarily by weather.⁹³

In the 2020 Rate Case, Consumer Advocate Witness Hal Novak proposed a WNA methodology based on a simple linear regression analysis to determine the base load factor and heat sensitive factor for the WNA, consistent with the same regression analysis methodology approved by the Commission in the last rate cases for Atmos Energy Corporation, Kingsport Power Company, and Chattanooga Gas Company, as well as the prior rate case for Piedmont in Docket No. 11-00144.⁹⁴ Although Mr. Novak’s methodology produced different WNA factors than Piedmont’s, the parties agreed to use Piedmont’s WNA factors for purposes of settling the rate case.

Further, Mr. Novak weather-normalized Piedmont’s industrial tariffs for larger customers, which is typically not done since industrial usage is generally not weather sensitive. Mr. Novak stated, however, that he found a strong relationship between weather and industrial customer usage in that case for each of the last six years, which justified applying a weather normalization adjustment to the industrial customer classes.⁹⁵ In this docket, the Consumer Advocate did not make any proposed modifications to the ARRM related to the WNA. The hearing panel accepts Piedmont’s proposal to exclude certain customer classes representing large or industrial customers from the WNA. However, the hearing panel concluded Piedmont’s ARRM should use the WNA regression analysis that the Commission has approved for Atmos Energy Corporation and Chattanooga Gas Company to compute the base load factor and heat sensitive factor.

⁹² *Id.* at 1-48.

⁹³ 2020 Rate Case, Kally A. Couzens, Pre-Filed Rebuttal Testimony, pp. 13-14 (December 16, 2020).

⁹⁴ 2020 Rate Case, William H. Novak, Pre-Filed Direct Testimony, p. 10 (November 30, 2020).

⁹⁵ *Id.* at 10-11.

Although the Commission approved a settlement in the 2020 Rate Case that included Piedmont's WNA regression analysis methodology, the Commission did not expressly approve the methodology. The settlement was presented to the Commission for approval or denial in its entirety and, based on the reasonableness of the settlement, the settlement agreement was approved. The Commission also found, however:

Settlements entail give-and-take negotiations, the end result of which may see a long-standing Commission precedent on a particular issue set aside by the parties for purposes of reaching an agreement. Approving such settlements is not a rejection of a Commission precedent, although parties should be mindful that abandoning long-standing Commission precedents and practices in the name of settlement will only court greater uncertainty and may result in modification or rejection of a proposed settlement.⁹⁶

The hearing panel here finds the simple linear regression analysis methodology approved for Atmos Energy Corporation and Chattanooga Gas Company should be used to update the base load and heat sensitive factors in Piedmont's ARRM filings. This methodology is transparent, can be audited with ease, provides the Commission and the parties more administrative efficiency, and has been the primary WNA methodology used by similarly situated utilities for three decades. As such, if Piedmont updates the base load and heat sensitive WNA factors that were approved in its last rate case, then it shall use the Commission-approved simple linear regression analysis to compute the new factors. Accordingly, approval of Piedmont's ARRM should be conditioned upon use of the Commission-approved simple linear regression analysis methodology to update its WNA factors.

Promotional and Advertising Expenses

Piedmont's proposed ARRM includes Advertising and Promotion Expenses in O&M on Service Schedule 318 with further reference on Schedule 38. Neither of these schedules, however, provides specific information on what expenses shall be included or excluded as advertising expense,

⁹⁶ 2020 Rate Case, *Order Approving Settlement Agreement Setting Rates and Approving the Procedures for Refunds to Customers*, p. 6 (May 6, 2021).

other than to state “such actual expenses recorded during the HBP, exclusive of any such expenses related to lobbying activities, and shall reflect costs necessary in the provision of natural gas service.”⁹⁷ The Commission has been very clear on what constitutes a recoverable “advertising expense,” as memorialized in Commission rules for the Regulation for Gas Companies:

1220-04-05-.45 ADVERTISING.

