

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

December 4, 2023

IN RE:

**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)**

**DOCKET NO.
23-00035**

ORDER APPROVING SETTLEMENT AGREEMENT AND SETTING ARRM RATES

This matter came before Vice Chairman David F. Jones, Commissioner Clay R. Good, Commissioner Robin L. Morrison, Commissioner Kenneth C. Hill, 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 September 11, 2023, to consider the *Settlement Agreement* filed on August 21, 2023 by Piedmont Natural Gas Company, Inc. (“Piedmont” or “Company”) and the Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”). In summary, the *Settlement Agreement* was approved.

BACKGROUND

Piedmont is a subsidiary of Duke Energy Corporation and is a public utility under the jurisdiction of the Commission. The Company transports, distributes, and sells natural gas to approximately 199,000 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.¹ In Piedmont’s last rate case in 2021, the Company was granted a rate increase based on a revenue deficiency of \$16,250,000.²

On November 5, 2021, Piedmont initially filed a petition in Docket No. 21-00135 requesting approval of an Annual Review of Rates Mechanism (“ARRM”) pursuant to Tenn. Code Ann. § 65-5-103(d)(1)(a) and Tenn. Code Ann. § 65-5-103(d)(6). The Company’s initial petition was revised following discussions with the Consumer Advocate and presented to the Commission. However, the revised proposal was denied, as the Commission found the proposed ARRM tariff was not in the public interest. The Commission’s order memorializing the denial outlined seven modifications needed to obtain approval of an amended ARRM tariff, while also noting acceptance of several resolved issues between the Company and the Consumer Advocate.³ On August 26, 2022, Piedmont filed an amended ARRM Tariff, Schedule 318, consistent with the findings and conclusions of the Commission’s Order of July 25, 2022. After a hearing on October 10, 2022, the Company’s ARRM tariff was approved.⁴ Pursuant to the approved tariff, Piedmont is to submit its ARRM filing to the Commission no later than May 20th of each year, with the initial filing by May 20, 2023. The initial filing shall include the results for the Historical Base Period calendar year 2022.

THE *PETITION*

On May 19, 2023, the Company filed its *2023 Annual Rate Review Mechanism Filing* (“*Petition*”). In its initial AARM filing, Piedmont requested an overall revenue deficiency of

¹ Pia Powers, Pre-Filed Direct Testimony, pp. 3-4 (May 19, 2023).

² See *In re: Petition of Piedmont Natural Gas Company, Inc. for Approval of an Adjustment of Rates, Charges, and Tariffs Applicable to Service in Tennessee*, Docket No. 20-00086, *Order Approving Settlement Agreement Setting Rates and Approving Procedures for Refunds to Customers*, pp. 7-8 (May 2, 2021).

³ See *In re: 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)*, Docket No. 21-00135, *Order Denying Proposed Annual Review of Rates Mechanism*, pp. 20-52 (July 25, 2022).

⁴ *Id.*, *Order Approving Amended Annual Rate Review Mechanism*, pp. 7-8 (November 1, 2022).

\$41,560,727, which was composed of (1) \$11,699,131 as a revenue deficiency for the Historic Base Period (“HBP”) ending December 31, 2022, an amount that included carrying costs of \$866,201, and (2) a \$29,861,596 revenue shortfall computed for purposes of resetting its base rates going forward.⁵ The Consumer Advocate sought and was granted intervention in the docket shortly thereafter.⁶

In support of the *Petition*, Ms. Pia Powers submitted pre-filed testimony on behalf of the Company. Ms. Powers testified that the Company’s *Petition* utilized the calendar year 2022 as the HBP and is necessary for the Company to achieve its authorized return on equity. The filing incorporated a two-step process of reconciling Piedmont’s actual 2022 performance with its authorized rate of return on equity from its last general rate case.⁷ According to Ms. Powers, the Company’s earned return on equity for 2022 was less than its authorized return, which was primarily due to gas infrastructure investments completed and placed into service during 2022. As a result, the Company requested approval to recover \$10.8 million HBP revenue requirement deficiency plus carrying costs and to increase its base margin rates for the computed \$29.9 million Annual Base Rate Reset (“ABRR”) revenue requirement deficiency.⁸ The Company also sought approval to implement updated weather normalization adjustment factors effective October 1, 2023, to amortize and recover certain deferred environmental expenses through updated base margin rates, and to implement new depreciation rates for Piedmont’s three-state joint property assets effective October 1, 2023, as previously provided in Commission Docket No. 20-00086.⁹

⁵ Pia Powers, Pre-Filed Direct Testimony, pp. 5-6 (May 19, 2023); *Settlement Agreement*, p. 3 (August 21, 2023).

⁶ *Order Granting Petition to Intervene of the Consumer Advocate* (June 22, 2023).

⁷ Pia Powers, Pre-Filed Direct Testimony, pp. 3-5, (May 19, 2023).

⁸ *Id.* at 5.

⁹ *Id.* at 6.

Piedmont has realized significant customer growth since its last general rate case that required substantial capital investments in order to maintain and expand the gas distribution system to serve customers and accommodate customer growth. As a comparison, Ms. Powers noted the Company's last rate case utilized a rate base of approximately \$897 million and the actual thirteen-month average rate base for the 2022 HBP is \$1.068 million with the actual rate base as of the end of the HBP being \$1.144 million. Ms. Powers attributed the majority of this increase to the plant in service component of rate base.¹⁰

The projects placed into service during 2022 totaled nearly \$165 million and these projects were necessary to support the Company's ability to maintain and expand its gas distribution system and comply with federal safety and integrity requirements. As part of these projects, Ms. Powers described the completion in 2022 of the Franklin Pike Loop Project, which supports the continuing delivery of adequate supply and system pressure to the area of South-Central Nashville. Piedmont's capital investments made to support growth and maintain reliability totaled \$110 million, and those to comply with federal pipeline safety and integrity requirements in Tennessee totaled approximately \$41 million.¹¹ This \$151 million represents 92% of the \$165 million investment. The remaining \$13 million was related to the Company's need to relocate existing Company assets in Tennessee pursuant to government projects, such as road-widening activities and other drivers.¹²

Ms. Powers testified that the Company is undertaking steps to eliminate methane leakage from its operations and facilities in Tennessee. The Company has incurred and deferred costs related to the remediation of the former Nashville Gas Company manufactured gas plant. Ms.

