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September 1, 2026

VIA ELECTRONIC MAIL
and U.S. Mail

Herbert H. Hilliard, Chairman
c/o Ectory Lawless
Tennessee Public Utility Commission
502 Deaderick Street, Fourth Floor
Nashville, Tennessee 37243

Re: Petition of Spire Tennessee Inc. For Approval of its 2026 Annual Review of Rates Mechanism Pursuant to Tenn. Code Ann. § 65-5-103(d)(6)
Docket No. 26-00042

Dear Chairman Hilliard:

Enclosed for filing, please find an original and four (4) copies of the Response in Opposition to the Consumer Advocate's Motion to Take Administrative Notice in the above referenced docket.

A PDF of the response is also being filed today by way of email to the Tennessee Public Utility Commission docket manager, Ectory Lawless. Please file the original and provide a "filed" stamped copy of the same via email.

If you have any questions regarding this letter, you may reach me at the number shown above.

Sincerely,

Paul S. Davidson

PSD:jv
Enclosure

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BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

IN RE:	)	
	)	
PETITION OF SPIRE TENNESSEE INC. FOR APPROVAL OF ITS 2026 ANNAUL REVIEW OF RATES MECHANISM PURSUANT TO TENN. CODE ANN. § 65-4-103(D)(6)	))))))	**Docket No. 26-00042**
	)	

RESPONSE OF SPIRE TENNESSEE INC. IN OPPOSITION TO CONSUMER ADVOCATE'S MOTION TO TAKE ADMINISTRATIVE NOTICE

Spire Tennessee Inc. ("Spire Tennessee" or the "Company"), by and through its undersigned counsel, hereby responds in opposition to the Consumer Advocate Division in the Financial Division of the Office of the Attorney General's ("Consumer Advocate") Motion to Take Administrative Notice (the "Motion") of Consumer Advocate & Protection Div. of Office of Atty. Gen. of Tennessee v. Tennessee Regulatory Authority, No. M2011-00028-COA-R12-CV, 2012 WL 1964593 (Tenn. Ct. App. May 30, 2012) (the "2012 Decision"). The Commission should deny the Consumer Advocate's Motion for the following reasons:

First, the Motion is an improper use of administrative notice. The Consumer Advocate's request for the Commission to take administrative notice of a "case presented before the Tennessee Court of Appeals" does not fall within any of the categories eligible for official notice under Tennessee Code Annotated §§ 4-5-313(6), which is part of the Uniform Administrative Procedures Act ("UAPA") or 65-2-109(4), and which provides the rules of evidence applicable to proceedings before the Commission. Even if the 2012 Decision could be characterized as containing facts subject to notice, the propositions the Consumer Advocate seeks to establish through the 2012 Decision are subject to reasonable dispute and are, therefore, not proper subjects for administrative notice.

Second, the Motion fails to identify the specific facts or material to be noticed, as required by Tennessee Code Annotated §§ 4-5-313(6) or 65-2-109(4).

Third, the Motion appears to be part of a broader effort to redefine "Base Rates" as that term is used in the Annual Rate Review Mechanism ("ARM") tariff. Any such modification of the ARM must be pursued through the proper procedures, including the statutory process under Tenn. Code Ann. § 65-5-103(d)(6)(D)(iii) or the petition process available under Section V of the ARM Tariff – not through testimony or a motion for administrative notice.

Finally, the 2012 Decision does not support the Consumer Advocate's position and can be easily distinguished from this proceeding. The 2012 Decision addressed recovery of legal expenses and required the Court to distinguish between a general rate case and a non-ratemaking asset management docket involving a different utility operating under a different tariff. The Court's discussion of "base rates" and "cost of gas" served only as background context for the description of Chattanooga Gas Company's ("Chattanooga Gas") regulatory structure and was not a binding finding or holding that defines those terms for all Tennessee gas utilities.

In contrast, Spire Tennessee's ARM proceeding is governed by its Service Schedule No. 318, the Company's ARM tariff. The ARM tariff was the product of a negotiated settlement agreement between Piedmont Natural Gas Company, Inc. ("Piedmont") and the Consumer Advocate, approved by this Commission, and operated under for three successive ARM cycles without objection. Importantly, the ARM tariff expressly defines "Base Rates" to include both Base Margin Rates and Base PGA Rates. In light of this context – which, unlike the 2012 Decision's discussion of base rates and cost of gas, speaks *directly* to the heart of this issue in this case – the Commission should reject the Consumer Advocate's attempt to redefine terms that it has previously and repeatedly accepted.

