STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 1142

In the Matter of Application of Duke Energy Progress, LLC, for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina	)))))	**SIERRA CLUB'S NOTICE OF APPEAL AND EXCEPTIONS**

NOW COMES Sierra Club, by and through undersigned counsel, pursuant to N.C. Gen. Stat. § 62-90 and Rule 18 of the North Carolina Rules of Appellate Procedure, and gives notice of appeal to the North Carolina Supreme Court from the February 23, 2018 Order Accepting Stipulation, Deciding Contested Issues and Granting Partial Rate Increase (the "Order") issued by the North Carolina Utilities Commission (the "Commission") in the above-captioned proceeding.

As set forth below, the Order grants a rate increase which overcharges the customers of Duke Energy Progress, LLC ("DEP") in contravention of North Carolina law. Moreover, the Order lacks findings of fact sufficient to support the Commission's conclusion that the new rates are just and reasonable. Accordingly, the Order is unlawful, unjust, unreasonable, and unwarranted, and includes errors of law.

EXCEPTION NO. 1:

The Commission erred in finding that "DEP is entitled to recover these coal ash basin closure costs, less a disallowance of $9.5 million, for a total amount of $232,390,000," that "[t]he actual coal ash basin closure costs incurred by DEP, less the $9.5 million, are known and measurable, reasonable and prudent, and used and useful in

the provision of service to the Company's customers," and that "DEP is entitled to recover these costs through rates." Order at 18 (¶ 54). These findings are beyond the Commission's statutory authority and jurisdiction, are affected by errors of law, are unsupported by competent, material, and substantial evidence in light of the entire record, are arbitrary and capricious, and are not in the public interest.

The law requires that rates by public utilities "shall be just and reasonable," N.C. Gen. Stat. § 62-131(a), and that the North Carolina Utilities Commission "shall fix such rates as shall be fair both to the public utilities and to the consumer," N.C. Gen. Stat. § 62-133(a). Rates that allow for recovery of cleanup costs for coal ash impoundments where DEP's maintenance of the impoundments was not reasonable and prudent are neither just, nor reasonable, nor fair. The evidence shows that DEP acted negligently in maintaining its coal ash impoundments, that it failed to exercise the proper degree of care, attention, and skill, and that DEP failed to apply evolving best practices as they developed over time.

Moreover, the Commission's conclusion that a mismanagement penalty was appropriate—albeit a conclusion that was based on the incorrect finding that DEP's mismanagement was limited to those acts and failures to act that DEP admitted in the federal criminal case, Order at 19 (¶ 55), 206—is inconsistent with its conclusion that DEP is entitled to recover $232,390,000 for coal ash basin closure costs.

EXCEPTION NO. 2:

The Commission erred in concluding that "[t]he costs being incurred are not resulting from an unlawful discharge as defined by the statute [N.C. Gen. Stat. § 62-133.13], which is a discharge that results in a violation of State or federal surface water

quality standards," and that "DEP is incurring the costs to comply with the federal CCR rule and CAMA." Order at 198. Such conclusion is beyond the Commission's statutory authority and jurisdiction, is affected by errors of law, is unsupported by competent, material, and substantial evidence in light of the entire record, is arbitrary and capricious, and is not in the public interest.

The law expressly prohibits recovery of "costs resulting from an unlawful discharge to the surface waters of the State from a coal combustion residuals surface impoundment." N.C. Gen. Stat. § 62-133.13. The Order allows DEP to recover such costs from its retail electric customers, despite undisputed evidence that unpermitted seeps at DEP's coal ash ponds convey untreated, pollutant-laden wastewater into nearby surface waters in violation of federal and state law, that those seeps discharge pollutants at concentrations above relevant surface water quality standards, and that closure of the ponds is necessary to eliminate seeps. The evidence in the record does not support the finding that "[t]he vast majority of these costs would have been incurred irrespective of management inefficiency in order to comply with EPA CCR requirements." Order at 199. In fact, the record lacks evidence that cleanup costs would have been the same had DEP acted prudently and taken corrective action at its coal ash ponds sooner.

CONCLUSION

For the reasons set forth above, the Order is arbitrary and capricious, is affected by errors of law, is unsupported by competent, material, and substantial evidence in light of the entire record, and is beyond the Commission's statutory power and jurisdiction.

Respectfully submitted, this 25th day of April, 2018.

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CERTIFICATE OF SERVICE

The undersigned certifies that on this day a copy of the foregoing **SIERRA CLUB'S NOTICE OF APPEAL AND EXCEPTIONS** was served upon each of the parties of record in this proceeding or their attorneys of record by electronic mail, hand delivery or depositing a copy of the same in the United States mail, postage prepaid.

This, the 25th day of April, 2018.

LEWIS & ROBERTS, PLLC

By: _____
Matthew D. Quinn