¹⁰ *Id.* at 7-8.

¹¹ *Id.* at 9-10.

¹² *Id.* at 10.

Powers stated that the Company is requesting to recover \$1,005,910 of deferred environmental costs in this proceeding.¹³

Ms. Kally Couzens provided pre-filed direct testimony in support of the *Petition*. Ms. Couzens testified that based upon the thirteen-month average HBP rate base of \$1,067,764,143, the Company earned a return of 6.10% over the period ending December 31, 2022, with a net operating income of \$65,166,327. The overall fair rate of return based upon the authorized 9.80% return on equity was 6.88%. The difference between the authorized and earned rate of return equated to a \$8,280,961 net operating income deficiency and using the authorized methodology to gross-up for taxes and other components resulted in an HBP revenue requirement deficiency of \$10,832,930.¹⁴ After adding carrying costs and utilizing the net-of-tax overall cost of capital rate for the HBP, the Company calculated a resulting deficiency of \$11,699,131.¹⁵

Based upon the results of operations and the prescribed methodologies in the ARRM tariff, the Company experienced a \$29,861,596 revenue requirement deficiency for the HBP. According to Ms. Couzens, when using the net operating income for return of \$56,697,580, there is a 4.96% earned rate of return. The difference between the 4.96% earned rate of return and the 6.95% fair rate of return results in a \$22,826,947 net operating income deficiency. After grossing up for taxes and other components, the resulting ABRR requirement is \$29,861,596.¹⁶

Using the same rate design methodology approved by the Commission in Piedmont's last rate case and based upon Piedmont's objective to achieve rate parity, the Company proposed to allocate recovery of the ABRR evenly across all of the applicable rate schedules with the exception

¹³ *Id.* at 10-12.

¹⁴ Kally Couzens, Pre-Filed Direct Testimony, pp. 3-4 (May 19, 2023).

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 4-5.

of the Resale Service Class, due to the absence of active customers. Ms. Couzens asserted this approach gradually moves the rate of return toward the overall system rate of return of 1.00.¹⁷

The Company proposed to update all the Weather Normalization Adjustment (“WNA”) components as demonstrated.¹⁸ Ms. Couzens further testified that the Company’s HomeServe Warranty Program has now been changed to a Home Protection Plan (“HPP”) and is directly administered by Piedmont and supported by TWG Home Warranty Service, Inc. According to the Company’s calculations in ARRM Schedule No. 6A, the calculations supporting an HPP revenue of \$2,238,287 with costs of \$1,718,788 demonstrates that no aspect of Piedmont’s operation of the HPP burdens Tennessee customers that are not participating in the program. Ms. Couzens further testified that the revenues and expenses associated with the warranty program have been included in the HBP reconciliation and the ABRR as prescribed in the Company’s tariff.¹⁹ Ms. Couzens testified that the Company has completed its refund to customers of the deferred base revenues and excess Unprotected Accumulated Deferred Income Taxes (“excess Unprotected ADIT”), as ordered in Commission Docket No. 18-00040. The refunds did not affect the HBP Reconciliation or the ABRR of this filing.²⁰

Mr. Keith Goley submitted pre-filed testimony to support the ratemaking adjustments to the Company’s booked amounts to determine the appropriate rate base and net operating income for return for the ARRM. Mr. Goley asserted he made three adjustments to rate base for the HBP revenue requirement deficiency. First, he adjusted the thirteen-month average of actual per books Construction Work in Progress (“CWIP”) balances by (\$450,727) to exclude 50% of actual short-term incentive plan (“STIP”) costs, 100% of actual long-term incentive plan (“LTIP”) costs and

¹⁷ *Id.* at 6-9.

¹⁸ *Id.* at 10.

¹⁹ *Id.* at 11-13.

²⁰ *Id.* at 13.

100% of actual pension/other post-employment benefits (“OPEB”) costs. Second, the ADIT balance was adjusted to exclude the unprotected excess deferred income taxes (“EDIT”), subject to refund. Additionally, the ADIT related to pension/OPEB and incentive compensation was removed. Third, cash working capital was adjusted per the lead/lag study.²¹ Mr. Goley testified that he made one adjustment to the ARRM regulatory asset component of rate base for the HBP revenue requirement deficiency to exclude (\$460,008) deferred interest expense of the average monthly balance.²²

The sales and transportation component of operating revenues was adjusted by \$15,293,405 to exclude gas cost-related revenues that were not associated with customer usage during the HBP.²³ Mr. Goley testified four other adjustments were made to other revenues for the HBP revenue requirement deficiency calculation, and the HPP revenues of \$2,238,651 were included.

Mr. Goley testified that the Company made seven adjustments to operating and maintenance expense (“O&M”). Uncollectible and bad debt expense was adjusted by (\$373,394) to allow the amount for the HBP reconciliation to only reflect the margin portion of the actual write-off during the HBP. Employee incentive compensation expense was adjusted by (\$1,630,295) to exclude 50% of actual STIP expenses and 100% of actual LTIP expenses. Expense for allocated return on Duke Energy Business Services LLC (“DEBS”) assets was adjusted by (\$195,308) to reflect a return based on the authorized return on equity and to exclude any such expense related to return on DEBS pension assets. Other pension and OPEB expenses were adjusted by (\$3,000,491) to exclude other pension and OPEB expenses. Lobbying expenses were

²¹ Keith Goley, Pre-Filed Direct Testimony, pp. 3-5 (May 19, 2023).

²² *Id.* at 5.

