IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSE

IN RE:	)	
	)	
APPLICATION OF PIEDMONT	)	
NATURAL GAS COMPANY, INC. AND	)	
SPIRE TENNESSE INC. FOR	)	
APPROVAL OF A TRANSFER OF	)	**DOCKET NO. 25-00074**
AUTHORITY TO PROVIDE UTILITY	)	
SERVICES PURSUANT TO T.C.A. 65-4-	)	
113 AND RELATED AUTHORIZATIONS	)	

PRELIMINARY MOTION TO ADDRESS THE TRANSFERABILITY OF PIEDMONT NATURAL GAS COMPANY'S ALTERNATIVE REVIEW MECHANISM UNDER TENN. CODE ANN. §65-5-103(d)(6)

The Consumer Advocate requests preliminary determination of the issue of the transferability of the alternative ratemaking mechanism ("ARM") from Piedmont Natural Gas Company ("Piedmont") to Spire Tennessee ("Spire") (collectively "Joint Applicants" or "Applicants"). The Consumer Advocate submits that this Commission should, as a threshold matter, find that the transfer of Piedmont's alternative ratemaking mechanism is improper under Tenn. Code Ann. §65-5-103(d)(6) and direct the Joint Applicants to file supplemental information to support the transaction's financing absent the transfer of Piedmont's ARM to Spire. The Consumer Advocate will show herein how the Application fails to meet the necessary standard to make the determination that the transfer of Piedmont's ARM is both appropriate by the plain language of the statute and in the public interest.

I. Joint Applicants misinterpret the plain language of Tenn. Code Ann. §65-4-113

The Joint Applicants seek approval to the transfer of authority to provide service and "additional related authorizations" under the umbrella notion that Spire is purporting to "step into

the shoes" of Piedmont.[1] Applicants go on to state that this "stepping into the shoes" characterization is appropriate because Tenn. Code Ann. §65-4-113 "necessarily includes" the existing approvals because those approvals define how Spire must provide service.[2] However, this premise fails for two reasons. The first is that the statutory language does not state that existing approvals are necessarily included at all. The second is that those approvals were appropriate to Piedmont's corporate and capital structure and operations—not Spire's.

The Applicants have asserted that the plain language of Tenn. Code Ann. §65-4-113 "necessarily includes" all Piedmont's existing approvals. But the language of Tenn. Code Ann. §65-4-113, in fact, contemplates the opposite. Section (a) of the statute expressly provides language for the transfer of any "part" of a public utility's authority.[3] This carve-out for public utilities to be able to piecemeal transfer their authority to serve actually demonstrates that not every current Commission approval from the transferor utility would be automatically necessary for the transferee utility to serve.

Applicants have also alleged that all Piedmont's existing approvals are necessary to avoid "potentially chaotic and uncertain" disruption of service absent this blanket approval.[4] But, Piedmont's current landscape of approvals were based on years of regulation by this Commission. They have been crafted and honed to serve the public interest after years of regulatory scrutiny by Piedmont itself, intervenors, the Commission, and Staff of *Piedmont's* operations. Spire, while no

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[1] *Application Of Piedmont Natural Gas Company, Inc. And Spire Tennessee Inc. For Approval of a Transfer of Authority to Provide Utility Services Pursuant to T.C.A. § 65-4-113 and Related Authorizations*, at 9 ¶13, TPUC Docket No. 25-00074 (September 8, 2025); *Direct Testimony of David Yonce* at 16:23-17:4, TPUC Doket No. 25-00074 (September 8, 2025); *Direct Testimony of Joe Hampton* at 6:3-9, TPUC Doket No. 25-00074 (September 8, 2025); *Direct Testimony of Mike Switzer* at 2:23-3:1, TPUC Doket No. 25-00074 (September 8, 2025).

[2] *Direct Testimony of David Yonce* at 16:23-17:4, TPUC Doket No. 25-00074 (September 8, 2025).

[3] Tenn. Code Ann. § 65-4-113(a) "No public utility, as defined in § 65-4-101, shall transfer all or *any part* of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the commission[.]" (emphasis added).

