

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. G-9, SUB 743

In the Matter of:)
)
Application of Piedmont Natural Gas Company, Inc.)
for an Adjustment of Rates, Charges, and Tariffs)
Applicable to Service in North Carolina,)
Continuation of its IMR Mechanism, Adoption of an)
EDIT Rider and Other Relief)

**OBJECTIONS OF PIEDMONT
NATURAL GAS COMPANY, INC.
TO THE ATTORNEY GENERAL’S
SECOND DATA REQUEST
REGARDING SETTLEMENT**

Piedmont Natural Gas Company, Inc. (“Piedmont”), through counsel and pursuant to the Commission’s May 16, 2019 *Order Scheduling Investigation and Hearings, Establishing Interventions and Testimony Due Dates and Discovery Guidelines and Requiring Public Notice*, respectfully submits the following objections to the Attorney General’s Second Data Request regarding settlement in the above-captioned docket.

Piedmont objects to the Attorney General’s second data request regarding settlement as follows:

- 1. Exhibit J to the Stipulation shows a comparison of the end of period revenues to stipulated proposed revenues for each customer class for year 1.**

Please provide a comparison of the end of period revenues to stipulated proposed revenues for each customer class as is done in Exhibit J for year 1, but provide the comparison for year 2, year 3, year 4, and year 5.

Objection: The documents sought by this request do not exist and as such, would have to be created by Piedmont. It is not Piedmont’s responsibility to engage in substantive analysis or the creation of new documentary evidence in responding to data requests in this proceeding and it is improper for the Attorney General to request such

new analysis or document creation, particularly when the patent purpose for the creation of such documents and analysis would be to oppose Piedmont's interests in this proceeding. As such, Piedmont objects to this document production request on the grounds that it is unduly burdensome and outside the scope or permissible discovery by purporting to require Piedmont to produce documents that do not presently exist and are, therefore, not within Piedmont's possession, custody or control. Rule 34(a) of the North Carolina Rules of Civil Procedure ("NCRCP")¹ provides in pertinent part as follows:

Any party may serve on any other party a request (i) to produce . . . any designated documents, electronically stored information, or tangible things which constitute or contain matters within the scope of Rule 26(b) and which are *in the possession, custody or control* of the party upon whom the request is served[.] (emphasis added).

Since the NCRCP authorize the discovery of relevant and non-privileged information that is "in the possession, custody or control of the party upon whom the request is served," it logically follows that Rule 34 requires that the documents be in existence.²

2. Please provide Exhibit J again, breaking out the amounts and percentages relating to the Excess Deferred Income Taxes in years 1-5.

Objection: The documents sought by this request do not exist and as such, would

¹ The Commission's procedures for conducting orderly and efficient discovery generally comport with the guidelines established by Rule 34 of the North Carolina Rules of Civil Procedure.

² 1 North Carolina Civil Procedure § 34-2 (2018). See also *Order Ruling On First Data Requests From AT&T and the ILEC Group To CompSouth and the NCCTA*, at 3-4, Docket No. P-100, SUB 167 (Aug. 05, 2011) ("Rule 34(a) of the NCRCP refers to the requests to produce and permit the party making a request to inspect and copy documents or other things in "the possession, custody or control of the party upon whom the request is served." This plainly refers to documents and records in the possession, custody or control of the party upon whom a request for production is served. Documents are deemed to be within the possession, custody, or control of a party if that party has actual possession, custody, or control or has the legal right to obtain the documents demanded. Otherwise, the party cannot be compelled to produce the requested information. The Commission itself recognizes this principle when it routinely orders parties to respond to requests for the production of documents to the extent the parties actually possess responsive information."). (internal citations omitted).

