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April 5, 2016

VIA ELECTRONIC FILING

Ms. Gail Mount
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

Re: Duke Energy Carolinas, LLC and Duke Energy Progress, LLC Notification of FERC Audit Report
Docket Nos. E-7, Sub 986E and E-2, Sub 998E

Dear Ms. Mount:

Pursuant to Regulatory Condition No. 5.13, as approved by the North Carolina Utilities Commission ("Commission") in its June 29, 2012 *Order Approving Merger Subject to Regulatory Conditions and Code of Conduct*, in Docket Nos. E-7, Sub 986 and E-2, Sub 998, this letter informs the Commission that on April 1, 2016 the Federal Energy Regulatory Commission ("FERC") issued the final report of its Division of Audits and Accounting within the FERC Office of Enforcement pertaining to Duke Energy's compliance with conditions established in FERC orders authorizing the merger of Duke Energy with Progress Energy, Inc. The final report is attached hereto for filing, as Regulatory Condition No. 5.13 requires.

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, the "Companies") provided notification of FERC audit commencement on February 6, 2014 in the above-referenced dockets. Because this letter is being filed for the Commission's information, the Companies believe no action by the Commission is required.

Please do not hesitate to contact me if you have any questions.

Sincerely yours,

Kendrick C. Fentress

Kendrick C. Fentress

Enclosure

cc: Antoinette R. Wike

Federal Energy Regulatory Commission
Office of Enforcement
Division of Audits and Accounting

AUDIT REPORT

Audit of Duke Energy Corporation and its Public Utility Subsidiaries' Compliance with:

- Conditions in Commission Merger Authorization Orders;
- Transmission Formula Rate Tariff Requirements; and
- Accounting and Financial Reporting Regulations.

Docket No. PA14-2-000
March 29, 2016

Table of Contents

I. Executive Summary

A. Overview

The Division of Audits and Accounting (DAA) in the Office of Enforcement has completed an audit of Duke Energy Corporation (Duke Energy) and its public utility subsidiaries'[1] (collectively, Duke Companies) compliance with conditions and requirements established in Commission orders authorizing the merger of Duke Energy and Progress Energy, Inc. (Progress Energy).[2] The audit also evaluated each Duke Energy public utility subsidiary's compliance with: (1) tariff requirements governing its transmission formula rate; (2) accounting regulations in 18 C.F.R. Part 101, Uniform System of Accounts (USofA) Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act; and (3) financial reporting regulations in 18 C.F.R. Part 141, Statements and Reports. The audit covered the period January 1, 2011 through January 31, 2016.

B. Duke Energy Corporation

Duke Energy is a public utility holding company headquartered in Charlotte, NC. It is engaged in energy production, trade, transmission, and distribution through its six public utility subsidiaries that operate in the Southeast and Midwest regions of the United States. In 2014, Duke Energy was the largest electric utility in the nation. The company had 7.3 million retail electric and 500,000 natural gas customers, 32,400 miles of transmission lines, 57,500 MW of generating capacity, and total operating revenue of $23.9 billion. Its service area covered about 95,000 square miles and had an estimated population of 23 million. Regulated operations accounted for over 90 percent of the company's total revenue, and commercial power generation and international operations provided most of the remainder.

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[1] The Duke Energy public utility subsidiaries are: Duke Energy Carolinas, LLC (DEC), Duke Energy Progress, LLC (DEP), Duke Energy Florida, LLC (DEF), Duke Energy Indiana, LLC (DEI), Duke Energy Ohio, Inc. (DEO), and Duke Energy Kentucky, Inc. (DEK).

[2] *Duke Energy Corp. and Progress Energy, Inc.*, 136 FERC ¶ 61,245 (2011) (Merger Order), *order on compliance*, 137 FERC ¶ 61,210 (2011), *order on compliance*, 139 FERC ¶ 61,194 (2012) (June 8 Compliance Order), *order on compliance*, 149 FERC ¶ 61,078 (2014) (October 29 Compliance Order).

C. Summary of Compliance Findings

Audit staff identified eight findings of noncompliance. Below is a summary of audit staff's compliance findings. Details are in section IV of this report.

- *Accounting for Merger Transaction Costs* – Duke Companies did not file merger transaction accounting entries with the Commission as required by the Merger Order, and the companies recorded merger transaction costs in operating accounts, contrary to the Commission's long-standing policy that such costs be recorded in nonoperating accounts. By not filing the accounting entries, Duke Companies prevented Commission review of the merger accounting and correction of any entries that were not in accordance with Commission accounting requirements.