²³ *Id.* at 6.

adjusted by (\$20,679) to exclude lobbying, charitable contributions, and social club memberships. Advertising expense was adjusted by (\$29,236) to exclude expenses related to political or promotional advertising. Miscellaneous O&M adjustments were made in order to exclude expenses improperly recorded as operating expenses during the HBP.²⁴

The Company calculated general taxes using the actual per books expense amount for the twelve-month period ended December 31, 2022, after adjusting for payroll taxes and the allocated other taxes in the amount of \$190,263. According to Mr. Goley, the Company adjusted the actual per books Allowance for Funds Used During Construction (“AFUDC”) amount by \$2,382,695 to reflect the thirteen-month average CWIP balance during the HBP.²⁵

Mr. Goley testified that the Company made the six adjustments to the HBP rate base balance. The HBP balance of Utility Plant in Service (“UPIS”) was adjusted by \$96,421,940 to reflect the UPIS balance on December 31, 2022. The HBP balance of CWIP was adjusted by (\$8,333,705) to reflect the CWIP balance on December 31, 2022. The HBP balance of accumulated depreciation was adjusted by (\$8,883,054) to reflect the accumulated depreciation balance on December 31, 2022. The HBP balance of ADIT was adjusted by (\$3,597,709) to reflect the ADIT balance on December 31, 2022. The cash working capital requirement was adjusted by (\$2,912,817) to include adjustments made to revenue and expenses in the ABRR calculation. The HBP balance of the ARRM regulatory asset was adjusted by \$3,488,646 to reflect the actual unamortized ARRM regulatory asset balance on December 31, 2022.²⁶

Mr. Goley testified that operating revenues were determined using the derived HBP balances for the twelve-month period ended December 31, 2022, along with three ratemaking

²⁴ *Id.* at 6-10.

²⁵ *Id.* at 10-12.

²⁶ *Id.* at 13-15.

adjustments outlined in the Company's ARRM tariff.²⁷ The Company adjusted amortization expenses for deferred environmental costs by \$335,303 to reflect the three-year amortization of incremental environmental costs and adjusted the depreciation expense by \$4,607,472 in order to align the annualized depreciation expense with the actual December 31, 2022 balance of UPIS. AFUDC was also adjusted by (\$533,576) to reflect the thirteen-month average CWIP balance multiplied by the overall cost of capital, and amortization expense was adjusted by \$75,154.²⁸ Mr. Goley testified that the capital structure for the period ended December 31, 2022, is 50.09% equity, 45.36% long-term debt, and 4.55% short-term debt.²⁹

POSITION OF THE CONSUMER ADVOCATE

Following discovery, the Consumer Advocate filed the pre-filed testimony of David N. Dittemore. Mr. Dittemore noted that the size of the increase proposed by the Company was substantial, representing a 25.23% increase in the rates of customers.³⁰ Mr. Dittemore doubted annual rate increases of such magnitude are sustainable.³¹ As a result of his analysis, Mr. Dittemore recommended that the Commission approve a slightly lower increase with an annual ARRM rider surcharge of \$10,202,856 and a base rate increase of \$28,139,496. Collection of the rider surcharge was proposed on a volumetric basis and the base rate recovered as a pro-rata increase of 17% to the current base rates. The sum of the ARRM surcharge and rate base increase proposed by Mr. Dittemore would be an overall increase to customers of 23.0%, when the Purchased Gas Adjustment Rider ("PGA") surcharges are excluded.³²

²⁷ *Id.* at 15-18.

²⁸ *Id.* at 18-19.

²⁹ *Id.* at 20.

³⁰ David N. Dittemore, Pre-Filed Direct Testimony, p. 5 (August 2, 2023).

³¹ *Id.* at 6.

³² *Id.* at 3-4.

As part of his recommendation, Mr. Dittmore made three adjustments to rate base. First, a reduction in rate base in the HBP by \$3,339,960 for the removal of the non-cash items from cash working capital.³³ Mr. Dittmore also reduced rate base by \$1,505,250 for the removal of ADIT components related to non-qualified pension costs, environmental reserves, annual incentive plan compensation, OPEB expense accrual, and Financial Accounting Standards (“FAS”) medical expense accrual.³⁴ Rate base was further adjusted by the removal of \$2,126,188 of capitalized pension costs related to construction projects from the HPB rate base.³⁵

Mr. Dittmore made several adjustments to O&M expenses. Depreciation expense was reduced by \$43,903 related to work vehicles physically located in other jurisdictions. Operating expenses were reduced by \$378,334 to reflect the removal of corporate consulting costs with Mr. Dittmore opining that such costs should be deferred until such time the Company could justify cost recovery. Mr. Dittmore also removed corporate-owned aircraft charges of \$231,115 from expenses. In the alternative, Mr. Dittmore included commercial travel costs and utility patrol costs. Upon review of the job description provided by the Company of the Government Affairs Director, Mr. Dittmore removed labor and related lobbying expense of \$134,795. Mr. Dittmore removed additional labor costs of \$14,511 from operating expenses associated with lobbying supervisors. These costs are related to supervisory oversight of the Government Affairs Director. Finally, \$335,303 was removed from operating expenses for environmental costs, limited to the rate reset period. According to Mr. Dittmore, the Company did not provide evidence that it has pursued recovery of these costs from insurance companies.³⁶

³³ *Id.* at 6.

³⁴ *Id.* at 7-8.

³⁵ *Id.* at 8-10.

³⁶ *Id.* at 17.

With respect to rate design, Mr. Dittmore's approach was similar to that of the Company. The Consumer Advocate proposed the \$28.1 million base rate reset revenue increase be recovered on a pro-rata basis among all customer classes, including the resale service class, based on end-of-period margin revenues.³⁷

Mr. Dittmore also recommended the following four issues be addressed in the Company's next ARRM filing and summarized them as follows:

1. The Company should provide additional information on measures it has taken to control costs if it seeks an increase greater than 10%.
2. The Company should establish the anticipated customer growth associated with its capital expenditures identified as "Growth".
3. The Company should assign a reasonable pro-rata level of marketing-related labor associated with the development and/or oversight of advertising that is not otherwise recoverable.
4. The Company should address the implications of state tax rate changes on the balance of ADIT assigned to Tennessee within the present ARRM filing and future ARRM filings.³⁸

The Consumer Advocate did not address the Company's proposal to update the WNA factors and implement new depreciation rates for Piedmont's three-state joint property.

PIEDMONT REBUTTAL TESTIMONY

The Company submitted the pre-filed rebuttal testimony of Ms. Kally Couzens to address the Consumer Advocate's concerns regarding removal of consulting costs, aircraft expense, labor and lobbying related expenses and environmental costs. Ms. Couzens asserted the inclusion of \$378,334 for consulting costs is consistent with the treatment afforded in the Company's last general rate case and these costs are specifically related to the team effort between Duke Energy and McKinsey & Company to reduce costs.³⁹

³⁷ *Id.* at Schedule 19 of file DND Schedules.

