

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

September 8, 2026

IN RE:	)	
	)	
PETITION OF SPIRE TENNESSEE INC. FOR	)	DOCKET NO.
APPROVAL OF ITS 2026 ANNUAL REVIEW OF	)	26-00042
RATES MECHANISM PURSUANT TO TENN. CODE	)	
ANN. §65-5-103(d)(6)	)	

ORDER GRANTING, IN PART AND DENYING, IN PART
CONSUMER ADVOCATE’S MOTION TO TAKE ADMINISTRATIVE NOTICE

This matter is before the Administrative Judge upon the *Motion to Take Administrative Notice* (“*Motion*”), filed by the Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) on August 25, 2026. In its *Motion*, the Consumer Advocate requesting that the Commission take administrative notice of the opinion of the Tennessee Court of Appeals in *Consumer Advoc. & Prot. Div. of Atty. Gen. of Tennessee v. Tennessee Regul. Auth.*, No. M2011-00028-COAR12CV, 2012 WL 1964593 (Tenn. Ct. App. May 30, 2012) and the terms “base rates” and “costs of gas.”¹

On September 1, 2026, Spire Tennessee Inc. (“Spire TN” or “Company”) filed its *Response of Spire Tennessee Inc. in Opposition to Consumer Advocate’s Motion to Take Administrative Notice* (“*Response to Motion*”).² The Consumer Advocate filed its *Consumer Advocate’s Motion for Leave to File a Reply to Spire’s Opposition to the Consumer Advocate’s Motion to Take Administrative Notice* (“*Motion to File Reply*”), the following day.³ At a Pre-Hearing Conference

¹ *Motion*, p. 1 (August 25, 2026).

² *Response to Motion* (September 1, 2026).

³ *Motion to File Reply* (September 2, 2026).

held on September 2, 2026, Spire TN stated that it had no objection to the *Motion to File Reply* and the Administrative Judge granted the Consumer Advocate leave to file its reply.⁴

I. CONSUMER ADVOCATE’S *MOTION*

The Consumer Advocate’s *Motion* requested that the Tennessee Public Utility Commission (“Commission” or “TPUC”) take administrative notice of an opinion of the Tennessee Court of Appeals in accordance with Tenn. Code Ann. §§ 4-5-313(6) and 65-2-109(4). The Consumer Advocate provided a copy of the opinion, *Consumer Advoc. & Prot. Div. of Atty. Gen. of Tennessee v. Tennessee Regul. Auth.*, No. M2011-00028-COAR12CV, 2012 WL 1964593 (Tenn. Ct. App. May 30, 2012) (“2012 Decision”) and noted that the opinion involved the Commission and the terms “base rates” and “costs of gas.”⁵

II. SPIRE TN’S *RESPONSE TO MOTION*

Spire TN argued that the Consumer Advocate’s *Motion* is not a proper use of administrative notice, fails to identify specific facts or material to be noticed, is part of an effort to improperly modify the ARRM tariff, and that the case cited does not support the Consumer Advocate’s position. The Company urged the Commission to deny the Consumer Advocate’s *Motion*.⁶

Spire TN stated that Tenn. Code Ann. § 4-5-313 and § 65-2-109 govern when the Commission may take official notice of facts and allow notice only of judicially noticeable facts, records of agency proceedings, technical or scientific matters, and adopted codes or standards.⁷ Spire TN asserted that the 2012 Decision does not fall into any of these categories, and is, therefore, not eligible for administrative notice. Further, the Company argued that even if the 2012 Decision

⁴ *Order Granting Consumer Advocate’s Motion for Leave to File a Reply to Spire’s Opposition to the Consumer Advocate’s Motion to Take Administrative Notice* (September 4, 2026).

⁵ *Motion*, p. 1, Ex. (August 25, 2026).

⁶ *Response to Motion*, pp. 1-2 (September 2, 2026).

⁷ *Id.* at 3.

contained facts that could be noticed, judicial notice applies only to facts not subject to reasonable dispute. The meaning of “base rates,” which is discussed in the 2012 Decision, is disputed and central to an evidentiary issue and therefore not subject to administrative notice.⁸

The Company also argued that the *Motion* does not meet the procedural requirements of Tenn. Code Ann. §§ 4-5-313(6)(B) and 65-2-109(4) which require that parties be told exactly which facts or materials are being noticed, the source of those materials, and that they be given an opportunity to contest them.⁹ The Consumer Advocate’s *Motion* fails because it asks the Commission to take notice of an entire Court of Appeals case without identifying any specific fact, record, or material from that case. Without knowing what is being noticed, Spire TN cannot meaningfully contest or rebut it, and the Commission cannot ensure the material is not being used to establish disputed facts. The Company also argued that the *Motion* violates Commission Rule 1220-01-02-.06(1). The Rule requires that any request for agency action states the factual basis for the request while the Consumer Advocate’s *Motion* identifies no factual basis for the request.¹⁰

Spire TN also asserted that its annual ARRM proceeding is meant only to calculate the historic base-period revenue deficiency or sufficiency and set rates accordingly and is not the proper venue for altering or redefining the ARRM tariff. The Company stated that the Consumer Advocate appears to be using testimony and its *Motion* to redefine “base rates” in the ARRM Tariff and in the *Order Approving Transfer of Authority to Provide Utility Services and Related Authorizations* in Docket No. 25-00074.¹¹ The Company argued that Tennessee law provides a specific process for modifying the ARRM that requires formal presentation to the Commission for

⁸ *Id.* at 3-4.