- (1) A utility may not recover from any person other than their shareholders (or other owners) any direct or indirect expenditure for promotional or political advertising.
- (a) The term “advertising” means the commercial use of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to gas customers.
- (b) The term “political advertising” means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.
- (c) The term “promotional advertising” means any advertising for the purpose of encouraging any person to select or use gas service or additional gas service or the selection or installation of any appliance or equipment designed to use gas service.
- (d) The terms “political advertising” and “promotional advertising” do not include:
1. Advertising which informs gas customers how they can conserve energy or can reduce peak demand for gas,
 2. Advertising required by law or regulation, including advertising required under Part 1 of Title II of the National Energy Conservation Policy Act,
 3. Advertising regarding service interruptions, safety measures or emergency conditions,
 4. Advertising concerning employment opportunities,
 5. Advertising which promotes the use of energy efficient appliances, equipment, services, or which informs customers that natural gas is cheaper and/or more efficient than other fuels, or
 6. Any explanation or justification of existing or proposed rate schedules or notification of hearings thereon.

Accordingly, Piedmont shall expressly state that the ARRM methodology for Other O&M Expenses shall reflect such promotional and advertising expenses recorded during the HBP, consistent with Commission Rule 1220-04-05-.47. Promotional and advertising expenses that are not authorized by the rule must be excluded.

⁹⁷ Pia K. Powers, Pre-Filed Rebuttal Testimony, PKP-2, p. 6 (February 7, 2022).

Resolved Issues

In addition to the issues discussed previously herein, the parties addressed and resolved numerous other issues as reflected in the *New Petition*, specifically in the Issues Matrix and described in the supplemental testimonies of Ms. Powers and Mr. Dittmore. The hearing panel reviewed the parties' agreements as reflected in the Issues Matrix of the *New Petition* and concluded unanimously that they are reasonable and, within the context of any new proposed ARRM by the Company, such agreements are in the public interest. Accordingly, the parties' resolution of the following remaining issues should be adopted as part of any refiled ARRM filing by Piedmont:

Lobbying Expenses (Issue Matrix Nos. 1 & 2): In his direct testimony, Mr. Dittmore recommended that the definition of lobbying expenses should include indirect costs in support of the lobbying function.⁹⁸ In rebuttal testimony, Ms. Powers stated that Piedmont will exclude all lobbying expenses that it reports to the Tennessee Ethics Commission; she further stated that the Consumer Advocate's position was not reasonable, appropriate, or consistent with applicable state law related to lobbying.⁹⁹

With the filing of the *New Petition*, the Consumer Advocate agreed to withdraw its recommendation for consideration of the lobbying issue in this docket. Further, both parties agree the Consumer Advocate reserves its right to raise this issue in a future proceeding and the Company retains its right to put forth its position in said proceeding.¹⁰⁰ Consideration of this issue in a future docket is reasonable and the parties, along with the Commission, will have a better opportunity to develop a complete record to determine which lobbying expenses should be eliminated from rate recovery.

⁹⁸ David N. Dittmore, Pre-Filed Direct Testimony, p. 26 (January 26, 2022).

⁹⁹ Pia. K. Powers, Pre-Filed Rebuttal Testimony, p. 19 (February 7, 2022).

¹⁰⁰ *New Petition*, Issues Matrix, p. 1 (February 18, 2022).

Exclusion of Non-cash Items from Working Capital (Issue Matrix Nos. 3 & 4): A Working Capital Lead/Lag Expense measures the length of time from incurring an expense until payment is made to the vendor. The Consumer Advocate initially requested removal of any non-cash items from the lead/lag when determining the cash balance to include in the Working Capital component of Rate Base. The Consumer Advocate specifically identified Depreciation Expense and Income for Return as non-cash items that should be removed. The Company countered this recommendation by stating the Consumer Advocate did not raise this issue in the Company's last rate case; and that both items are in the lead-lag computation with 0.00 lag days pursuant to the *Rate Case Settlement*. The parties resolved this issue by the Consumer Advocate withdrawing its recommendation but reserving its right to raise this issue in a future docket, a resolution the hearing panel finds reasonable.