- *Merger Transaction Internal Labor Costs* – Duke Companies improperly included approximately $31.4 million of merger transaction internal labor costs in wholesale power and transmission formula rate service cost determinations without first submitting a section 205 filing demonstrating that the costs were offset by quantified savings produced by the merger. As a result, the wholesale power and transmission customers' revenue requirements were inappropriately overstated by an estimated $17.5 million.

- *Merger Transaction Outside Services and Related Costs* – Duke Companies incorrectly included $1.5 million of merger transaction outside services and related costs in wholesale power and transmission formula rate service cost determinations without first submitting a section 205 filing demonstrating the costs were offset by quantified savings produced by the merger. In addition, the companies recorded the merger transaction costs in operating accounts, contrary to the Commission's long-standing policy that such costs be recorded in nonoperating accounts. As a result, the wholesale power and transmission customers' revenue requirements were inappropriately overstated by an estimated $745,000.

- *Use of the Consolidation Method of Accounting* – DEC and DEP accounted for investments in subsidiaries on a consolidated basis in their FERC Form No. 1, Annual Reports (Form No. 1), contrary to the Commission's long-standing accounting policy.

- *Accounting for Sales of Accounts Receivable* – DEC, DEP, and DEF misclassified an estimated $94.7 million of nonoperating expenses and receivables arising from transactions with their subsidiaries during the audit period. As a result, the wholesale power and transmission customers' revenue requirements were inappropriately overstated by an estimated $61 million.

- *Accounting for Lobbying Expenses:* Duke Companies recorded approximately $2.4 million of lobbying expenses in above-the-line operating accounts from 2011 through 2013. As a consequence, Duke Companies improperly included these costs in wholesale power and transmission formula rate service cost determinations.

- *Allocation of Lobbyist Labor Costs:* Duke Companies accounted for the labor costs of internal lobbyists and their support staff in operating accounts that lacked support for inclusion in the accounts. Improper accounting for the costs can lead to inappropriate recovery of the costs through rates charged and billed to customers.

- *Nonutility Expenses in Operating Accounts:* Duke Companies recorded approximately $490,000 of nonutility expenses in operating accounts in 2014. As a result, inappropriate costs were included in wholesale power and transmission formula rate service cost determinations and charged to customers.

D. Summary of Recommendations

Audit staff's recommendations to remedy the findings are summarized below with details in section IV of this report. Audit staff recommends that Duke Companies:

Accounting for Merger Transaction Costs

1. Revise accounting policies and procedures to appropriately account for merger transactions consistent with Commission accounting requirements.

2. Develop written policies and procedures to timely identify proposed accounting transactions that would trigger a notification to the Commission.

3. Develop written policies and procedures to submit accounting questions of doubtful interpretation to the Commission.

4. Provide training to employees on compliance with the merger cost accounting conditions and the revised policies, procedures, and controls for complying with the conditions. Also, develop a training program that supports the provision of periodic training in this area.

Merger Transaction Internal Labor Costs

5. Revise all policies and procedures for tracking, accounting, and excluding merger transaction costs from wholesale power and transmission formula rates, including amounts previously charged to utility plant, accumulated deferred income taxes, construction work in progress with the associated capitalized cost of funds used during construction (AFUDC), and maintenance and operating expense accounts, and future charges to such accounts for any transaction to which a FERC hold harmless obligation applies. The revised procedures should hold customers harmless from all merger transaction costs consistent with requirements of the Merger Order. Among other things, the revised policies and procedures should include an annual review of each subsidiary's merger transaction cost adjustments as well as periodic evaluations within the year, as needed and appropriate.

6. Submit a refund analysis, within 60 days of receiving the final audit report, to DAA for review that explains and details the following: (1) calculation of refunds that include the amount of inappropriate recoveries that resulted from the inclusion of merger transaction internal labor and related costs in wholesale power and transmission formula rates during the audit period, plus interest on the costs; (2) determinative components of the refund; (3) refund method; and (4) period(s) refunds will be made.

7. File a refund report with the Commission after receiving DAA's assessment of the refund analysis.

8. Refund amounts disclosed in the refund report to wholesale power and transmission customers, with interest calculated in accordance with section 35.19a of Commission regulations.