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Since the NCRCP authorize the discovery of relevant and non-privileged information that is "in the possession, custody or control of the party upon whom the request is served," it logically follows that Rule 34 requires that the documents be in existence.⁴

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⁴ 1 North Carolina Civil Procedure § 34-2 (2018). See also *Order Ruling On First Data Requests From AT&T and the ILEC Group To CompSouth and the NCCTA*, at 3-4, Docket No. P-100, SUB 167 (Aug. 05, 2011) ("Rule 34(a) of the NCRCP refers to the requests to produce and permit the party making a request to inspect and copy documents or other things in "the possession, custody or control of the party upon whom the request is served." This plainly refers to documents and records in the possession, custody or control of the party upon whom a request for production is served. Documents are deemed to be within the possession, custody, or control of a party if that party has actual possession, custody, or control or has the legal right to obtain the documents demanded. Otherwise, the party cannot be compelled to produce the requested information. The Commission itself recognizes this principle when it routinely

3. Please state how customer rates would be impacted in Year 1 by the following changes to the agreements reflected in the Stipulation filed in this matter on August 12, 2019, and provide your workpapers:
- (a) If federal “unprotected EDIT” is returned to customers over three years instead of five years as reflected in the Stipulation [and corresponding adjustments are made, such as an adjustment to ratebase];
 - (b) If the allowed Return on Equity is 8.7%, instead of the 9.7% provided for in the Stipulation [including the impact on gross up]; and
 - (c) If both changes are made to the Stipulation. Please provide the impact on rates (i) as a percentage increase in overall rates compared to existing rates, and (ii) as the changes would impact the average bill of customers by class, both as a percentage and as a dollar amount.

Objection: Piedmont objects to this document production request, and each of the subparts, on the ground that the documents sought by this request do not exist and as such, would have to be created by Piedmont. It is not Piedmont’s responsibility to engage in substantive analysis or the creation of new documentary evidence in responding to data requests in this proceeding and it is improper for the Attorney General to request such new analysis or document creation, particularly when the patent purpose for the creation of such documents and analysis would be to oppose Piedmont’s interests in this proceeding. As such, Piedmont objects to this document production request on the grounds that it is unduly burdensome and outside the scope or permissible discovery by purporting to require Piedmont to produce documents that do not presently exist and are, therefore, not within Piedmont’s possession, custody or control. Rule 34(a) of the North Carolina Rules of Civil Procedure (“NCRCP”)⁵ provides in pertinent part as follows:

orders parties to respond to requests for the production of documents to the extent the parties actually possess responsive information.”). (internal citations omitted).

⁵ The Commission’s procedures for conducting orderly and efficient discovery generally comport with the guidelines established by Rule 34 of the North Carolina Rules of Civil Procedure.

Any party may serve on any other party a request (i) to produce . . . any designated documents, electronically stored information, or tangible things which constitute or contain matters within the scope of Rule 26(b) and which are *in the possession, custody or control* of the party upon whom the request is served[.] (emphasis added).

Since the NCRCP authorize the discovery of relevant and non-privileged information that is “in the possession, custody or control of the party upon whom the request is served,” it logically follows that Rule 34 requires that the documents be in existence.⁶

4. **Please provide Settlement Exhibit PKP-1 showing the impact of the change if the equity ratio in the capital structure changes from 52% to 50% and the percentage of long-term debt is increased to make up the balance in the capital structure.**

Objection: The documents sought by this request do not exist and as such, would have to be created by Piedmont. It is not Piedmont’s responsibility to engage in substantive analysis or the creation of new documentary evidence in responding to data requests in this proceeding and it is improper for the Attorney General to request such new analysis or document creation, particularly when the patent purpose for the creation of such documents and analysis would be to oppose Piedmont’s interests in this proceeding. As such, Piedmont objects to this document production request on the grounds that it is unduly burdensome and outside the scope or permissible discovery by purporting to require Piedmont to produce documents that do not presently exist and

⁶ 1 North Carolina Civil Procedure § 34-2 (2018). See also *Order Ruling On First Data Requests From AT&T and the ILEC Group To CompSouth and the NCCTA*, at 3-4, Docket No. P-100, SUB 167 (Aug. 05, 2011) (“Rule 34(a) of the NCRCP refers to the requests to produce and permit the party making a request to inspect and copy documents or other things in “the possession, custody or control of the party upon whom the request is served.” This plainly refers to documents and records in the possession, custody or control of the party upon whom a request for production is served. Documents are deemed to be within the possession, custody, or control of a party if that party has actual possession, custody, or control or has the legal right to obtain the documents demanded. Otherwise, the party cannot be compelled to produce the requested information. The Commission itself recognizes this principle when it routinely orders parties to respond to requests for the production of documents to the extent the parties actually possess responsive information.”). (internal citations omitted).

are, therefore, not within Piedmont's possession, custody or control. Rule 34(a) of the North Carolina Rules of Civil Procedure ("NCRCP")⁷ provides in pertinent part as follows:

Any party may serve on any other party a request (i) to produce . . . any designated documents, electronically stored information, or tangible things which constitute or contain matters within the scope of Rule 26(b) and which are *in the possession, custody or control* of the party upon whom the request is served[.] (emphasis added).