³⁸ *Id.* at 18.

³⁹ Kally Couzens, Pre-Filed Rebuttal Testimony pp. 2-3 (August 18, 2023).

Ms. Couzens claimed the inclusion of \$231,115 for corporate aircraft ownership and use is consistent with the treatment allowed in the Company's last general rate case. She asserted that neither the Consumer Advocate nor the Commission questioned this expense in that case.⁴⁰ Ms. Couzens argued the Consumer Advocate's removal of \$134,795 and \$14,511 from expenses for labor and supervision related to lobbying expenses should not be adopted because the Company has already excluded 100% of this lobbying expense in its 2023 ARRM.⁴¹

Ms. Couzens opposed the Consumer Advocate's recommendation to remove \$335,303 related to environmental costs from O&M in the ABRR, claiming such costs are associated with legacy manufactured gas plant ("MGP") sites which are similar to many of the deferred environmental costs approved for recovery in the Company's last rate case. Further, the Company investigated potential insurance coverage for MGP many years ago and did not obtain a specific opinion related to insurance coverage for potential liability.⁴²

Mr. Keith Goley also submitted pre-filed rebuttal testimony on behalf of the Company. Mr. Goley claimed that Mr. Dittmore's argument for removal of \$3,339,960 from the cash working capital component of rate base because these are non-cash items is inconsistent with their treatment in the Company's last rate case. According to Mr. Goley, the Consumer Advocate's proposed expense lag in that case included both items with 0.00 lag days, the same as the Company applied in this case.⁴³ Mr. Goley also asserted that the items removed by Mr. Dittmore do involve cash outlays. Depreciation expense represents the recovery of cash previously spent for utility assets. All the revenues and expenses that equal the cost of service relate to cash receipts and/or disbursements and should be included in the cash working capital calculation. Mr. Goley

⁴⁰ *Id.* at 3-4.

⁴¹ *Id.* at 4-5.

⁴² *Id.* at 6.

⁴³ Keith Goley, Pre-Filed Rebuttal Testimony, pp. 2-3 (August 18, 2023).

referenced the Atmos 2022 ARRM filing wherein the Commission declined to exclude these items, as recommended by the Consumer Advocate, and should make the same finding in this case.⁴⁴

The Company noted that the Consumer Advocate's recommendation to remove \$1,505,250 from rate base was amended in its response to a data request on August 14, 2023, to \$1,072,070.⁴⁵ Mr. Goley partially agrees with this recommendation, as the Company failed to remove the ADIT costs for retirement plan underfunding of \$40,292.⁴⁶ Mr. Goley testified that adding this adjustment to Piedmont's ARRM filing Schedule 18 results in an updated amount of pension and OPEB in ADIT removed for the HBP reconciliation of \$3,332,186, and the updated amount of pension and OPEB in ADIT removed for the ABRR computation of \$4,578,113. Mr. Goley asserted the other proposed adjustment to remove \$928,370 related to OPEB Expense should be rejected. Further, Mr. Goley disputed Mr. Dittmore's proposal to remove \$183,991 related to FAS Medical Expense because this amount is for long-term disability costs for active employees.⁴⁷

The Company noted that the Consumer Advocate's adjustment to reduce rate base by \$2,126,188 for capitalized pension costs was withdrawn by Mr. Dittmore during discovery.⁴⁸ Mr. Goley agreed with Mr. Dittmore's recommendation to have vehicles that are recorded on Piedmont's books in UPIS to a three-state business unit be transferred to the business unit in which the asset is physically located. Therefore, Mr. Goley did not object to removing \$43,903 from depreciation expense.⁴⁹

⁴⁴ *Id.* at 3-4.

⁴⁵ *Id.* at 4.

⁴⁶ *Id.* at 5-6.

⁴⁷ *Id.* at 6.

⁴⁸ *Id.* at 6-7.

⁴⁹ *Id.* at 9.

THE SETTLEMENT AGREEMENT AND SUPPORTING TESTIMONY

On August 21, 2023, the parties filed the *Settlement Agreement* with the supporting testimony of Kally Couzens outlining the agreed upon adjustments to the Company's ARRM filing. The Company and the Consumer Advocate agreed to a total increase of \$40,208,694 which consists of (1) reconciliation revenues – the Company under-collected \$10,996,205 in Commission authorized revenues, including carrying charges, for the past year and (2) a \$29,212,489 revenue shortfall related to the Company's current year financial results. Piedmont originally requested a total recovery of \$41,560,727, representing an overall increase of 25.2% in rates and charges, while this settlement represents a 24.4% overall increase.⁵⁰

The parties agreed to rate base adjustments related to Mr. Dittmore's recommendations, including the exclusion of the impacts of the non-cash items, return on equity, and depreciation expenses, from the calculation of cash working capital. This adjustment results in total HBP and ABRR reductions of \$583,627. This methodology applies to this filing and to future Piedmont ARRM filings.⁵¹ The *Settlement Agreement* modified the Company's ADIT for capitalized pension/OPEB, incentive compensation, and deferred environmental costs, which results in an overall increase in the HBP and ABRR revenue deficits of \$8,175.⁵²

With respect to O&M Expense Adjustments related to Mr. Dittmore's recommendations, the parties agreed to several adjustments. The depreciation expense was reduced by \$91,106 for non-jurisdictional work vehicles, but the Parties reserved this issue in future ARRM filings.⁵³ There was no removal allocated for consulting expenses of \$378,334. The non-utility patrol

⁵⁰ *Settlement Agreement*, p. 4 (August 21, 2023).

⁵¹ Kally Couzens, Pre-Filed Settlement Testimony, p. 5 (August 21, 2023); *Settlement Agreement*, p. 6 (August 21, 2023).