<u>**Argument**</u>

I. Notice of the 2012 Decision is not proper use of administrative notice.

In its Motion, the Consumer Advocate invokes Tenn. Code Ann. §§ 4-5-313(6) and 65-2-109(4) and asks the Commission to take "administrative notice" of a published Tennessee Court of Appeals decision. Two statutory provisions govern the use of official notice in proceedings before the Commission. The UAPA, specifically Tenn. Code Ann. § 4-5-313, establishes the general framework for official notice in contested cases before state agencies. Tennessee Code Annotated § 65-2-109 provides the rules of evidence for Commission proceedings, including the Commission's authority to take notice of judicially cognizable facts and general, technical, or scientific facts within its specialized knowledge.

Tenn. Code Ann. § 4-5-313(6)(A) states that "[o]fficial notice may be taken of: (i) [a]ny fact that could be judicially noticed in the courts of this state; (ii) [t]he record of other proceedings before the agency; (iii) [t]echnical or scientific matters within the agency's specialized knowledge; and (iv) [c]odes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association." Tenn. Code Ann. § 65-2-109(4) similarly provides that the Commission "may take notice of judicially cognizable facts and, in addition, may take notice of general, technical, or scientific facts within its specialized knowledge." The 2012 Decision is not an (i) adjudicative fact, (ii) the record of a prior proceeding before the Commission, (iii) a technical or scientific matter, or (iv) a code or standard. Therefore, it is not proper for notice under Tenn. Code Ann. § 4-5-313(6)(A) and Tenn. Code Ann. § 65-2-109(4) and the request should be denied.

Moreover, even if the 2012 Decision could be characterized as containing "facts" subject to notice, judicial notice is limited to facts "not subject to reasonable dispute." *Dolman v. Donovan*, No. W2015-00392-COA-R3-CV, 2015 WL 9315565, at *3 (Tenn. Ct. App. Dec. 23, 2015) (refusing to take judicial notice where the fact at issue was not "generally known within the territorial jurisdiction of the trial court or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned"). The Consumer Advocate's position effectively treats "Base Rates" as synonymous with "Base Margin Rates" and excludes purchased gas costs.

As Company Witness Taylor testifies, the phrase "base rates" has no uniform industry meaning, and purchased gas costs are included in "base or tariffied rates" in multiple jurisdictions. *See* Rebuttal Testimony of John D. Taylor at 5, 17, and 22. Where a party seeks to use official notice to establish a proposition that it must otherwise prove through evidence, that proposition is by definition subject to reasonable dispute and is not a proper subject for administrative notice. *See State v. Lawson*, 291 S.W.3d 864, 869-70 (Tenn. 2009) (holding that judicial notice is limited to facts "not subject to reasonable dispute" that are "capable of accurate and ready determination by resort to" the record). Therefore, the 2012 Decision's factual descriptions of a different utility's rate structure cannot resolve the definition of "base rates" and "cost of gas" as a proper matter of administrative notice.

II. The Motion does not identify any fact or material for notice.

Even if the Commission were to find that the Motion invokes a proper category of administrative notice, it nonetheless fails to comply with the procedural requirements of both governing statutes. Tenn. Code Ann. § 4-5-313(6)(B) requires that the parties be notified "of the specific facts or material noticed and the source thereof" and be afforded "an opportunity to contest and rebut the facts or material so noticed." Tenn. Code Ann. § 65-2-109(4) imposes a parallel requirement that parties be afforded notice and an opportunity to contest the material so noticed. The Motion fails to comply with either statute.

The Motion asks the Commission to take notice of an entire case "involving the Commission and the terms 'base rates' and 'costs of gas,'" but identifies no particular fact, matter, record or part thereof, or code or standard for notice. A broadly worded request to notice an entire case does not identify the "specific facts or material" required by § 4-5-313(6)(B), nor does it satisfy the Commission notice requirements of § 65-5-109(4). Without knowing what specific facts or material the Consumer Advocate is trying to establish through the 2012 Decision, Spire Tennessee cannot meaningfully exercise its statutory right to "contest and rebut" that material, and there is no way to know whether the noticed material would be used improperly to establish contested facts.

The Motion also fails to provide a sufficiently definite basis for the requested action under Tenn. Comp. R. & Regs. 1220-01-02-.06(1), which requires that any request for action "state the factual … basis for the request." The Motion does not identify any factual basis to justify the request. For these reasons, the Motion should be denied.