Allowance for Funds Used During Construction ("AFUDC") (Issue Matrix Nos. 5 & 6): Piedmont initially proposed to compute AFUDC by multiplying its authorized Overall Cost of Capital for the Company by the CWIP used in Rate Base.¹⁰¹ The CWIP reflected in Rate Base is the 13-month average of the actual end of month balances recorded to CWIP during the HBP and the month prior to the HBP, consistent with the 2020 rate case settlement.¹⁰² Mr. Dittmore recommended modifying the ARRM to state that the "AFUDC recorded as net operating income should be consistent with AFUDC charges recorded to CWIP during the HBP" for the ARRM's HBP Reconciliation and Annual Base Rate Reset.¹⁰³ Ms. Powers, however, stated that Mr. Dittmore's proposed modifications would cause confusion since the amount of computed AFUDC for ratemaking purposes and the actual amount of AFUDC per Piedmont's books are never identical due to timing differences between these two different concepts.¹⁰⁴

¹⁰¹ Pia K. Powers, Pre-Filed Rebuttal Testimony, p. 28; Exhibit PKP-1, p. 7 (February 7, 2022).

¹⁰² *Id.*

¹⁰³ David N. Dittmore, Pre-Filed Direct Testimony, Exh. DND 5, pp. 7, 13 (January 26, 2022).

¹⁰⁴ Pia K. Powers, Pre-Filed Rebuttal Testimony, pp. 28-29 (February 7, 2022).

For ratemaking purposes, it is the Commission's policy to make a provision for AFUDC based on the utility's weighted cost of capital applied to its average CWIP included in rate base. The parties resolved this issue by agreeing that the AFUDC adjustment to Net Operating Income for both the HBP Reconciliation and the Annual Base Rate Reset shall be the CWIP included in the corresponding Rate Base multiplied by the corresponding Overall Cost of Capital including the authorized ROE. The calculated amount of AFUDC for ratemaking purposes could be different than the actual amount of AFUDC recorded in the utility's books for a given period. The parties' resolved this issue consistent with the Commission's approved methodology for computing AFUDC, and therefore, the agreed resolution of this issue should be adopted.

State Composite Tax Rate (Issue Matrix Nos. 7-9, 39 & 42): Piedmont proposed using a composite state tax rate for computing ADIT and state income tax expense in the ARRM. The composite state tax rate is the blended state tax rate for Piedmont's three jurisdictions, North Carolina, South Carolina, and Tennessee. The composite tax rate of 3.46% is lower than the Tennessee statutory rate of 6.5%. Mr. Dittmore recommended using the Tennessee statutory rate, which was used to compute tax expense in a prior rate case, Docket No. 11-00144.¹⁰⁵

In Piedmont's tax Docket No. 18-00040, Mr. Dittmore stated using 3.46% composite tax rate for computation of Excess ADIT, which is a benefit to be returned to customers, while using 6.5% Tennessee statutory rate to compute tax expenses is inconsistent treatment in the tax calculation. This results in Tennessee ratepayers paying a higher tax expense but receiving lower credit.¹⁰⁶ In the 2020 Rate Case, Piedmont agreed that there should not be an inconsistency in the tax rates used to compute

¹⁰⁵ *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, Order Approving Settlement Agreement, Exh. 1, Schedule 6 (April 18, 2012).

¹⁰⁶ *In re: Compliance Filing of Piedmont Natural Gas Company, Inc. Regarding the Impact of Federal Tax Reform On Public Utility Revenue Requirements*, Docket No. 18-00040, David N. Dittmore, Pre-Filed Direct Testimony, p. 17 (January 15, 2019).