⁵² *Id.*

⁵³ *Settlement Agreement*, p. 5 (August 21, 2023).

aviation costs in the HBP and ABRR was reduced by \$479,604 to reflect exclusion of corporate-owned aircraft ownership, and operating costs were adjusted with offsets to (a) utility patrol costs and (b) imputed commercial airline costs for flights taken by Piedmont employees.⁵⁴ Indirect lobbying expenses were adjusted and reduced by a five percent (5%) exclusion of associated supervisory labor expenses for a total reduction of \$15,918 in O&M costs from the HBP and the ABRR. This agreement and adjustment also apply to future Piedmont ARRM filings.⁵⁵ Seventy-five percent (75%) of direct lobbying-related labor expenses, taxes, and related benefits, along with leased downtown office space costs were excluded, resulting in a \$189,952 reduction in O&M costs from the HBP and ABRR. This agreement and adjustment apply to future Piedmont ARRM filings.⁵⁶ There was no removal of the Company's proposed deferred environmental cost amortization.⁵⁷

The Agreement also includes the following agreed-upon actions, originally proposed by the Consumer Advocate, related to future ARRM filings. First, should the Company seek an overall revenue increase of 10% or more, it will demonstrate it has taken specific steps to control costs. Second, as a part of its 2024 ARRM filing, the Company should quantify the annualized level and timing of revenue generated from capital expenditures related to customer growth incurred in this 2023 docket. Third, the Company and the Consumer Advocate are to meet within three (3) months after Commission approval of this *Settlement Agreement* to discuss the issue of assigning a reasonable amount of pro-rata marketing labor costs associated with non-recoverable advertising in the Company's future ARRM filings.⁵⁸ Finally, the Company will address the

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 6.

⁵⁸ *Id.*

ramifications of state tax rate changes on the balance of ADIT assigned to Tennessee in its next ARRM filing.⁵⁹

According to Ms. Couzens, the Company's originally requested revenue deficit would have resulted in an increase of approximately \$137 annually to the average residential customer. If approved, the *Settlement Agreement* would result in an annual bill increase to the average residential customer of \$132.⁶⁰ Ms. Couzens testified that the main driver of this increase is the significant rate base growth beyond that upon which its present rates are based. Ms. Couzens testified that the Company needed to make substantial capital investments to accommodate customer growth and maintain and improve system reliability, along with maintaining compliance with federal pipeline safety and integrity requirements.⁶¹

To soften the impact of such a large rate increase, Ms. Couzens testified there is a fuel-related reduction to the Company's rates, per the PGA, which is scheduled to take effect on October 1, 2023, concurrently with any customer bill impact from the 2023 ARRM *Petition*. While the PGA adjustment is not an issue in this specific docket, the revised PGA rates should offset the ARRM increase by lowering the average residential customer's bill by \$35 annually.⁶² Thus, the increased rates resulting from the ARRM filing taken together with the lower PGA rates should result in an annual increase to residential customers of \$97 over the next year. In closing, Ms. Couzens asserted that the Piedmont ARRM remains in the public interest by reflecting rates that are in line with the actual costs incurred by the Company.⁶³

⁵⁹ *Id.* at 7.

⁶⁰ Kally Couzens, Pre-Filed Settlement Testimony, p. 6 (August 21, 2023).

⁶¹ *Id.* at 7.

⁶² *Id.*

⁶³ *Id.* at 8.

THE HEARING

The hearing on the *Settlement Agreement* was noticed by the Commission on September 1, 2023 and held during the regularly scheduled Commission Conference on September 11, 2023.

Appearances were made by the following:

Piedmont Natural Gas Company, Inc. – James Jeffries IV, Esq. and Brian Franklin, Esq., McGuire Woods, LLP, 201 N. Tyron Street, Suite 3000, Charlotte, NC 28202; Paul S. Davidson, Esq., Holland & Knight, 511 Union Street, Suite 2700, Nashville, Tennessee 37219-2498.

Consumer Advocate Division – Victoria Glover, Esq., Financial Division of the Office of the Tennessee Attorney General and Reporter, Post Office Box 20207, Nashville, Tennessee, 37219.

The *Settlement Agreement* was presented to the hearing panel and summarized by Ms. Kally Couzens. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

FINDINGS AND CONCLUSIONS

Upon review of the evidentiary record, the panel voted unanimously to approve the *Settlement Agreement* as filed by the Parties, Piedmont Natural Gas Company and the Consumer Advocate, on August 21, 2023. As provided in Exhibit A of the *Settlement Agreement*, the panel approved the Parties' agreed-upon \$40,208,694 overall net revenue deficiency, which consists of (1) reconciliation revenues of an under-collected amount of \$10,996,205 in Commission authorized revenues, including carrying charges, for the past year and (2) a revenue shortfall of \$29,212,489 related to the Company's current year financial results. To update the record, the panel directed the Company to submit a revised set of exhibits and schedules to the Commission that reflects the *Settlement Agreement's* revised amounts and terms. Further, the panel voted unanimously to approve the additional provisions as set forth in the Settlement Agreement, which are as follows:

1. Should the Company seek an overall revenue increase of 10% or more in its next filing, it will demonstrate specific steps it has taken to control costs.
2. As a part of its 2024 Annual Rate Review Mechanism filing, the Company should quantify the annualized level and timing of revenue generated from capital expenditures related to “growth” incurred in this 2023 Docket.
3. The Parties are to meet within three months after Commission approval of this Settlement Agreement to discuss the issue of assigning a reasonable amount of pro-rata marketing labor costs associated with non-recoverable advertising in the Company’s future Annual Rate Review Mechanism filings.
4. In its next Annual Rate Review Mechanism filing, the Company will address the implications of state tax rate changes on the Accumulated Deferred Income Tax balance assigned to Tennessee. The Parties specifically agree that Tennessee customers shall be held harmless from any related accounting entries made in 2022 and 2023 to date.

Also, consistent with the *Settlement Agreement*, the panel approved the Company’s proposed rate design, whereby the \$10,996,205 reconciliation deficiency will be recovered through volumetric rider rates and this year’s \$29,212,489 revenue shortfall will be recovered through volumetric base rates. As discussed in the Company’s *Petition*, the apportionment of the revenue for recovery by customer class will be based on each class’s relative amount of margin revenue.

Finally, the panel found that the mechanism continues to be in the public interest by allowing Piedmont to timely recover its capital investment and operating expenses, while also providing the Company with necessary resources to continue providing safe and reliable service to its customers.