[4] *Direct Testimony of David Yonce* at 17:10-13.

doubt a reliable provider in other jurisdictions, has never undergone any regulatory process in Tennessee to arrive at a similar position, especially with respect to authorizations sanctioned under different statutory sections than the cited Tenn. Code Ann. § 65-4-113. Without taking on the whole scope of the duties and obligations that Piedmont underwent to properly implement certain regulatory mechanisms in Tennessee, Spire cannot step into Piedmont's shoes. It would be detrimental to Tennessee consumers to allow this blanket swap of natural gas providers without first making a determination within this jurisdiction that Spire possesses the requisite capabilities to properly operate and serve the public of this State, let alone to have one of the most lenient forms of ratemaking available conferred upon it as a mere "related authorization."

Although never explicitly discussed, this Application seeks approval of the transfer of Piedmont's alternative ratemaking mechanism or "ARM" pursuant to Tenn. Code Ann. §65-5-103(d)(6), a vehicle of review unique to Piedmont, without Spire first meeting the statutory burden to do so or seeking affirmative waiver of the applicability of such requirements. To approve the transfer of this mechanism without fulfilling the statutory obligation under that section, rather than Tenn. Code Ann. §65-4-113, or without seeking waiver would allow Spire to gain a regulatory benefit without assuming any of the obligations to undergo similar regulatory scrutiny. Conferral of such a mechanism without first conducting this level of review would be erroneous and against the public interest.

In fact, neither company in the Application makes any effort to discuss the public interest served by the continuance of this ARM specifically or the unique need the companies are under that would be remedied by the continuance of this ARM specifically. Neither do the companies discuss a waiver of the statutory obligation to participate in a rate case before being eligible to

craft their own appropriate mechanism. Instead, both companies devote entire sections of testimony to how and why this transaction as presented will benefit the companies alone.

II. Applicants use inapplicable terminology from corporate law that does not apply in the context of a government sanctioned monopoly

Spire purports to "step into the shoes" of Piedmont by virtue of this sale and through this Application seeks an approval of the transfer of authority. While this phraseology suggests that Spire will be slipping into the natural fit of Piedmont's business, without proper scrutiny and review, it will wear it more as a costume than a true fit. Stepping into the shoes of another company is not a mere turn of phrase as the Application suggests. It is a doctrine borrowed from corporate law that is usually reserved for complete mergers. This phrase denotes taking on the whole of a business, including all assets and liabilities. Tennessee state law and federal precedent confirm the general rule: a corporation purchasing assets is not liable for the seller's debts and obligations. As the Sixth Circuit explained in *City Management Corp. v. U.S. Chemical Co.*, "a corporation that purchases the assets of another corporation does not, simply by virtue of the asset purchase transaction, become liable for the obligations of the seller."[5] Thus, when a non-utility business merges, it is up to the companies to contract around which assets and liabilities are carried over or assumed as a part of the carefully structured transaction.

Because the instant transaction must be approved by a regulatory body, the same contracting consideration does not hold. This is no mere merger or asset purchase as with any other business. Running a public utility comes with the obligation to serve. This obligation is not one that can be contracted around or merely walked away from. It requires governmental approval from this Commission to both undertake and divest. Thus, the sanctioned monopoly for the authority to provide service is itself both the asset and the obligation. In this Application the very

[5] *City Management Corp. v. U.S. Chemical Co., Inc.*, 43 F.3d 244 (1994).

business asset that Spire is seeking—the approval to transfer authority to provide service and its ensuing regulation by the Commission—is also the very obligation it seems that Spire is trying to avoid by remaining silent in its request for, continuance of, or waiver of requirements to obtain Piedmont's ARM.

Applicants' assertion that Piedmont's approval for an ARM as a "related authorization" necessary to define how Spire is to provide service fundamentally misconstrues the language of Tenn. Code Ann. §65-4-113. That chapter of the statute is concerned with the overall authority to provide services derived from the certificate of convenience and necessity, whereas Tenn. Code Ann. §65-5-103 is concerned with setting rates. This Application appropriately requests transfer of authority; but it goes too far in assuming that that request also confers a separate statutory entitlement to set rates in a special mechanism. Spire must separately demonstrate that it fulfils the necessary requirements to set rates in this manner. Yet, the Application fails to address or even acknowledge its regulatory obligation to fulfill this independent statutory requirement. Therefore, the Consumer Advocate requests this Commission to find that if Spire truly wants to "step into the shoes" of Piedmont, it must first wear the same size— it must follow the same regulatory process to attain an ARM.

