AMOS, JEFFRIES & ROBINSON, L.L.P.
ATTORNEYS AND COUNSELLORS AT LAW
1230 RENAISSANCE PLAZA
230 NORTH ELM STREET
GREENSBORO, NORTH CAROLINA 27401

TELEPHONE: (336) 273-5569
FACSIMILE: (336) 273-2435

MAILING ADDRESS:
P. O. BOX 787
GREENSBORO, N.C. 27402

April 27, 1999

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Application of Nashville Gas Company, a Division of Piedmont Natural Gas Company, for Approval of Negotiated Gas Redelivery Agreement with State Industries
Application of Nashville Gas Company, a Division of Piedmont Natural Gas Company, for Approval of Negotiated Gas Redelivery Agreement with Bridgestone/Firestone
Docket Nos. 98-00338 and 98-00339

Dear Mr. Waddell:

I am enclosing for filing in the above captioned proceedings the original and fourteen copies of the following documents on behalf of Nashville Gas Company:

1. Brief of Nashville Gas Company on Inapplicability of Prohibitions on Retroactive Ratemaking in Docket Nos. 98-00338 and 98-00339;

2. Proposed Recommendation and Report of Hearing Officer in Docket Nos. 98-00338 and 98-00339;

3. Motion of Nashville Gas Company to Amend Application in Docket No. 98-00338; and

4. Motion of Nashville Gas Company to Amend Application in Docket No. 98-00339.

I am enclosing an additional copy of each document that I would appreciate your stamping "filed" and returning in the enclosed envelope.

Sincerely,

Jerry W. Amos

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Encl.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:	)	
	)	
NASHVILLE GAS COMPANY APPLICATION FOR APPROVAL OF NEGOTIATED GAS REDELIVERY AGREEMENT WITH STATE INDUSTRIES	)	**DOCKET NO. 98-00338**
	)	
	)	
IN RE:	)	
	)	
NASHVILLE GAS COMPANY APPLICATION FOR APPROVAL OF NEGOTIATED GAS REDELIVERY AGREEMENT WITH BRIDGESTONE/FIRESTONE	)	**DOCKET NO. 98-00339**
	)	

PROPOSED RECOMMENDATION AND REPORT OF HEARING OFFICER

Effective January 1, 1998, Nashville Company Gas ("Nashville Gas" or the "Company") entered into oral agreements with State Industries and Bridgestone/Firestone to provide them with reduced rates pending the completion and filing of written agreements with the Authority. The written agreements were completed and filed with the Authority on May 12, 1998. On January 22, 1999, the Authority issued orders (1) approving the two written agreements, (2) ordering that margin losses during the period January 1, 1998 to August 1, 1998 (Phase I) be absorbed 100% by Nashville Gas, and (3) ordering that margin losses for periods subsequent to August 1, 1998 (Phase II) be shared 10% by Nashville Gas and 90% by customers.

On February 5, 1999, Nashville Gas requested a rehearing of the Authority's orders. The Authority granted rehearing by orders dated April 14, 1999. The two proceedings were consolidated for hearing on April 15, 1999. Director H. Lynn Greer, Jr. was appointed to serve as Hearing Officer for the purpose of conducting a hearing and deciding the merits of the request. At the hearing, the

testimony and exhibits of Nashville Gas witnesses Chuck W. Fleenor and Bill R. Morris were received into evidence.

Following the receipt of evidence, counsel for the Company proposed that the Authority resolve the various issues raised in the Company's request for rehearing by approving the two agreements to be effective January 1, 1998 and providing that all margin losses from January 1, 1998 be shared 10% by the Company and 90% by customers. In return, the Company would withdraw its objections to all issues. Counsel for the Company contended that this proposal would be fair to all parties and would avoid the various issues related to the applicability of Rate Schedule 9.

The Hearing Officer requested counsel for the Company to file (1) a written motion to amend the previously filed petitions in the consolidated dockets and (2) a brief on the question of whether the Authority could grant the 90%/10% sharing for the period January 1, 1998 to May 12, 1998 without violating prohibitions against retroactive ratemaking. The written motions and the brief were filed with the Authority on April 28, 1999.

Based on the evidence presented at the hearing, the post-hearing brief filed by the Company, and the record as a whole, the Hearing Officer finds that the proposal presented by counsel for the Company at the hearing should be approved. It is clear from the pleadings in this case and the evidence presented at the hearing that the parties intended the negotiated rates for Bridgestone/Firestone and for State Industries to be effective January 1, 1998. The rates to be charged to these two customers have already been approved by the Authority, and no party has objected to the approval of these rates. The only issue before the Authority at this time is how the negotiated margin losses that result from these negotiated rates should be shared by the Company and its customers.