III. The Motion is part of an effort to improperly modify the ARM Tariff.

Spire Tennessee's ARM proceeding occurs annually for the limited purpose of calculating the historic base period deficiency or sufficiency and determining the Company's rates going forward. This is not the appropriate forum for attempts to modify the ARM tariff. Despite this, viewed in light of Consumer Advocate Witness David N. Dittemore's testimony in this docket, the Motion also appears to be a part of the Consumer Advocate's attempt to redefine "Base Rates" as used in the ARM Tariff and the Transfer Approval Order. However, Tennessee Code Annotated § 65-5-103(d)(6)(D)(iii) expressly prescribes the process by which the ARM may be modified:

> The commission or the public utility may propose a modification to the approved annual review plan for consideration by the commission. The commission shall determine whether any proposed modification is in the public interest and should be approved within the time frame set forth in subdivision (d)(6)(C). If the commission denies a modification to the approved annual review plan, the commission shall set forth with specificity the reasons for its denial.

Tenn. Code Ann. § 65-5-103(d)(6)(D)(iii). Testimony or motions for administrative notice of unrelated case law do not fall under the requirements of this statute.

In addition to the statutory vehicle provided by § 65-5-103(d)(6)(D)(iii) to propose modifications to the ARM, Section V of Spire Tennessee's ARM Tariff also preserves the Consumer Advocate's right to file a petition or complaint asking the Commission to terminate or modify the ARM. The Consumer Advocate, however, has not filed such a petition.[1] Again, instead, it appears to improperly use testimony – and now this Motion – to support a redefinition of "Base Rates." This suggested redefinition is, in substance, a proposed modification of the ARM as transferred and conditioned by the Transfer Approval Order cloaked in the guise of a testimonial request for clarification. Modification of the ARM's definitions cannot be accomplished through testimony or, for that matter, a motion for administrative notice.

Moreover, the Consumer Advocate's position is also untenable given the history of the tariff. Service Schedule No. 318 is the product of a fully negotiated process between Piedmont and the Consumer Advocate. Following discovery and multiple rounds of testimony, the parties reached agreement on the ARM tariff language, including the definitions of "Base Rates," "Base Margin Rates," and "Base PGA Rates." *See* Docket No. 21-00135. The Consumer Advocate

[1] Notwithstanding the fact that the Consumer Advocate has not filed such a petition, it is the Company's view that such a petition – had the Consumer Advocate filed one – would nevertheless be contextually inappropriate at this time given this Commission's very recent authorization in Docket No. 25-00074 of the transfer of Piedmont's ARM to Spire Tennessee for a period of three years.

reviewed Piedmont's final amended tariff and filed a letter with the Commission affirmatively stating that it had no opposition. *See Letter of the Consumer Advocate*, Docket No. 21-00135 (Sept. 16, 2022). The Commission approved Piedmont's ARM tariff and Piedmont subsequently operated under its ARM tariff for three successive ARM filing cycles without the Consumer Advocate ever challenging the definition of "Base Rates" or suggesting that PGA revenues should be excluded from the base revenue. This is the first ARM filing in which the Consumer Advocate has attempted to depart from the tariff language it previously accepted. The Commission should give no weight to an effort to rewrite a negotiated and Commission-approved definition through testimony or a motion for administrative notice of an unrelated case.

IV. The 2012 Decision does not support the Consumer Advocate's position.

Notwithstanding the foregoing objections, the 2012 Decision does not support the Consumer Advocate's position. To be clear, the Company does not dispute that case law may be cited in Commission proceedings for applicable legal propositions. Company Witness David Yonce referenced the 2012 Decision in his rebuttal testimony for the well-established proposition that Commission-approved tariffs carry the force of law. *See* Rebuttal Testimony of David Yonce at 6, n.4 (Aug. 21, 2026). As far as the Company can tell, however, the Consumer Advocate is not citing the 2012 Decision for an established legal principle. Rather, the Consumer Advocate is seeking administrative notice of the 2012 Decision apparently to import the Court's discussion of a different utility's rate structure and case law and statutes relevant to that specific case as though they establish the meaning of "Base Rates" in this proceeding. That is not an appropriate use of administrative notice, and it is unsupported by the 2012 Decision for the following reasons.

A. This is an ARM proceeding and not a general rate case or asset management docket.

The 2012 Decision arose from Consumer Advocate's challenge to a Tennessee Regulatory Authority ("TRA") order permitting Chattanooga Gas to recover reasonable and prudent litigation expenses incurred in a separate asset management docket. The Consumer Advocate argued that the TRA lacked authority to award litigation expenses outside of a traditional rate case and that the TRA could not order recovery of those expenses from asset management funds. The Court of Appeals rejected both arguments, holding that the TRA had the authority to permit the utility to recover reasonable and prudent litigation expenses as an extraordinary operating cost, and that the TRA acted within its authority in ordering that those expenses be paid from asset management funds. *See* 2012 Decision at *20-24.