IT IS THEREFORE ORDERED THAT:

1. The *Settlement Agreement* filed by Piedmont Natural Gas Company, Inc. and the Consumer Advocate Division of the Tennessee Office of the Attorney General filed on August 21, 2023, is approved and attached as Exhibit 1.

2. 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.

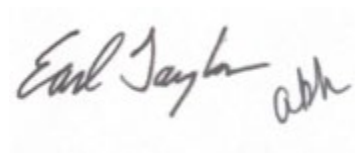
3. Any party aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Vice Chairman David F. Jones,
Commissioner Clay R. Good,
Commissioner Robin L. Morrison,
Commissioner Kenneth C. Hill, and
Commissioner John Hie concurring.**

None dissenting.

ATTEST:

A handwritten signature in dark ink, appearing to read "Earl Taylor" followed by a smaller, less legible signature or initials.

Earl R. Taylor, Executive Director

EXHIBIT 1

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

IN RE:)	
)	
PIEDMONT NATURAL GAS)	Docket No. 23-00035
COMPANY, INC. PETITION FOR)	
APPROVAL OF ITS 2023 ANNUAL)	
REVIEW OF RATES MECHANISM)	
PURSUANT TO TENN. CODE ANN.)	
§ 65-5-103(d)(6))	

SETTLEMENT AGREEMENT

Piedmont Natural Gas Company, Inc. (“Piedmont” or the “Company”) and the Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”), (hereinafter, individually “Party” and collectively “Parties”) and in full and complete settlement of the matters at issue in this proceeding, do hereby jointly submit to the Tennessee Public Utility Commission (“Commission” or “TPUC”) for its approval this Stipulation and Settlement Agreement (“Settlement Agreement”), along with its supporting exhibits, reflecting the following stipulations and agreement of the Parties:

I. BACKGROUND

1. Piedmont is a public utility incorporated under the laws of the State of North Carolina and is engaged in the business of transporting, distributing, and selling natural gas in Tennessee. Piedmont is a wholly owned subsidiary of Duke Energy (“Duke”), an electric and natural gas holding company headquartered in Charlotte, North Carolina. Piedmont’s principal office and place of business in Tennessee is located at 83 Century Boulevard, Nashville,

Tennessee, 37214.

2. Piedmont is a public utility pursuant to the laws of the State of Tennessee, and its public utility operations, including its rates, terms, and conditions of service, are subject to the jurisdiction of this Commission.

3. The Consumer Advocate is authorized by Tenn. Code Ann. § 65-4-118 to represent the interests of consumers of Tennessee public utility services by intervening and participating as a party in proceedings before the Commission in accordance with the Uniform Administrative Procedures Act and Commission rules.

4. In TPUC Docket No. 21-00135, the Company requested approval to opt into an alternative regulatory method as authorized by Tennessee Code Annotated Section 65-5-103(d)(1)(a). Specifically, Piedmont sought an annual review of rates process as authorized by Tennessee Code Annotated Section 65-5-103(d)(6), with Piedmont's specific annual rate review mechanism referred to therein as an "Annual Review of Rates Mechanism", "ARRM", or "ARM." The parties to that docket ultimately had a hearing on an Amendment to the Proposed ARM Tariff.¹ After conducting an evidentiary proceeding, the Commission approved the Amendment by its Order Approving Amended Annual Review of Rates Mechanism dated November 1, 2022 ("2022 ARM Order"). Among other things, the approved Piedmont ARM sets forth an annual process with compliance filings on or before May 20 of each year reflecting the Company's prior calendar year or Historic Base Period ("HBP") operating results and resultant proposed rate adjustments effective October 1.

5. On May 19, 2023, Piedmont filed a petition initiating this Docket ("Petition") for its first annual rate review ("2023 Annual ARM Filing") herein to consider Piedmont's 2022 HBP

¹ Order Approving Amended Annual Review of Rates Mechanism, at 7, TPUC Docket No. 21-00135 (November 1, 2022).

revenues and expenses pursuant to the 2022 ARM Order and approved ARM Tariff. In support of its Petition, Piedmont filed the schedules required by the 2022 ARM Order and approved ARM Tariff along with the direct testimony and supporting exhibits of its witnesses Pia Powers, Kally Couzens, and Keith Goley.

6. The Petition requested an increase to rates in accordance with calculated revenue deficiency for the Company's cost of service, including carrying costs, of \$11,699,131 for the HBP.² The Petition also requested a rate adjustment for the Annual Base Rate Reset Revenue Requirement Deficiency for the same period of \$29,861,596.³ Taken together, these deficiencies total \$41,560,727.

7. On June 6, 2023, the Consumer Advocate filed its Petition to Intervene, which was granted by the TPUC in an order dated June 22, 2023. The Consumer Advocate is the only intervenor of record in the Docket.

8. On August 2, 2023, the Consumer Advocate submitted direct expert testimony and supporting exhibits/workpapers from its expert witness, Mr. David N. Dittmore, which focused on the review and recommended adjustments presented by the Company in its 2023 Annual ARM Filing.

9. Piedmont has responded to both formal and informal discovery requests from the Consumer Advocate, with the Parties' witnesses and other representatives meeting multiple times by video conference and phone call to discuss the issues and documentation presented in the Docket. As the present Docket is the Company's first annual rate review filing, additional discovery requests and discussions were necessary to facilitate the Consumer Advocate's

² See Column [A] Line 8 of 2023 ARM Filing Schedule No. 12, Carrying Cost and ARM Reconciliation Deferred Account. (May 19, 2023).

³ See Column [B] Line 8 of 2023 ARM Filing Schedule No. 1, Results of Operations. (May 19, 2023).

investigation into the underlying supporting documentation that backs up Piedmont's request. Thus, Piedmont agreed to several sets of additional, informal discovery over and above that authorized by the Commission's scheduling order.

10. The Parties have engaged in extensive settlement discussions in this matter and have resolved all issues raised by the Parties in this Docket.