Merger Transaction Outside Services and Related Costs

9. Revise accounting policies and procedures to appropriately account for merger transaction costs consistent with Commission accounting requirements.

10. Submit a refund analysis, within 60 days of receiving the final audit report, to DAA for review that explains and details the following: (1) calculation of refunds that include the amount of inappropriate recoveries that resulted from the inclusion of merger transaction outside services and related costs in wholesale power and transmission formula rate charges during the audit period, plus interest on the costs; (2) determinative components of the refund; (3) refund method; and (4) period(s) refunds will be made.

11. File a refund report with the Commission after receiving DAA's assessment of the refund analysis.

12. Refund amounts disclosed in the refund report to wholesale power and transmission customers, with interest calculated in accordance with section 35.19a of Commission regulations.

Use of the Consolidation Method of Accounting

13. Review and, as needed, revise accounting policies, practices, and procedures to ensure that investments in subsidiaries are accounted for consistent with the Commission's equity method accounting requirements.

14. Evaluate the accounting applied to Duke Companies' existing subsidiaries and notify DAA of any areas of noncompliance with Commission accounting requirements.

15. Revise documented policies, procedures and processes to ensure timely notice is provided to relevant regulators regarding instances of noncompliance with regulations, rules, and orders.

16. Provide training to staff on procedures, practices, and available tools to transparently or anonymously report instances of noncompliance to senior management, the Board of Directors, and relevant regulators.

Accounting for Sales of Accounts Receivable

17. Revise procedures to ensure that all costs and account balances associated with the sale of accounts receivable are accounted for in accordance with Commission accounting regulations. Among other things, the corrected accounting should ensure that all losses associated with receivable sales are recorded in Account 426.5.

18. Provide the revised procedures to DAA for review within 60 days of receiving the final audit report.

19. Recalculate charges to wholesale power and transmission customers of DEC, DEP, and DEF and submit the recalculations in a refund analysis to DAA for review within 60 days of receiving the final audit report. The refund analysis should explain and detail the: (1) return of collection service billings charged in 2014; (2) return of losses on the sales included in rates; (3) determinative components of the refund; (4) refund method; (5) period(s) refunds will be

made; and (6) interest calculated in accordance with section 35.19 of Commission regulations.

20. File a refund report with the Commission after receiving DAA's assessment of the refund analysis.

21. Refund amounts disclosed in the refund report to wholesale power and transmission customers, with interest calculated in accordance with section 35.19a of Commission regulations.

Accounting for Lobbying Expenses

22. Establish and implement written procedures governing the methods used to account for, track, report, and review lobbying costs incurred.

23. Provide training on Commission accounting requirements and the impact of accounting on cost-of-service rate determinations to employees involved in lobbying and lobbying-related work, and those with oversight responsibility for lobbying cost allocations. Also, develop a training program that supports the provision of periodic training in this area.

24. Submit a refund analysis, within 60 days of receiving the final audit report, to DAA for review that explains and details the following: (1) calculation of refunds that include the amount of inappropriate recoveries that resulted from the improper inclusion of lobbying cost in operating accounts during the audit period, plus interest on the costs; (2) determinative components of the refund; (3) refund method; and (4) period(s) refunds will be made.

25. File a refund report with the Commission after receiving DAA's assessment of the refund analysis.

26. Refund amounts disclosed in the refund report to wholesale power and transmission customers, with interest calculated in accordance with section 35.19a of Commission regulations.

Allocation of Lobbyist Labor Costs

27. Revise written policies and procedures to create a process to document and verify appropriate allocation of lobbying and lobbying-related costs, and maintain auditable support for the cost included in rate determinations.

28. Retain an independent third-party entity to conduct a representative labor time study to determine an appropriate allocation of internal lobbyist labor, support

staff, and associated costs that should be accounted for in operating and nonoperating accounts based on time spent by employees engaged in the activities. Provide the study results to audit staff within 180 days of the date of the final audit report.

29. Include the results of the labor time study in the determination of lobbying-related labor cost allocations as of January 1, 2016.

30. Implement policies and procedures to perform a labor time study biennially using an independent third-party or internal company resources that are able to attest to the results of the study. Revise the lobbying-related labor cost allocations based on the results of the study.

Nonutility Expenses in Operating Accounts

31. Develop and implement written policies, procedures, and controls to ensure proper accounting and reporting of nonutility expenses.

32. Provide training for employees involved in the invoicing process on Commission accounting requirements and the impact of the accounting on cost-of-service rate determinations.