The Court's analysis required it to distinguish between a general rate case and the non-ratemaking asset management docket. A general rate case is a proceeding in which the Commission sets base rates that balance the utility's need to recover operating expenses and earn a reasonable return with the public interest. The asset management docket, by contrast, was a non-ratemaking proceeding in which the Commission evaluated Chattanooga Gas's gas purchase and capacity release practices to determine whether consumers were being exploited. The Court concluded that the asset management docket "cannot be characterized as a 'rate case' as that term has come to be understood in the vernacular of utility regulation." *Id.* at *16.

An ARM proceeding before this Commission is neither a general rate case nor an asset management docket. An ARM is a distinct statutory mechanism, authorized by Tenn. Code Ann. § 65-5-103(d)(6), that permits a public utility to adjust rates annually through a review of its historic base period revenue deficiency or sufficiency. It does not involve full adjudication and the ARM's scope is defined and limited by the governing tariff. The Consumer Advocate has raised issues outside the scope of this docket, including the Company's policies on new business extensions, contributions in aid of construction, and line extensions. Those issues, along with any proposed modification to terms of the tariff, are not appropriate for resolution in this filing and should be addressed, if at all, in the appropriate forum at the appropriate time. Because this is an ARM proceeding, the 2012 Decision's discussion of Chattanooga Gas's rate structure has no bearing here.

Finally, Tenn. Code Ann. § 65-5-103(d)(6), which enabled the Commission to approve alternative regulatory methods, was enacted on April 19, 2013, more than a year after the 2012 Decision. The ARM statutory framework did not exist when the Court rendered its decision and neither did Piedmont's or Spire Tennessee's ARM tariff. The Court, therefore, did not, and could not have, interpreted the ARM framework or the tariff definitions that operate within it.

B. The definitions in the 2012 Decision do not establish the meaning of "Base Rates" or "Cost of Gas" for this proceeding.

The 2012 Decision's discussion of "base rates" and "cost of gas" was not a finding or holding on the meaning of those terms for Tennessee gas utilities generally. At most, the discussion was non-binding dicta describing how those terms operated in Chattanooga Gas Company's regulatory structure based on the evidence before the Court. *See* 2012 Decision at *1-3. Whether characterized as a description of Chattanooga Gas's tariff or as a broader attempt to define those terms for the purpose of deciding the case, the discussion was only incidental to the Court's resolution of the specific appeal and did not establish a binding or universal definition applicable to other utilities with different tariffs. The Court was not asked to construe the defined term "Base Rates" as used in any particular tariff, nor did it decide how that term should apply to a different utility's ARM tariff approved a decade later under a different statutory framework.

Spire Tennessee operates under a different tariff than Chattanooga Gas. Service Schedule No. 318 expressly defines "Base Rates" to include both "Base Margin Rates" and "Base PGA Rates." Definition R defines "Base Rates" as "those base rates per therm shown in Columns 1, 2, and 3 of the Company's Tariff Sheet No. 1," identifying Base Margin Rates in Column 1 and Base PGA Rates in Columns 2 and 3. As explained earlier, that definition was negotiated, approved by the Commission, and transferred to Spire Tennessee without change. The 2012 Decision's description of how Chattanooga Gas's rates were structured at that time does not override the specific, Commission-approved definitions that govern this ARM filing.

C. The phrase "base rates" has no uniform industry meaning.

Company Witness John Taylor's rebuttal testimony in this proceeding further demonstrates that the phrase "base rates" has no uniform industry meaning. Through examples from North Carolina, South Carolina, Kentucky, Virginia, and Pennsylvania, Witness Taylor showed that purchased gas costs are routinely included in base or tariffed rates and then adjusted through a PGA, GCA, or similar mechanism. *See* Rebuttal Testimony of John D. Taylor at 17-19 (Aug. 21, 2026). In South Carolina, for example, Dominion Energy South Carolina, Inc.'s PGA tariff expressly provides that purchased gas costs "will be included in base rates to the extent approved by the Public Service Commission." *Id.* at 18, n. 14. Additionally, Columbia Gas of Kentucky, Inc. defines its billing rate as a base rate charge plus a gas cost adjustment. Moreover, Columbia Gas of Virginia, Inc. calculates "base rate" as base gas plus base non-gas. *Id.* at 18, n. 15. These examples confirm that the term "base rates" is defined by the applicable tariff, not by some universal regulatory convention.

Conclusion

For the foregoing reasons, the Company requests that the Commission deny the Consumer Advocate's Motion to Take Administrative Notice and grant any other relief the Commission deems necessary and proper.

Respectfully submitted this 1st day of September, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via electronic mail upon the following counsel of record on this 1st day of September, 2026:

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