

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 3, 1996

**IN RE: APPLICATION OF NASHVILLE GAS COMPANY, A
DIVISION OF PIEDMONT NATURAL GAS COMPANY,
INC., FOR ADJUSTMENT OF ITS RATES AND CHARGES**

DOCKET NO. 96-00977

DISSENTING OPINION OF DIRECTOR MALONE

A majority of the Directors have adopted a Report and Recommendation arising from a status conference held in the above-captioned matter on September 23, 1996. With one exception, I too support said Report and Recommendation. I am compelled, however, to dissent because of the manner in which the hearing date was adopted.

The Consumer Advocate Division is a party to this matter. The Status Conference Report and Recommendation of H. Edward Phillips, III reflects that General Williams had a conflict, which he announced at the status conference, with the proposed hearing date of November 13, 1996. Nonetheless, the hearing officer recommended that the Authority adopt the proposed schedule.

The Report and Recommendation was adopted at the regularly scheduled Authority Conference held on October 1, 1996, without any comment from the Consumer Advocate Division. In my opinion, no proceeding that affects the rights of Tennesseans should be held without representation from the Consumer Advocate Division when said Division has intervened on behalf of the consumers of this State. Therefore, General Williams, or a member of his legal staff, should have been given the opportunity to address the Authority and be heard concerning the conflict. It is my understanding that the Consumer Advocate Division only has two attorneys, General Williams and David Yates. If the Consumer Advocate Division had been given an opportunity to comment at the Conference, they could have, at a minimum, informed the Authority of whether Mr. Yates is available on November 13, 1996. In addition, the Authority could have learned whether there is some justifiable reason why General Williams' presence, as opposed to that of Mr. Yates, is essential for the hearing. At this point, the Authority does not know the answer to either of these important questions.

The Authority often accommodates the schedules of the parties before it, and I am somewhat perplexed as to why the Consumer Advocate Division was not granted the

courtesy of being heard on this issue. Unlike several large firms whose lawyers practice before this Authority, the Consumer Advocate Division does not have the luxury of being able to dispatch one of a host of lawyers. While I make no judgment as to the merit of General Williams' conflict, of which I am unaware, I am reluctant to preclude his presence at a hearing before the Authority under the circumstances presented. I am not suggesting that November 13, 1996, is not the optimum hearing date for this matter; rather, I believe that the Consumer Advocate Division should have been heard at the October 1, 1996, Conference.

For the foregoing reasons, I dissent.



DIRECTOR

ATTEST:



EXECUTIVE SECRETARY