III. Spire must submit to the same regulatory review processes to determine that it is both eligible and in the public interest for it to assume Piedmont's independent regulatory mechanisms

The determination of Spire's eligibility for an ARM can only occur through a comprehensive review in a general rate case absent affirmative waiver by the Commission. The requirement for a rate case is clear from the plain text of the statute, which is why the phrase "most recent general rate case" is included in each subsection discussion of eligibility and procedure to obtain any iteration of the currently available alternative regulatory mechanisms in Tenn. Code Ann. §65-5-103(d).

This contention that a general rate case is the rule governing the eligibility for an ARM is further supported by the fact that Piedmont's first attempt to obtain an alternative mechanism was denied because it did not comport with the findings from its most recent rate case. Thus, in putting together this Application, Piedmont should have advised Spire that such an alternative mechanism is not guaranteed. Additionally, Spire should have been familiar with Piedmont's road to an ARM through its own due diligence before offering to purchase Piedmont's Tennessee operations. It is confounding that Spire, presumably knowing the history of Piedmont's ARM through due diligence, has either intentionally or inadvertently omitted its own independent request to (1) continue Piedmont's current ARM through a valid waiver of the statutory requirement, (2) seek a separate ARM under the same statutory section because it independently fulfills the requirements, or (3) seek a different alternative mechanism under a different section of Tenn. Code Ann. §65-5-103(d) because neither Piedmont's ARM nor an ARM under Section (d)(6) is available to it. Instead, Spire remains silent on all these issues. This decision to omit or inadvertent omission of any discussion of the appropriateness of any of these options leaves the Consumer Advocate wondering why this Application was either filed without full consideration or was filed intentionally prematurely to obfuscate the details necessary for this Commission's approval.

If the companies were to allege an affirmative waiver of the need to go through with a general rate case, the Commission may have found it suitable to pick up this alternative review issue. However, because no such waiver is requested as a part of the Application, the Commission cannot infer or read the minds of the companies that that is what they meant to do. Thus, it would be imprudent for the Commission to grant a form of relief from general compliance with the statute that was not sought.

Absent a valid waiver, Tennessee consumers are entitled to a specific finding that a streamlined rate recovery approach is necessary to further the public interest by dispelling the threat of continual costly rate cases and reducing rate shock. An oft-cited reason for a request for an alternative mechanism in this jurisdiction is that such a process will alleviate the need companies feel to continually file large rate cases to combat regulatory lag and to reduce rate shock.[6] However, to say that a company is entitled to an ARM without a rate case conflates the aim of the two methods of setting rates.

An initial comprehensive rate case is the foundation that all other decisions, calculations, and mechanisms will be built on. It is meant to assess more complex, standalone issues like corporate structure, cost of capital, and rate of return, of which the aim is to determine from the outset the need and the prudency of the overall health of the utility's business to set appropriate rates. Contrastingly, an ARM is an elective regulatory mechanism that may flow from an initial rate case. It is a regulatory privilege after having gone through the heighted scrutiny of a rate case, not an entitlement. This privileged regulatory status of an ARM is demonstrable from the language of the statute that requires a general rate case simply to request such a mechanism, let alone be granted one. The aim of an ARM is to essentially true-up costs on a yearly quasi-automatic basis. It is only a reasonable form of recovery because everything else has first been decided through a rate case that "all else remains equal" except specific costs (e.g., O&M and CapEx).

Because the two methods necessarily have a chronological order—first rate case then ARM—it would be against the public interest to award Spire this regulatory privilege without first

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[6] *See Direct Testimony of Pia Powers* at 4:7-14, TPUC Docket No. 21-00135 (Nov. 5, 2021); Atmos Energy Corporation SEC Form 10K at 9, Atmos Energy 10-K 2023.pdf (Mar. 2024); *Order Approving Settlement Agreement for Petition of Chattanooga Gas Company to Opt Into an Annual Review of Rates Mechanism Pursuant to Tenn Code Ann. § 65-5-103(d)(6)* at 3, TPUC Docket No. 19-00047 (Oct. 7, 2019); *Direct Testimony of Dante DeStefano* at 10:17-11:2, TPUC Docket No. 23-00046 (Jun. 6, 2023); *Direct Testimony of john Powell* at 3:21-4:2, TPUC Docket No. 23-00069 (Sep. 11, 2023); and *Direct Testimony of Bob Lane* at 7:19-18:1, TPUC Docket No. 25-00089 (Nov. 18, 2025).

having earned it. Granting an ARM without a rate case would only consider the utility's shareholder interest and would completely ignore the interests of the customers that it serves.