33. Within 60 days of receiving the final audit report, provide documentation supporting the analysis performed of invoiced expenses recorded to administrative and general (A&G) accounts in 2014 that identified misclassified nonutility expenses included in A&G accounts. Develop an estimate of misclassified nonutility expenses accounted for in operating accounts in 2011 through 2013 and 2015.

34. Implement policies and procedures to provide periodic audits or reviews of A&G transactions by external or internal auditors.

35. Submit a refund analysis, within 60 days of receiving the final audit report, to DAA for review that explains and details the following: (1) calculation of refunds that include the amount of inappropriate recoveries that resulted from the improper inclusion of identified and estimated nonutility expenses in charges to wholesale power and transmission customers during the audit period, plus interest on the costs; (2) determinative components of the refund; (3) refund method; and (4) period(s) refunds will be made. Include the results of the invoice analysis in the refund analysis.

36. File a refund report with the Commission after receiving DAA's assessment of the refund analysis.

37. Refund amounts disclosed in the refund report to wholesale power and transmission customers, with interest calculated in accordance with section 35.19a of Commission regulations.

E. Implementation of Recommendations

Audit staff further recommends that Duke Companies submit the following for audit staff's review:

- A plan for implementing the audit recommendations within 30 days after the final audit report is issued;

- Quarterly reports describing progress in completing each corrective action recommended in the final audit report. Quarterly nonpublic submissions should be made no later than 30 days after the end of each calendar quarter, beginning with the first quarter after the final audit report is issued, and continuing until all recommended corrective actions are completed; and

- Copies of any written policies and procedures developed in response to recommendations in the audit report. These documents should be submitted in the first quarterly filing after Duke Companies complete such policies and procedures.

II. Background

A. Merger of Duke Energy and Progress Energy

On January 10, 2011, Duke Energy and Progress Energy announced their intention to merge in a stock-for-stock transaction under which Progress Energy would become a wholly owned subsidiary of Duke Energy, and the shareholders of Progress Energy would become shareholders of Duke Energy. At the time, the transaction was valued at over $31 billion. The merger was poised to create the largest U.S. electric utility in history with over seven million electric customers and operations in six states.

Following the announcement, on April 4, 2011, Duke Energy, Progress Energy, and their public utility subsidiaries (collectively, Duke Companies) filed an application with the Commission seeking authorization for the merger transaction under section 203 of the Federal Power Act (FPA)[3] and Part 33 of Commission regulations.[4] To receive authorization for the transaction, the companies committed to hold transmission and wholesale requirements customers harmless from the costs of the transaction for five years. The companies also contended that the transaction would not adversely affect competition, and thus there were no market power concerns associated with the transaction.

On September 30, 2011, the Commission found that the transaction, as proposed in the application, would result in significant screen failures in the horizontal market power analysis and have an adverse effect on competition.[5] As such, the Commission authorized the transaction subject to conditions. Among other things, the transaction was conditioned on Duke Companies holding transmission and wholesale requirements customers harmless from the costs of the transaction, and submitting proposed market power mitigation measures that the Commission approves. The Commission advised Duke Companies that sufficient mitigation measures could include membership in a regional transmission organization, implementing an independent coordinator of transmission arrangement, actual or virtual divestiture of generation, and/or transmission upgrades to provide greater market access to third-party energy suppliers.

Further, the Commission stated that the hold harmless commitment included all merger transaction costs, not only costs related to consummating the transaction.[6] To recover merger transaction costs through wholesale requirement or transmission rates, the

[3] 16 U.S.C. § 824b (2012).

[4] 18 C.F.R. Part 33.

[5] Merger Order, 136 FERC ¶ 61,245 at PP 145-146.

[6] *Id.* P 169.

companies were required to submit a filing to the Commission that identified merger costs to be recovered and demonstrated that the costs were exceeded by savings produced by the transaction.[7] Duke Companies did not submit a filing to recover merger transaction costs during the audit period. However, as discussed in detail below, the companies recovered merger transaction costs through rates charged.