11. This Settlement Agreement, detailed below, calls for recovery of the HBP Reconciliation cost of service of \$10,996,205 (inclusive of carrying costs) and an increase in the Company's base rates of \$29,212,489 for the Annual Base Rate Reset component of the ARM. Taken together these amounts result in a total increase of \$40,208,694. This represents an overall increase of 24.4% in the Company's rates and charges. This is less than the overall increase of 25.2% in the Company's rates and charges resulting from the total \$41,560,726 increase from the Company's May 19, 2023 filing.

12. For the purpose of avoiding further litigation and resolving this proceeding upon acceptable terms, the Parties have agreed to the settlement terms set forth below, subject to TPUC approval, which the Parties jointly request.

II. SETTLEMENT SPECIFIC TERMS

13. The Parties agree to a Settlement Revenue Requirements Adjustments included as Exhibit A to this Agreement that has been approved by the Parties. These adjustments have been agreed to solely for purposes of resolving this matter without litigation, and inclusion of this provision does not reflect the adoption of any methodology regarding the recoverability of such costs by the Parties in future ARM filings, except as otherwise specified. Notwithstanding the inclusion of this provision in this Settlement Agreement, the Parties reserve their respective rights regarding this issue in future ARM proceedings.

14. The Parties agree to total HBP Reconciliation and Annual Rate Reset Operating Expense Adjustment reducing depreciation expenses for certain vehicles to be jurisdictionally appropriate by \$91,106. This reduction has been agreed to solely for purposes of resolving this matter without litigation, and inclusion of this provision does not reflect the adoption of any methodology regarding the recoverability of such depreciation expense by the Parties in future ARM filings. Notwithstanding the inclusion of this provision in this Settlement Agreement, the Parties reserve their respective rights regarding this issue in future ARM proceedings.

15. The Parties agree to total HBP Reconciliation and Annual Rate Reset Operating Expense Adjustment reducing the non-utility patrol aviation costs by \$479,604. This adjustment excludes corporate-owned aircraft charges, offsetting such amounts by utility patrol costs, and imputes commercial airline costs applied to flights taken in the HBP by Piedmont employees.

16. The Parties agree to an adjustment regarding the reclassification of labor and related expenses to direct lobbying expenses. The Parties have agreed to a seventy-five percent (75%) exclusion of labor expenses. This percentage is inclusive of corrected calculations provided by the Company during informal discussion and discovery. The Parties also agree to a seventy-five percent (75%) exclusion of the Company's leased downtown office costs and employment taxes and benefits. This percentage is inclusive of TPUC adopted recovery of incentive compensation costs. Specifically, the Parties agree that this percentage applies to the revenue requirement computation in this Docket and to future Piedmont ARM proceedings.

17. The Parties agree to an adjustment regarding the reclassification of labor and related expenses to indirect lobbying expenses. The Parties have agreed to a five percent (5%) exclusion of supervisory labor expenses allocated to Piedmont-TN and employment taxes and benefits. This percentage is inclusive of TPUC recovery of incentive compensation costs. Specifically, the

Parties agree that this percentage applies to the revenue requirement computation in this Docket and to future Piedmont ARM proceedings.

18. The Parties agree to total HBP Reconciliation and Annual Rate Reset Operating Expense Adjustment modifying the ADIT for capitalized pension/OPEB, incentive compensation, and deferred environmental costs by \$8,175. The Company provided attestation regarding its efforts to seek insurance coverage regarding this issue as requested by the Consumer Advocate.⁴

19. The Parties agree to a total HBP Reconciliation and Annual Rate Reset Rate Base Adjustment regarding Cash Working Capital. This adjustment excludes the impacts of Return on Equity and Depreciation Expenses from the Cash Working Capital calculation and reduces the total HBP and Annual Rate Reset amount by \$583,627. Additionally, the Parties agree that the proposed methodology stated in the direct testimony of David N. Dittmore shall be implemented in this Docket and in future Piedmont ARM proceedings.⁵

20. The Parties agree that the Company shall demonstrate specific steps it has taken to control costs in its next ARM filing should the Company seek an overall revenue increase of 10% or more in its next ARM filing.

21. The Parties agree the Company should quantify the annualized level and timing of revenue generated associated with capital expenditures related to “growth” incurred in this 2023 Docket in its next ARM filing.

22. The Parties agree to meet with regard to the issue of assigning a reasonable pro-rata level of marketing related labor associated with non-recoverable advertising in its ARM filing. This meeting shall occur within three (3) calendar months after the approval of this Settlement

⁴ See Rebuttal Testimony of Kally Couzens, at 6, lines 15-21, TPUC Docket No. 23-00035 (August 18, 2023).

⁵ Direct Testimony of David N. Dittmore, at 6, lines 12-22, TPUC Docket No. 23-00035 (August 2, 2023).

Agreement by the Commission.

23. The Parties agree that the Company should address implications of state tax rate changes on the balance of ADIT assigned to Tennessee operations in its next ARM filing. The Parties specifically agree that Tennessee customers shall be held harmless from any such accounting entries made in 2022 and 2023 to date, associated with this issue.

III. SETTLEMENT GENERAL TERMS

24. The Settlement Agreement does not address any other issues or adjustments raised by the Consumer Advocate's testimony except those expressly agreed upon within this Settlement Agreement. Any issues or adjustments not expressly addressed in this Settlement Agreement are reserved by both Parties to be raised in future ARM proceedings.

25. All schedules, pre-filed testimony and exhibits, discovery responses, and other documents filed with the Commission in this Docket are requested to be admitted into evidence without objection, and the Parties waive their right to cross-examine all witnesses with respect to all such pre-filed testimony, exhibits, and schedules. If the Commission requires the presence of witnesses for the final hearing and if the Commissioners desire to question any witness regarding their testimony or this settlement, any Party may present testimony and exhibits to respond to such questions and may cross-examine any witnesses with respect to such testimony and exhibits. The Parties hereby request approval from TPUC for any out-of-town witnesses participate by telephone or video conference to reduce the costs associated with appearing physically for the hearing.

26. The Parties agree to support this Settlement Agreement before the Commission and in any testimony, hearing, proposed order, or brief conducted or filed in this proceeding. The provisions of this Settlement Agreement reflect compromises and acceptance of actions, positions, or policies done solely for the purposes of settlement of this matter. The provisions in

this Settlement Agreement do not necessarily reflect the positions asserted by any Party. None of the Parties to this Settlement Agreement shall be deemed to have acquiesced in or agreed to any ratemaking or accounting methodology or procedural principle, including without limitation, any cost-of-service determination or cost-allocation or revenue-related methodology, except to the limited extent necessary to implement the provisions hereof.