Since the NCRCP authorize the discovery of relevant and non-privileged information that is "in the possession, custody or control of the party upon whom the request is served," it logically follows that Rule 34 requires that the documents be in existence.⁸

- 5. Please provide Settlement Exhibit PKP-1 showing the impact of the change if the return on equity is not changed from 10.6% to 9.7% and the equity ratio stays 52%.**

Objection: The documents sought by this request do not exist and as such, would have to be created by Piedmont. It is not Piedmont's responsibility to engage in substantive analysis or the creation of new documentary evidence in responding to data requests in this proceeding and it is improper for the Attorney General to request such new analysis or document creation, particularly when the patent purpose for the creation of such documents and analysis would be to oppose Piedmont's interests in

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Since the NCRCP authorize the discovery of relevant and non-privileged information that is "in the possession, custody or control of the party upon whom the request is served," it logically follows that Rule 34 requires that the documents be in existence.¹⁰

6. Please provide Settlement Exhibit PKP-1 showing the impact of the change if the return on equity is changed from the settlement 9.7% to 8.7% and the equity ratio stays 52%.

Objection: The documents sought by this request do not exist and as such, would have to be created by Piedmont. It is not Piedmont's responsibility to engage in substantive analysis or the creation of new documentary evidence in responding to data

⁹ The Commission's procedures for conducting orderly and efficient discovery generally comport with the guidelines established by Rule 34 of the North Carolina Rules of Civil Procedure.

¹⁰ 1 North Carolina Civil Procedure § 34-2 (2018). See also *Order Ruling On First Data Requests From AT&T and the ILEC Group To CompSouth and the NCCTA*, at 3-4, Docket No. P-100, SUB 167 (Aug. 05, 2011) ("Rule 34(a) of the NCRCP refers to the requests to produce and permit the party making a request to inspect and copy documents or other things in "the possession, custody or control of the party upon whom the request is served." This plainly refers to documents and records in the possession, custody or control of the party upon whom a request for production is served. Documents are deemed to be within the possession, custody, or control of a party if that party has actual possession, custody, or control or has the legal right to obtain the documents demanded. Otherwise, the party cannot be compelled to produce the requested information. The Commission itself recognizes this principle when it routinely orders parties to respond to requests for the production of documents to the extent the parties actually possess responsive information."). (internal citations omitted).

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Since the NCRCP authorize the discovery of relevant and non-privileged information that is "in the possession, custody or control of the party upon whom the request is served," it logically follows that Rule 34 requires that the documents be in existence.¹²

Pursuant to the guidelines regarding discovery in this docket, set forth in the Commission's May 16, 2019 *Order Scheduling Investigation and Hearings, Establishing*

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Interventions and Testimony Due Dates and Discovery Guidelines and Requiring Public Notice, attached hereto is a copy of the Attorney General's Second Data Requests to Piedmont Regarding Settlement.

WHEREFORE, Piedmont respectfully submits the foregoing objections to document production request #2 of the Attorney General in this proceeding.

Respectfully submitted, this the 15th day of August, 2019.

Piedmont Natural Gas Company, Inc.

s/ James H. Jeffries IV
James H. Jeffries IV

OF COUNSEL:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Objections of Piedmont Natural Gas Company, Inc. to Attorney General's Second Data Request Regarding Settlement* is being served this date upon all of the parties to this docket electronically or by depositing a copy of the same in the United States Mail, First Class Postage Prepaid, at the address contained in the official service list in this proceeding.

This the 15th day of August, 2019.

/s/ Sloane K. O'Hare
Sloane K. O'Hare