⁹ *Id.* at 4-5.

¹⁰ *Id.* at 5.

¹¹ *Id.*; See also *In Re: Application of Piedmont Natural Gas Company, Inc. and Spire Tennessee Inc. for Approval of a Transfer of Authority to Provide Utility Services Pursuant to Tenn. Code Ann. § 65-4-113 and Related Authorizations*, Docket No. 25-00074, *Order Approving Transfer or Authority to Provide Utility Services and Related Authorizations* (June 2, 2026) (“*Acquisition Order*”).

Commission review and determination of public interest under Tenn. Code Ann. § 65-5-103(d)(6)(D)(iii).¹² Spire TN's ARRM Tariff permits the Consumer Advocate to file a formal petition to modify or terminate the ARRM, but the Consumer Advocate has not utilized this process, instead seeking to modify through testimony and the *Motion* which do not meet these statutory requirements.¹³ The Company also argued that the *Motion* is improper because the ARRM Tariff language, including the definitions of "base rates," "base margin rates," and "base PGA rates," was negotiated between Piedmont and the Consumer Advocate, fully litigated, and expressly approved by both the Consumer Advocate and the Commission. These terms were not challenged during three prior ARRM cycles. Spire TN urged the Commission to give no weight to the Consumer Advocate's attempt to rewrite a negotiated, Commission-approved definition through testimony or a motion for administrative notice of an unrelated case.¹⁴

Finally, Spire TN stated that the 2012 Decision does not support the Consumer Advocate's attempt to redefine "base rates" in this ARRM proceeding. The Company agreed that case law may be cited for legal principles but cannot be used to import discussion of another utility's rate structure as though it determines the meaning of "base rates" in the present case through administrative notice.¹⁵ First, the 2012 Decision involved a Chattanooga Gas asset-management docket rather than an ARRM proceeding. The statutory and tariff framework for an ARRM did not exist when the 2012 decision was issued; therefore, the Court could not have interpreted the ARRM structure or the definitions relevant to Spire TN's ARRM tariff.¹⁶ Second, the 2012 Decision's references to "base rates" and "cost of gas" were descriptive of Chattanooga Gas's

¹² *Response to Motion*, pp. 5-6 (September 2, 2026).

¹³ *Id.* at 6.

¹⁴ *Id.* at 6-7.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 8-9.

tariff at that time. These definitions were not binding and do not control the meaning of those terms for other utilities with different tariffs, especially a tariff adopted a decade later under the statutory language establishing alternative regulatory methods, adopted after the opinion.¹⁷ Third, Spire TN's tariff expressly defines "base rates" to include both Base Margin Rates and Base PGA Rates. These definitions were negotiated, approved by the Commission, and carried forward unchanged. These negotiated definitions cannot be overridden by language from the 2012 Decision.¹⁸ Lastly, industry practice confirms there is no universal meaning of "base rates." Spire TN witness, John Taylor testified that many jurisdictions include purchased gas costs within base or tariffed rates and adjusted through a PGA, CGA, or other similar mechanism. The term is, therefore, defined by the applicable tariff, not by any universally defined regulatory convention.¹⁹ For these reasons, Spire TN asserted that the 2012 Decision does not support the Consumer Advocate's position and has no bearing on the definitions governing this ARRM proceeding.

III. THE CONSUMER ADVOCATE'S *REPLY*

In reply to Spire TN's *Response to Motion*, the Consumer Advocate argued that its *Motion* was straightforward and properly sought notice of a Tennessee Court of Appeals opinion that presents no genuine factual dispute. The Consumer Advocate stated that Spire TN cited the same case in its own testimony yet opposes taking administrative notice of it.²⁰ Further, the Consumer Advocate asserted that Spire TN's *Response to Motion* reads more like a legal brief on the meaning of "base rates" than a valid procedural objection. In support of its *Motion*, the Consumer Advocate offers three points. First, the *Motion* clearly identified the purpose of the requested notice, namely

¹⁷ *Id.* at 9.

¹⁸ *Id.* at 10.