Consistent with the Commission's merger authorization condition that required Duke Companies to submit proposed market power mitigation measures for approval, the companies submitted an initial compliance filing on October 17, 2011, which proposed to mitigate market power through virtual divestiture of generation. The filing proposed a must-offer obligation under which Duke Companies would sell specified quantities of energy at cost-based rates to entities directly or indirectly serving load in the DEC and DEP Balancing Authority Areas (BAAs). The Commission rejected the filing on the grounds that the market power mitigation proposals did not remedy the market power concerns identified in the Merger Order.[8]

A revised compliance filing was submitted by Duke Companies on March 26, 2012 that proposed permanent and interim market power mitigation measures. To permanently mitigate market power, Duke Companies proposed to build seven transmission expansion projects (TEPs), expedite completion of an eighth project that was already planned, and set aside 25 MW of transfer capacity on their transmission systems for use by third parties (Stub Mitigation). During construction of the TEPs, as an interim measure to protect against potential market power concerns, Duke Companies proposed to enter into power sale agreements with three unaffiliated firms – Cargill Power Marketing, EDF Trading, and Morgan Stanley Capital Markets – to which the companies would sell power during all periods requiring mitigation. The companies also proposed to hire an independent monitor, Potomac Economics Ltd. (Potomac Economics), to verify compliance with the provisions of the power sale agreements.

The Commission accepted the revised compliance filing on June 8, 2012, subject to certain revisions and conditions, which included, among other things, requirements to hold customers harmless from the cost of the mitigation actions and to expand Potomac Economics' duties to verify that the TEPs were completed within the prescribed scope and timeline.[9] The merger was consummated on July 2, 2012.

On December 6, 2013, after the merger was consummated, Duke Companies submitted a motion to supplement its March 26, 2012 compliance filing, due to newly identified information that affected calculation of the impact of the market power

[7] *Id.* P 170.

[8] *Duke Energy Corp.*, 137 FERC ¶ 61,210 (2011).

[9] *See* June 8 Compliance Order, 139 FERC ¶ 61,194 at P 113.

mitigation measures. In the filing, Duke Companies offered to increase the Stub Mitigation by 104 MW (thereby raising the total amount of the transmission set-aside to 129 MW), repair out of service phase-shifting transformers at DEC's Rockingham substation and return them to service, and operate the transformers so as to create additional import capability on the transmission system. The Commission granted the motion and accepted the supplementary compliance filing subject to conditions on October 29, 2014.[10] Moreover, the Commission reiterated its requirement that transmission and wholesale requirements customers be held harmless from costs associated with repairing the transformers and returning them to service.

B. Duke Energy's Public Utility Subsidiaries

During the audit period, the Duke Companies provided electricity service in portions of North Carolina, South Carolina, Florida, Indiana, Ohio, and Kentucky. DEO and DEK also provided natural gas service in portions of Ohio and Kentucky. The following describes the services provided by each company, its open access transmission tariff (OATT), membership in an independent system operator (ISO) or regional transmission organization (RTO), transmission formula rate, and market-based rate authority.

Duke Energy Carolinas, LLC

DEC is a vertically integrated public utility that generates, transmits, distributes, and sells electricity to 2.5 million customers in a 24,000 square mile service area in North and South Carolina. DEC owns 8,302 miles of transmission lines and 19,600 MW of generating capacity.

DEC provided open access transmission service under a Commission-approved OATT at cost-based stated rates from 1995 through 2011.[11] In 2011, DEC began recovery of its transmission service cost pursuant to a formula rate that became effective June 1, 2011.[12] However, on March 26, 2012, in connection with the merger transaction, DEC, DEP, and DEF filed for approval of a Joint OATT under section 205 of the FPA and Part 35 of the Commission's regulations. The filing was conditionally accepted by the Commission on June 8, 2012.[13]

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[10] October 29 Compliance Order, 149 FERC ¶ 61,078 (2014).

[11] *Duke Power Co.*, 73 FERC ¶ 61,309 (1995) (Duke Power Order).

[12] *Duke Energy Carolinas, LLC*, 137 FERC ¶ 61,058 (2011).

[13] *Duke Energy Corp.*, 139 FERC ¶ 61,193 (2012).

The Joint OATT provided for transmission service at non pancaked rates for transactions involving the combined transmission systems of the companies. DEC's transmission formula rate is incorporated as Schedule 10-B of the Joint OATT. DEC's formula rate implementation protocols are incorporated as Exhibit A of the Joint OATT, and the formula rate template and formula rate principles are contained in Exhibit B. DEC does not belong to an ISO or RTO.

DEC has wholesale power sale agreements with cost-based rates determined under a formula, and it has Commission authorization to make wholesale sales at market-based rates outside its and DEP's BAAs and Peninsular Florida.