ADIT and tax expense and the parties agreed to use the composite state tax rate to calculate both ADIT and tax expense. The composite tax rate was also used to compute Excess ADIT in tax Docket No. 18-00040.¹⁰⁷

The parties agreed to the use of the composite state tax rate for computing both ADIT and tax expense in its ARRM. Although the use of the Tennessee statutory rate for computing ADIT and tax expense is appropriate, the continued use of the composite state tax rate, as proposed by the parties, is reasonable. Use of the composite state tax rate will also avoid the need to recompute the Excess ADIT amounts determined in Piedmont's tax docket to prevent inconsistency between the computation of Excess ADIT regulatory liabilities and annual tax expense. Therefore, the hearing panel agrees with the parties' resolution of this issue.

Income Tax Provision True-up (Issue Matrix No. 10): In his direct testimony, Mr. Dittmore raised the issue of whether a modification should be made to the mechanism to reflect impacts of the delayed tax provision true-up entries recorded after the HBP.¹⁰⁸ In rebuttal testimony, Ms. Powers asserts that this issue was specifically resolved in the 2020 Rate Case and there is nothing left to resolve.¹⁰⁹

In the *New Petition*, both parties agree that the appropriate treatment of the "Return to Provision" accounting entries, which reflect the true-up results of the Company's state and federal tax filings, is an open issue and may be raised in subsequent ARRM proceedings.¹¹⁰ Consideration of this issue in a future docket is reasonable and the parties, along with the Commission, will have a better opportunity to develop a complete record to determine the appropriate accounting treatment.

¹⁰⁷ *Id.*, *Order Approving Stipulation and Partial Settlement Agreement and Adjudicating Contested Issues Presented by the Parties*, p. 15 (August 6, 2019).

¹⁰⁸ David N. Dittmore, Pre-Filed Direct Testimony, p. 28 (January 26, 2022).

¹⁰⁹ Pia K. Powers, Pre-Filed Rebuttal Testimony, p. 34 (February 7, 2022).

¹¹⁰ *New Petition*, Issues Matrix, p. 1 (February 18, 2022); Pia K. Powers, Pre-Filed Supplemental Testimony, p. 6 (February 23, 2022); David N. Dittmore, Supplemental Pre-Filed Testimony, pp. 3-4 (February 23, 2022).

ARM Regulatory Asset (Issue Matrix Nos. 11 & 31): Piedmont proposed to establish an ARM Regulatory Asset to partially address “regulatory lag” by recording interest deferrals and depreciation expense deferrals associated with investments in plant that have not yet been included in rate base for ratemaking purposes. On a monthly basis, Piedmont will record deferred interest to the ARM Regulatory Asset at the pretax Overall Cost of Capital under which the Base Margin Rates were last established. The deferred interest will be calculated on all plant placed into service but not yet included in rate base, and interest will continue to accrue into the ARM Regulatory Asset account until the plant is included in rate base.¹¹¹ Also, monthly, Piedmont will record deferred depreciation expense to the ARM Regulatory Asset on plant that is placed into service but not yet included in rate base. The deferred depreciation expense will continue to be recorded into the ARM Regulatory Asset account until the plant is included in rate base.¹¹²

The Consumer Advocate initially recommended modifications to Piedmont’s proposed ARM Regulatory Asset. First, Mr. Dittmore stated that the interest deferrals recorded into the ARM Regulatory Asset should be reflected as other revenues for purposes of determining the HBP deficiency or sufficiency in a similar fashion as the recognition of AFUDC. Second, Mr. Dittmore stated that it should be made clear that the deferred depreciation expense recorded in the ARM Regulatory Asset should result in a credit to depreciation expense.¹¹³

Piedmont opposed Mr. Dittmore’s first proposed modification to record interest deferrals to the ARM Regulatory Asset as other revenues. Piedmont witness, Ms. Powers, asserted that the purpose of the interest deferrals on plant investments made during the HBP is to account for and compensate the Company for “regulatory lag.” She further asserts that the reduction of regulatory lag does not result in over-earnings during the HBP.¹¹⁴ Ms. Powers maintained that treating the

¹¹¹ Pia K. Powers, Pre-Filed Direct Testimony, Direct Exh. PKP-1, pp. 2-3 (November 5, 2021).