From a practical standpoint, as explained from a technical perspective by the Consumer Advocate's witnesses in the direct pre-filed testimonies on December 1, 2025, an ARM is also reserved for those entities that have already undergone the above mentioned comprehensive review of a general rate case. To cram the voluminous and complex transition and transaction items from the potential approval of this Application into a truncated review mechanism would work real harm on the regulatory efforts of the Commission Staff, the Consumer Advocate, and likely the companies' staff—not to mention ultimately the consumers who will bear the burden of paying for the process. Therefore, the notion of continuing Piedmont's ARM is simply premature without a rate case and is not in the public interest.

IV. The Issues and Authorizations in This Application Is Unlike Duke Energy's Application to Acquire Piedmont Natural Gas

The Applicants have inquired as to the Consumer Advocate's participation and positions asserted in the TRA Docket No. 16-00006, Duke Energy's acquisition of Piedmont Natural Gas. The Consumer Advocate has answered Joint Applicants' Request to a limited extent in its Responses filed on December 18, 2025, in this Docket. However, for administrative ease of assessing the record, the Consumer Advocate will also include its reasoning in this Motion.

TRA Docket No. 16-00006 ("Duke's Acquisition"), Duke Energy's acquisition of Piedmont Natural Gas, at first glance is a similar application for approval of transfer of control pursuant to Tenn. Code Ann. §65-4-113. However, upon further examination, one will see that the citation of that statute is all these two dockets have in common. Duke's Acquisition in 2016 was a merger and common stock buyout, while this transaction is an asset purchase. This distinction is also important, as reasoned above, for the notion of "stepping into the shoes." However, the

distinction is also important because it highlights that the transaction types are just different. Duke's Acquisition saw Piedmont, already the holder of a validly granted CCN in this Tennessee jurisdiction, remain the surviving entity as the provider of services pursuant to the CCN. In essence, the CCN never moved from Piedmont. In this Docket, Piedmont as an entity and provider of services will cease to exist and the CCN must move to a new entity that has never held one in Tennessee before. As stated in the petition for Duke's Acquisition, the "sole difference in Piedmont's operations in Tennessee following the merger will be the identity of the owner of the common stock."[7] This assertion is fundamentally different than what is to follow the acquisition in this instant Application. After the close of this transaction, there are a significant amount of transitions that will take place by a number of agreements.[8] Unlike Duke's Acquisition, the sole difference in Piedmont's operation in Tennessee in this Docket is that it will not operate at all in Tennessee; it will cease to exist in Tennessee altogether. It is vital that the Consumer Advocate's decision not to issue discovery or intervene in a fundamentally different docket not be construed as condoning or confirming that the two dockets are at all related, have the same considerations, or should spell similar outcomes.

V. Conclusion

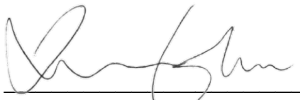
The Consumer Advocate by this motion requests the Commission, or hearing officer, to make a determination as to the transferability of the Piedmont ARM to Spire as a preliminary matter before the Target Hearing Date in February of 2026. Deciding the transferability as matter of law prior to the hearing is necessary for the parties to effectively settle other factual, technical issues and would streamline the Commission's contested hearing in February of 2026. Therefore,

[7] *Application* at 3, TRA Docket No. 16-00006 (January 15, 2016).

[8] *See generally* the "Transition Services Agreement" and the "Asset Purchase Agreement" filed as CONFIDENTIAL exhibits to this Application.

the Consumer Advocate requests the Commission find that the transfer of Piedmont's alternative ratemaking mechanism is improper under Tenn. Code Ann. §65-5-103(d)(6) and direct the Joint Applicants to file supplemental information to support the transaction's financing absent the transfer of Piedmont's ARM to Spire.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

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This the 23rd day of December, 2025.

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