<u>Duke Energy Progress, LLC</u>

DEP is a vertically integrated public utility that generates, transmits, distributes, and sells electricity to 1.5 million customers in a 32,000 square mile service area in North and South Carolina. DEP owns 6,981 miles of transmission lines and 12,200 MW of generating capacity.

DEP provided open access transmission service under a Commission-approved OATT at cost-based stated rates from 1996 through 2008. In 2008, DEP began recovery of its transmission service cost pursuant to a formula rate that became effective July 1, 2008.[14] Since the merger, DEP has provided transmission service under the Joint OATT with DEC and DEF. DEP's transmission formula rate is incorporated in Attachment H of the Joint OATT. The formula rate template is incorporated as Attachment H-1 of the Joint OATT, and the implementation protocols as Attachment H-2. DEP does not belong to an ISO or RTO.

DEP has wholesale power sale agreements with cost-based rates determined under a formula, and it has Commission authorization to sell energy and capacity at market-based rates outside its and DEC's BAAs and Peninsular Florida.

<u>Duke Energy Florida, LLC</u>

DEF is a vertically integrated public utility that generates, transmits, and delivers electricity to 1.7 million customers in a 13,000 square mile area in central and southern Florida. DEF owns 4,424 miles of transmission lines and 1,200 MW of generating capacity.

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[14] *Carolina Power and Light Co.*, Docket No. ER08-889-000 (June 27, 2008) (delegated letter order).

DEF provided open access transmission service under a Commission-approved OATT at cost-based stated rates from 1996 through 2008. In 2008, DEF began recovery of its transmission service cost pursuant to a formula rate that became effective January 1, 2008.[15] Since the merger, DEF has provided transmission service under the Joint OATT with DEC and DEP. DEF's transmission formula rate is incorporated as Schedule 10-A of the Joint OATT. The implementation protocols are designated as Schedule 10-A.1 of the Joint OATT, and the formula rate template as Schedule 10-A.2. DEF does not belong to an ISO or RTO. Additionally, DEF has Commission authorization to sell energy and capacity outside the DEC and DEP BAAs and Peninsular Florida.

Duke Energy Indiana, LLC

DEI is a vertically integrated utility that generates, transmits, distributes, and sells electricity to 810,000 customers within a 23,000 square mile service territory in central, north central, and southern Indiana. DEI owns 7,500 MW of generating capacity and 4,815 miles of transmission lines.

DEI became a member of the Midcontinent Independent System Operator, Inc., (MISO) in 1997 and recovered its cost of transmission service pursuant to cost-based stated rates. In 1998, DEI began to recover its transmission service cost pursuant to a transmission formula rate. DEI's transmission formula rate template is included at Attachment O of the MISO Open Access Transmission, Energy, and Operating Reserve Markets Tariff. Additionally, DEI has Commission authorization to sell power at market-based rates outside the DEC and DEP BAAs and Peninsular Florida.

Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.

DEO is the direct parent of DEK. The companies are combination electric and gas utilities that transmit, distribute, and sell electricity at retail and wholesale, and distribute and sell natural gas at retail in southwestern Ohio and northern Kentucky, respectively. DEO owns 1,879 miles of transmission lines. The company divested its generating assets pursuant to Ohio's electric restructuring program and received Commission authorization for the divestiture.[16] DEK owns 102 miles of transmission lines and about 1,200 MW of generating capacity.

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[15] *Florida Power Corp.*, Docket No. ER08-105-000 (Dec. 17, 2007) (delegated letter order).

[16] *See Dynegy Resource I, LLC*, 150 FERC ¶ 61,232 (2015).

DEO and DEK were members of MISO until January 1, 2012, when they withdrew their membership and joined PJM Interconnection, L.L.C. (PJM).[17] The companies recover transmission service costs pursuant to a transmission formula rate under the PJM OATT. DEO and DEK's transmission formula rate is incorporated as Attachment H-22 of the PJM OATT. The formula rate template is incorporated as Attachment H-22A of the OATT, and the implementation protocols as Attachment H-22B. Additionally, DEO and DEK have Commission authorization to sell power at market-based rates outside the DEC and DEP BAAs and Peninsular Florida.

[17] The Commission conditionally authorized the move in an order issued October 21, 2010. *See Duke Energy Ohio, Inc.*, 133 FERC ¶ 61,058 (2010).