In its January 22, 1999 orders, the Authority decided that the Company should be permitted to recover 90% of its margin losses beginning August 1, 1998; however, the Authority decided that the Company should not be permitted to recover any of its margin losses that were incurred during Phase I. The reason for denying the recovery of the recovery of margin losses with respect to Phase

I was based on the Authority's understanding that the Phase I losses were incurred under Rate Schedule 9 and the Authority's concern about the applicability of Rate Schedule 9 to the particular facts of these proceedings.

At the hearing, the Company, through counsel, stated that the Company did not (and does not now) intend for the Authority to rule on the applicability of Rate Schedule 9. Furthermore, according to the Company, the Authority could avoid ruling on the applicability of Rate Schedule 9 by approving the Phase I rates under the negotiated contracts effective January 1, 1998. The Company pointed out that the parties always intended for the rates previously approved by the Authority to become effective in two phases. The rates in Phase I were intended to be pursuant to oral contracts which were later reduced to writing and filed with the Authority. The rates in Phase II were intended to be pursuant to the written agreements to be effective upon approval of the Authority. Although the Company mentioned Rate Schedule 9 in its two petitions as its authority for placing the Phase I rates into effect on January 1, 1998, it did not intend to limit the Authority's power to approve the Phase I rates under either the oral or the written contracts.

The Hearing Officer is of the opinion that Rate Schedule 9 and the Authority's practice of permitting the Company and other gas utilities to negotiate lower rates for large industrial customers are but two different ways of achieving the same result. In both cases, the utility is able to avoid the loss of customers and the related contribution of margin. In both cases, both the utility and its remaining customers benefit. For these reasons, the Hearing Officer finds that it is in the public interest to permit the Company to amend its two petitions and to seek approval of the negotiated contracts effective January 1, 1998.

The Authority has already found that it is fair and reasonable that the Company share 10% of these margin losses with respect to the period beginning August 1, 1998. Although it previously objected to the 10% sharing, the Company has now agreed to share 10% of these post July 31, 1998 margin losses provided it also shares only 10% of the margin losses for the period January 1, 1998 through July 31, 1998. As previously stated, the Authority did not require the Company to absorb

100% of the pre-August 1, 1998 margin losses because it believed that such sharing was required by considerations of fairness but rather because of its concerns about the applicability of Rate Schedule 9 under the facts of these proceedings. Under the Company's amended applications, the applicability of Rate Schedule 9 is no longer an issue. Therefore, the Hearing Officer finds that it is fair and reasonable that the same sharing arrangements apply to the pre-August 1, 1998 period as have previously been approved for the post July 31, 1998 period.

At the hearing, the Hearing Officer expressed a concern as to whether the Authority could approve the sharing arrangement for the period beginning January 1, 1998 and ending on May 12, 1998. The Company was requested to file a brief addressing this matter, and the brief was filed on April 28, 1999. After reviewing the brief, the Hearing Officer finds that the Authority can approve the sharing arrangement effective January 1, 1998, and that doing so will not constitute unlawful retroactive ratemaking. As pointed out in the Company's brief, the Company is not proposing to change any rates retroactively. The rates that became effective January 1, 1998, have already been approved, no party has objected to those rates, and the Company does not propose to change those previously approved rates. In short, no rates are being changed retroactively. The only issue in these proceedings is how the margin losses will be shared. Any sharing of margin losses will take place through the Company's ACA and will be recovered in future rates to be collected on a prospective basis.

In American Association of Retired Persons v. Tennessee Public Service Commission, 896 S.W.2d 127 (1994) (Permission to Appeal Denied by Supreme Court, Feb. 27, 1995) ("Retired Persons"), the Tennessee Public Service Commission adopted rules that provided for the sharing of telephone company earnings in excess of a certain range between the telephone company and its customers. On appeal, the appellants contended that the sharing of past earnings resulted in retroactive rate making. The Court of Appeals for the Middle District of Tennessee disagreed. The Court held that since the sharing of past excess earnings would be effected through prospective rate

reductions, rates would not be retroactively changed and, therefore, the prohibition against retroactive ratemaking was inapplicable.

In the instant case, the Authority is not being requested to effect the 90%/10% sharing of margin losses in a retroactive manner. As was the situation in Retired Persons, the sharing between the Company and its customers will be effected in prospective rates. As a result, no rate is being adjusted retroactively. The only distinction between the Retired Persons case and the instant case is that in the first case the sharing was of earnings and in the second case the sharing is of losses. Since earnings and losses are simply the reciprocal of each other and are reported on the same line of the income statement, this is clearly a distinction without a difference.

THEREFORE THE HEARING OFFICER RECOMMENDS THAT:

1. The Company's motions to amend its petitions in Docket Nos. 98-00338 and 98-00339 be allowed;

2. The Authority's January 22, 1999 orders in Docket Nos. 98-00338 and 98-00339 be amended to provide for approval of the negotiated agreements effective as of January 1, 1998 and a 90%/10% sharing between ratepayers and the Company of margin losses under such agreements until the Company's next general rate case.

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HEARING OFFICER