¹¹² *Id.* at 3.

¹¹³ David N. Dittmore, Pre-Filed Direct Testimony, pp. 22-23; Exh. DND 5, p. 3 (January 26, 2022).

¹¹⁴ Pia. K. Powers, Pre-Filed Rebuttal Testimony, p. 12 (February 7, 2022).

interest deferrals as other revenue in the HBP Reconciliation effectively counteracts the purpose of the interest deferrals.¹¹⁵ Piedmont did not object to Mr. Dittmore's second recommendation to clarify that the offset to the recording of deferred depreciation expense in the ARM Regulatory Asset will be a credit to depreciation expense.¹¹⁶

The parties resolved this issue by the Consumer Advocate withdrawing its request to record interest deferrals to the ARM Regulatory Asset as other revenues; and by the Company accepting the clarifying language regarding the recording of depreciation expense. The hearing panel agrees with the parties' resolution of this issue.

Capitalization Synchronization (Issue Matrix Nos. 12 & 13): The Consumer Advocate and Piedmont agreed to the following methodologies to synchronize cost of capital with rate base under the ARRM:

a. **Capital Structure** for the HBP Reconciliation shall reflect the average of long-term debt, short-term debt, and common equity (not including the impact of goodwill), each as a percentage of total month-end capitalization during the 13-month period ending December 31 of the HBP. Adjustments shall be made to eliminate any double leverage implications. The Company should identify whether it received an infusion of capital from any affiliate and, if so, the amount, the date of the receipt of the capital, and how such funds were recorded. As for prospective rate resets, the HBP's year-end capitalization measures shall be used, which is consistent with the year-end rate base balances proposed for the rate reset process.

b. **Long-Term Debt Cost** for the HBP Reconciliation shall reflect the average embedded cost rate of long-term debt during the 13-month period ending December 31 of the HBP. The computation of the embedded cost of long-term debt shall include an adjustment for unamortized loss

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 31.

on reacquired debt and credit facility fees. For prospective rate reset purposes, the HBP's December 31 long-term cost rate shall be used, which is consistent with the year-end rate base balances proposed for the rate reset process. (Consumer Advocate Witness Dittmore also recommended this additional notation: "The Company shall have the burden to demonstrate such [debt] retirements were economical and in the public interest."¹¹⁷ The proposed tariff verbiage by Company witness, Ms. Powers, did not include this additional note.)

c. **Short-Term Debt Cost** for the HBP Reconciliation shall reflect the computed average cost rate of short-term debt borrowings (Piedmont's intercompany money pool borrowings) during the 13-month period ending December 31 of the HBP. For prospective rate reset purposes, the HBP's December 31 short-term cost rate shall be used, which is consistent with the year-end rate base balances proposed for the rate reset process.

d. **Authorized Return on Equity ("ROE")** is defined as the Commission-approved ROE from the Company's most recent rate case. Regarding other capitalization issues, the Consumer Advocate reserves its right to raise issues or challenge the reasonableness of capitalization ratios in future ARRM filings without objection from Piedmont. The hearing panel finds the methodologies are reasonable and appropriate under the circumstances of this docket.

Customer Notice (Issue Matrix No. 14): In the initial petition, the Consumer Advocate devoted substantial testimony to the public notice requirements set forth in Commission Rule 1220-04-05-.13, specifically stating that the rule should be updated to reflect current multi-media outlets. The parties address this issue by agreeing that, in addition to any additional customer notice requirements ordered by the Commission, Piedmont will provide a message on customer bills each year disclosing that the Company has filed a request to modify its rates pursuant to the ARRM. The bill message will be presented on the monthly cycle bills rendered to customers as soon as practicable

¹¹⁷ David N. Dittmore, Pre-Filed Direct Testimony, Exh. DND 5, pp. 9, 14 (January 26, 2022).

after submission of the Company's annual ARRM filing. The bill message will disclose the approved rate adjustment pursuant to the ARRM and will be provided to customers concurrent with the first effective month of approved rates under the ARRM. The hearing panel agrees with the parties' resolution of this issue.