27. This Settlement Agreement shall not have any precedential effect in any future proceeding or be binding on any of the Parties in this or any other jurisdiction except to the limited extent necessary to implement the provisions hereof, such as any new or updated schedules to be filed in future ARM docket proceedings. The Parties are free to take different positions in future proceedings as each Party deems appropriate for that proceeding, including the ability to advocate for new or revised schedules for future ARM dockets.

28. The Settlement Agreement does not address any other issues or adjustments raised by the Consumer Advocate's testimony except those expressly agreed upon within this Settlement Agreement. Any issues or adjustments not expressly addressed in this Settlement Agreement are reserved by both Parties to be raised in future ARM proceedings.

29. The terms of this Settlement Agreement have resulted from extensive negotiations between the signatories, and the terms hereof are interdependent. The Parties jointly recommend that the Commission issue an order adopting this Settlement Agreement in its entirety without modification.

30. If the Commission does not accept the settlement in whole, the Parties are not bound by any position or term set forth in this Settlement Agreement. In the event that the Commission does not approve this Settlement Agreement in its entirety, each of the signatories to this Settlement Agreement will retain the right to terminate this Settlement Agreement by

giving notice of the exercise of such right within ten (10) business days of the date of such non-approval; provided, however, that the signatories to this Settlement Agreement could, by unanimous consent, elect to modify this Settlement Agreement to address any modification required by, or issues raised by, the Commission within the same time frame. Should this Settlement Agreement terminate, it would be considered void and have no binding precedential effect, and the signatories to this Settlement Agreement would reserve their rights to resume and advocate for their prior positions and to fully participate in all relevant proceedings notwithstanding their agreement to the terms of this Settlement Agreement.

31. By agreeing to this Settlement Agreement, no Party waives any right to continue litigating this matter should this Settlement Agreement be rejected by the Commission in whole or in part.

32. No provision of this Settlement Agreement shall be deemed an admission of any Party, and no provision of this Settlement Agreement shall be deemed a waiver of any position asserted by a Party in this Docket, except to the limited extent necessary to implement the provisions thereof.

33. The Parties agree that this Settlement Agreement constitutes the complete understanding among the Parties concerning the resolution of issues and matters under this TPUC Docket No. 23-00035, and any oral statements, representations or agreements concerning such issues and matters made prior to the execution of this Settlement Agreement have been merged into this Settlement Agreement.

34. All exhibits and schedules attached to or referenced in this Settlement Agreement are hereby incorporated by reference into this Settlement Agreement.

35. The Consumer Advocate's agreement to this Settlement Agreement is expressly

premised upon the truthfulness, accuracy, and completeness of the information provided by Piedmont to the Consumer Advocate throughout the course of this Docket, which information was relied upon by the Consumer Advocate in negotiating and agreeing to the terms and conditions of this Settlement Agreement.

36. The acceptance of this Settlement Agreement by the Attorney General shall not be deemed as an approval by the Attorney General of any of Piedmont's acts or practices.

37. Each signatory to this Settlement Agreement represents and warrants that it/he/she has informed, advised, and otherwise consulted with the Party for whom it/he/she signs regarding the contents and significance of this Settlement Agreement and has obtained authority to sign on behalf of such Party, and based upon those communications, each signatory represents and warrants that it/he/she is authorized to execute this Settlement Agreement on behalf of its/his/her respecting Party.

38. This Settlement Agreement shall be governed by and construed under the laws of the State of Tennessee, Tennessee choice of law rules notwithstanding.

39. Nothing herein limits or alters the sovereign immunity of the State of Tennessee or any of its entities or subdivisions.

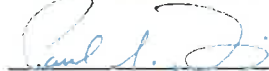
40. The Parties agree that approval of the Settlement Agreement will become effective upon the oral decision of the Commission at a noticed, public Commission conference meeting.

[signatures on the next pages]

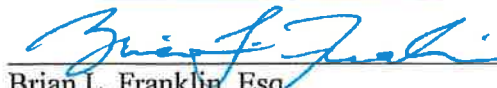
The foregoing is agreed and stipulated to this 21st day of August, 2023.

PIEDMONT NATURAL GAS COMPANY, INC.

HAVE SEEN AND AGREED



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CONSUMER ADVOCATE DIVISION

HAVE SEEN AND AGREED

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Exhibit A

Piedmont Natural Gas Company, Inc.
Docket No. 23-00035
2023 Annual ARM Filing

2023 Annual ARM Filing

SETTLEMENT ADJUSTMENTS					
Line No.	CA Direct Testimony Adjustment Reference	[A]		[B]	[C]
		HBP Reconciliation	Annual Base Rate Reset	Annual Base Rate Reset	Total HBP and Annual Base Rate Reset
1	TOTAL REV REQ DEFICIENCY IN 2023 ANNUAL ARM FILING (including HBP Reconciliation carrying costs)	11,699,131	29,861,596	41,560,726	
2	Address certain vehicle depreciation expense for appropriate jurisdiction	(47,304)	(43,802)	(91,106)	
3	Address McKinsey consulting expenses	-	-	-	
4	Address non-utility patrol aviation expenses	(249,021)	(230,583)	(479,604)	
5	Address direct lobbying expenses	(98,627)	(91,325)	(189,952)	
6	Address indirect lobbying expenses for supervisory labor	(8,265)	(7,653)	(15,918)	
7	Address incremental deferred environmental amortization expense	-	-	-	
8	Address ADIT for pension/OPEB, incentive compensation & deferred environmental costs	2,807	5,368	8,175	
9	Address UPIS for pension/OPEB costs	-	-	-	
10	Address CWC Methodology	(302,515)	(281,112)	(583,627)	
11	ADJUSTED TOTAL REV REQ DEFICIENCY (including HBP Reconciliation carrying costs)	10,996,205	29,212,489	40,208,694	
12	Difference from Piedmont's 2023 Annual ARM Filing dated May 19, 2023	(702,925)	(649,107)	(1,352,032)	