¹⁹ *Id.*

²⁰ *Motion to File Reply*, Ex. at pp. 1-2 (September 2, 2026) (hereinafter, the *Consumer Advocate's Reply to the Opposition of Spire to the Motion to Take Administrative Notice*, attached as an Exhibit to the *Motion to Reply* is cited as "*Consumer Advocate's Reply*").

recognition of how the Court used the terms “base rates” and “costs of gas.” Spire TN’s detailed response shows that the *Motion* squarely raised the relevant issue and met statutory requirements for administrative notice.²¹ Second, Spire TN’s claim that its ARRM tariff defines “base rates” to include gas costs ignores conflicting definitions within the tariff. Further, the Commission’s *Acquisition Order* did not reference Tariff 318 or its definitions, instead applying a 4% cap to the revenue requirement, not to gas-cost components.²² Third, Spire TN’s assertion that the Consumer Advocate is ignoring three years of tariff practice is misplaced. The meaning of “base rates” has only become an issue because the Commission applied that term in connection with the newly imposed 4% cap. Historically, ARRM proceedings never used the ARRM tariff to set a revenue requirement for gas costs. Gas costs are handled through the PGA mechanism which is separate and driven by market conditions. Thus, the Company’s attempt to distinguish its treatment of base rates and gas costs from other Tennessee gas utilities is unsupported. For these reasons, the Consumer Advocate urged that the Commission should grant the *Motion*.²³

IV. FINDINGS AND CONCLUSIONS

Tenn. Code Ann. §4-5-313(6) provides:

(6)(A) Official Notice may be taken of:

- (i) Any fact that could be judicially noticed in the courts of this state;
- (ii) The record of other proceedings before the agency;
- (iii) Technical or scientific matters within the agency’s specialized knowledge; and
- (iv) Codes 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.

(B) Parties must be notified before or during the hearing, or before the issuance of any initial or final order that is based in whole or in

²¹ *Consumer Advocate’s Reply*, p. 2 (September 2, 2026).

²² *Id.*

²³ *Id.* at 2-3.

part on facts or material noticed, of the specific facts or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the facts or material so noticed.

In addition, Tenn. Code Ann. § 65-2-109(2) provides that in all contested cases “[a]ll evidence, including records and documents in the possession of the commission of which it desires to avail itself, shall be offered and made a part of the record in the case, . . .”²⁴ Tenn. Code Ann. § 65-2-109(4) further states that “[t]he commission may take notice of judicially cognizable facts and, in addition, may take notice of general, technical, or scientific facts within its specialized knowledge.”²⁵ The statute also requires that parties be notified of the noticed material and afforded an opportunity to contest the noticed facts.²⁶

The Administrative Judge finds that the 2012 Decision is a Tennessee Court of Appeals ruling arising from multiple dockets decided by the Commission. The Administrative Judge, therefore, takes administrative notice of the 2012 Decision for the purpose of placing it in the evidentiary record of this docket. Doing so will permit the Parties to refer and cite to the 2012 Decision within the record of the docket.

However, the Administrative Judge finds that the 2012 Decision is an unpublished opinion of the Tennessee Court of Appeals. Tennessee Supreme Court Rule 4 establishes the type of precedential authority that an unpublished opinion carries. In general, an unpublished opinion is controlling authority between the parties to case when relevant. Unless the opinion is designated “Not for Citation,” “DCRO,” or “DNP,” unpublished opinions are persuasive authority. If designated as “Not for Citation,” the opinion has no precedential authority.²⁷

²⁴ Tenn. Code Ann. § 65-2-109(2) (2022).

²⁵ Tenn. Code Ann. § 65-2-103(4) (2022).

²⁶ *Id.*

²⁷ Tenn. S.Ct. R. 4.

The 2012 Decision involved different parties than are before the Commission in the present case. Therefore, the Administrative Judge finds that the 2012 Decision carries only persuasive authority concerning the issues to be considered by the Commission in this docket. Therefore, to the extent that the *Motion* requests that the Commission recognize any findings or conclusions stated within the 2012 Decision as controlling authority, the *Motion* is denied. The Parties may offer any testimony or arguments in support of or in rebuttal to the findings and conclusions stated within the 2012 Decision.

IT IS THEREFORE ORDERED THAT:

1. The *Motion to Take Administrative Notice* filed by the Consumer Advocate Division of the Office of the Attorney General on August 25, 2026, is granted, in part and denied, in part.

2. Administrative Notice is taken, for the purpose of inclusion in the evidentiary record for this docket, of *Consumer Advoc. & Prot. Div. of Atty. Gen. of Tennessee v. Tennessee Regul. Auth.*, No. M2011-00028-COAR12CV, 2012 WL 1964593 (Tenn. Ct. App. May 30, 2012).

3. *Consumer Advoc. & Prot. Div. of Atty. Gen. of Tennessee v. Tennessee Regul. Auth.*, No. M2011-00028-COAR12CV, 2012 WL 1964593 (Tenn. Ct. App. May 30, 2012) is recognized as persuasive authority. The Consumer Advocate Division of the Office of the Attorney General and Spire Tennessee Inc. may present testimony or argument supporting or rebutting its findings and conclusions.



Aaron J. Conklin
Administrative Judge
By Commission Delegated Authority