Rate Caps (Issue Matrix No. 22): In his direct testimony, Mr. Dittmore argued that regulated gas companies do not have sufficient incentives to control costs under an ARRM. The Consumer Advocate recommended that the Commission open a generic docket to establish rate caps in these mechanisms that would limit the amount by which rates could increase.¹¹⁸ In rebuttal testimony, Ms. Powers asserted that Piedmont has significant existing incentives for prudent cost management and disagrees that rate caps are needed to control rates.¹¹⁹

With the filing of the *New Petition*, the Consumer Advocate agreed to withdraw its recommendation for consideration of this issue in this docket. Further, both parties agreed the Consumer Advocate reserves its right to raise this issue in a future proceeding and the Company retains its right to put forth its position in said proceeding.¹²⁰ The hearing panel agrees with the parties' resolution of this issue.

Consumer Advocate Language Modifications (Issue Matrix Nos. 23-24, 30-33, 36-38 & 41): The Consumer Advocate proposed various text changes to the Company's ARRM which Piedmont did not oppose. The revised ARRM would include text changes concerning the following:

1. Language protecting the rights of intervenors in annual ARRM filings;
2. Consumer Advocate's right to petition for termination or modification of the ARRM;
3. Clarification regarding the Company's Authorized ROE;
4. Deletion of language referencing 2020 rate case methodologies;

¹¹⁸ *Id.* at 34.

¹¹⁹ Pia. K. Powers, Pre-Filed Rebuttal Testimony, pp. 34-36 (February 7, 2022).

¹²⁰ *New Petition*, Issues Matrix, p. 3 (February 18, 2022).

5. Additional terms relating to employee salaries and wage expense;
6. Additional terms relating to other O&M expense;
7. Additional terms relating to depreciation expense;
8. Additional terms relating to utility plant in service; and
9. Additional terms relating to the recovery of DEBS expense.

The hearing panel finds the text changes reasonable and consistent with sound ratemaking principles and practices.

Initial Historic Base Period (“HBP”) (Issue Matrix No. 25): Piedmont initially proposed an ARRM that used calendar year 2021 as the initial HBP for determining the Company’s first revenue sufficiency or deficiency under the plan. The calendar year 2021 was also the attrition period adopted by the Commission in Piedmont’s last rate case in Docket No. 20-00086. Consumer Advocate witness, David Dittmore, argued that using calendar year 2021 as the initial HBP would lead to double recovery if losses are incurred because Piedmont already has a tariff in place that covers the period in question for its attrition year. Mr. Dittmore also asserted that use of 2021 as the initial HBP raises concerns of retroactive ratemaking, which is prohibited in Tennessee, and with consistency of the filed-rate doctrine, which recognizes that rates approved by regulatory agencies are deemed just and reasonable until changed on a prospective basis. Mr. Dittmore pointed out that Piedmont’s request would allow it an opportunity to recapture attrition period losses back to January 2021.¹²¹ The parties resolved this issue by the Company agreeing to use calendar year 2022 as the initial HBP under the ARRM, and the hearing panel finds that use of a period separate and apart from the ratemaking forecasts and forward-looking rates ordered in the 2020 Rate Case is reasonable and appropriate.

¹²¹ David N. Dittmore, Pre-Filed Direct Testimony, pp. 6-8 (January 26, 2022).

Incentive Plan Synchronization (Issue No. 26): In direct testimony, Mr. Dittmore asserted that since Piedmont proposes to exclude gains and losses related to gas supply hedging and other non-jurisdiction activities from the ARRM calculations, then the effects of those transactions should also be excluded from the level of equity included in the ARRM.¹²² With the filing of the *New Petition*, the Consumer Advocate agreed to withdraw its recommendation for consideration of the issue in this docket.¹²³ Further, both parties agreed that the Consumer Advocate reserves its right to raise this issue in a future proceeding and the Company retains its right to put forth its position in said proceeding. The hearing panel agrees with the parties' resolution of this issue.

Unbilled Revenues (Issue Matrix No. 27): Piedmont proposes to exclude unbilled revenues in the calculation of revenues from the ARRM's HBP Reconciliation and the Annual Base Rate Reset. Piedmont states that exclusion of unbilled revenues is consistent with the methodology approved in its last rate case.¹²⁴ "Unbilled revenues" represent the amount of revenues that have been earned but not yet billed to the customer. Thus, for example, for an HBP ending December 31, any revenues for services provided in December but billed in January would be excluded from the HBP revenue calculation. Consumer Advocate Witness Dittmore proposed inserting language in the ARRM tariff that receipts (revenue) should be recorded on "an accrual basis."¹²⁵ Piedmont witness Powers stated, however, that this suggested change would require Piedmont to record revenues on an accrual basis for purposes of the ARRM, which would be a new accounting requirement for ratemaking purposes.¹²⁶ The parties resolved this issue by the Consumer Advocate's withdrawal of its proposal to record ARRM revenues on an accrual basis. The hearing panel agrees with the parties' resolution of this issue.

¹²² *Id.* at 21.

¹²³ *New Petition*, Issues Matrix, p. 3 (February 18, 2022).

¹²⁴ *Piedmont Natural Gas Company Inc's Responses to Consumer Advocate's First Discovery Request*, DR 1-25 (December 8, 2021).

¹²⁵ David N. Dittmore, Pre-Filed Direct Testimony, Exh. DND 5, p. 2 (January 26, 2022).

¹²⁶ Pia K. Powers, Pre-Filed Rebuttal Testimony, pp. 29-30 (February 7, 2022).

Variance Reporting, Performance Metrics and Additional Schedules (Issue Matrix Nos. 28-29, 43): Consumer Advocate witness, Mr. Dittmore, proposed submission of variance reporting, performance metrics, and other supplemental data with each annual ARRM filing.¹²⁷ The Company did not oppose these proposals and the parties have agreed that Piedmont's annual ARRM filings will incorporate the following information:

1. **Accrued Expense Detail:** For each accrued expense included in its Historic Base Period, the Company shall provide the amount, a full explanation identifying its nature, and whether the accrual is a direct charge or allocated charge to its Tennessee operations.

2. **Duke Energy Business Services ("DEBS") Allocation Detail:** For any GL-level detail provided for O&M expenses allocated to the Company's Tennessee operations from DEBS, the Company shall provide a description of each (i) Operating Unit, (ii) Allocation Pool ID, (iii) Resource Type ID, (iv) Source CD JD, and (v) Project ID CB, if these descriptions are not otherwise included in the Company's Cost Allocation Manual.

3. **DEBS Allocated Assets:** The Company shall provide a description of each DEBS asset for which the allocated costs to its Tennessee operations are \$50,000 or more annually.

4. **Amortization Expenses for Deferred Environmental Costs:** The Company may seek recovery of Environmental Costs incurred during its HBP upon a showing of prudence and that such costs are not otherwise recoverable through insurance policies.

5. **Return-to-Provision Entries:** The Company shall provide a schedule of its accounting entries made for its return-to-provision transaction that reflects the impacts of its filed tax return made in the year after the HBP, along with an explanation of the impact of the transaction on the regulated returns in the period the entry is made.

¹²⁷ David N. Dittmore, Pre-Filed Direct Testimony, pp. 16-17, 24, 27 (January 26, 2022).

6. **Additional Metrics:** The Company shall provide the following operating metrics for its HBP: (i) response time to emergency calls, (ii) age of natural gas leaks, and (iii) number of natural gas leaks by grade.

7. **Variance Report:** The Company shall file with the Commission, and provide a copy to the Consumer Advocate, a variance report that identifies and explains each and every Piedmont revenue and operating expense account and/or subaccount for which the Tennessee amount (including amounts allocated to Tennessee) either exceeds the prior year's amount (based on amounts either as filed by Piedmont in its Annual ARRM Filing or as adjusted by the Commission under Tenn. Code Ann. § 65-5-103(d)(6)(C)) by 5% or \$30,000).¹²⁸ The hearing panel agrees with the resolution of this issue as this additional information provides the Commission with more detail in its evaluation and analysis of the issues.

Environmental Costs (Issue Matrix Nos. 34 & 40): In direct testimony, Mr. Dittmore recommended deletion of Piedmont's proposed language regarding "Amortization Expenses for Deferred Environment Costs." Additionally, Mr. Dittmore recommended that language be added stating that the Company has the burden of proof to demonstrate the recovery of environmental costs is reasonable.¹²⁹ In rebuttal testimony, Ms. Powers stated that Piedmont did not object to Mr. Dittmore's revised language relating to environmental costs subject to the caveat that any deferred environmental costs previously approved by the Commission for recovery would not be subject to duplicative prudence showings in subsequent proceedings.¹³⁰ The hearing panel agrees with the parties' resolution of this issue.

DEBS Assets (Issue Matrix No. 35): In the initial petition, Consumer Advocate Witness Dittmore recommended that the computed expense for allocated returns on DEBS assets should

¹²⁸ *New Petition*, 318 Service Tariff, pp. 6, 10, 16-17 (February 18, 2022).

¹²⁹ David N. Dittmore, Pre-Filed Direct Testimony, p. 24 (January 26, 2022).

¹³⁰ Pia. K. Powers, Pre-Filed Rebuttal Testimony, p. 32 (February 7, 2022).

reflect such actual expenses properly incurred and charged to the Company's Tennessee operations adjusted to reflect a return based on the Commission-authorized return on equity. Such return should apply to the balance of DEBS assets, net of related Accumulated Depreciation and ADIT. Recoverable expenses should exclude expenses related to the return on DEBS pension assets.¹³¹ Company Witness Powers did not object to these proposals.¹³² The parties agreed to adopt the Consumer Advocate's recommendations for computing the ARRM revenue requirements related to DEBS Assets. The hearing panel agrees with the parties' resolution of this issue.

The list of resolved issues from the *New Petition* is illustrative of the work and effort that both the Company and the Consumer Advocate put into this docket. In recognition of the resolved issues described and found reasonable herein, the hearing panel voted unanimously to adopt the same for inclusion in any refiled ARRM by the Company in addition to the modifications ordered herein.

IT IS THEREFORE ORDERED THAT:

1. The *New Petition* filed by Piedmont Natural Gas Company, Inc. on February 18, 2022, is not in the public interest and is denied.
2. Piedmont Natural Gas Company, Inc. may refile a request for annual rate review mechanism pursuant to Tenn. Code Ann. § 65-5-103(d)(1)(C) in accordance with the findings and conclusions discussed within this *Order*.
3. Any party aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen (15) days from the date of this Order.

¹³¹ David N. Dittmore, Pre-Filed Direct Testimony, pp. 26-27 (January 26, 2022).

¹³² Pia K. Powers, Pre-Filed Rebuttal Testimony, pp. 25-26, 31-32 (February 7, 2022).

4. Any party aggrieved by the Commission'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 (60) days from the date of this Order.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Chairman Kenneth C. Hill,
Vice Chairman Herbert H. Hilliard,
Commissioner Robin L. Morrison,
Commissioner Clay R. Good, and
Commissioner John Hie concurring.**

None dissenting.

ATTEST:



Earl R. Taylor, Executive Director