III. Introduction

A. Objectives

The audit evaluated Duke Companies' compliance with conditions established in the Merger Order and associated orders on compliance, requirements of each company's transmission formula rate tariff, and accounting and financial reporting regulations. The audit covered the period January 1, 2011 through January 31, 2016.

B. Scope and Methodology

Audit staff performed specific actions to facilitate the audit and evaluate compliance with the audit objectives. Audit staff also reviewed the effectiveness of Duke Companies' compliance program in relation to the audit objectives and other key factors. To address overall audit objectives, audit staff:

- Conducted an extensive review of publicly available materials to understand the companies' corporate structure and organization, operations, financial accounting and reporting activities, and other key regulatory and business activities, both before and after the merger. Examples of materials and documentation reviewed include Commission rules, regulations, and orders, Form No. 1 reports, FERC Form No. 65, Notification of Holding Company Status, formula rate filings, the Commission's enforcement hotline calls and company self-reports, company-related web sites, and relevant media sources. This also included a review of filings with other government agencies, such as the Securities and Exchange Commission Forms 10-K and 10-Q, Annual and Quarterly Reports;

- Evaluated the companies' internal policies and procedures relevant to the audit objectives;

- Conferred with other Commission staff on various compliance issues to ensure audit findings were consistent with Commission precedent and policy. For example, audit staff communicated with staff from other divisions within the Office of Enforcement and staff from the Office of Energy Market Regulation and Office of General Counsel;

- Conducted two site visits to Duke Energy's headquarters in Charlotte, NC. The visits enabled audit staff to further understand the company's corporate structure, functions, operations, accounting systems and practices, transmission planning and cost-estimating procedures, formula rate, internal audit function, and regulatory and corporate compliance programs. While on site, audit staff interviewed employees and managers responsible for performing tasks within the audit scope, sampled and tested documents to verify compliance with Commission orders related to merger conditions, accounting regulations, financial reporting, transmission formula rates, and related matters. Additionally, audit staff also interviewed compliance program staff, senior officials, internal auditors, and employees who fulfill day-to-day compliance activities for the purposes of carrying out regulatory oversight responsibilities;

- Conducted teleconferences to discuss audit objectives and scope, data requests and responses, technical and administrative matters, compliance concerns, and held a closing conference to discuss the completion of audit fieldwork and results; and

- Issued data requests to gather information not available through public means. This information related to internal policies and procedures, business practices, reporting activities, corporate compliance, internal and external audit reports, merger order conditions and compliance, transaction and operational data, and other pertinent information. Audit staff used this information as underlying support for testing and evaluating compliance with Commission requirements relevant to the audit scope and objectives.

Further, audit staff performed these specific actions to facilitate the testing and evaluation of compliance with relevant requirements for the audit scope areas. A summary of these actions follows.

Compliance with Merger Conditions

To evaluate compliance with the hold harmless and market power mitigation conditions established in the Merger Order and associated compliance orders, audit staff performed audit fieldwork applicable to the merger. Audit staff performed the following steps:

- Reviewed the merger application, supporting testimony and exhibits to understand the context, terms, and conditions of the merger proposal and commitment to hold transmission and wholesale requirements customers harmless from costs of the transaction. Reviewed intervenor comments and protests, and responses to the comments and protests, and also reviewed Duke Companies' compliance filings, intervenor responses, and answers to the responses;

- Evaluated Duke Companies' responses to Commission staff's delegated data requests that sought information regarding the merger application and compliance filings;

- Examined the companies' policies and procedures associated with tracking and accounting for merger transaction costs incurred prior to and following consummation of the merger;

- Performed a comparative analysis of Duke Energy and Progress Energy's accounting for costs of the merger prior to and after its consummation and the companies' policies associated with the accounting;

- Reviewed actions taken by the companies to maintain compliance with merger conditions;

- Analyzed the companies' procedures to ensure compliance with hold harmless conditions and to account for merger transaction costs;

- Conducted sample-based tests of internal costs and external contracted costs incurred by the companies to assess the accounting for the costs and the impact on wholesale rate determinations;

- Obtained information on staff involved in merger activities, including employee names, positions, salaries, work performed on merger activities, and time spent on merger-related activities;

- Reviewed documentation and supporting evidence of merger transaction costs and performed substantive tests of sample data;

- Inspected reports submitted by Potomac Economics regarding the Rockingham phase shifters and other relevant Commission filings;

- Evaluated expenses incurred to repair the Rockingham phase shifters to assess the accounting for the costs and impacts on wholesale rate determinations; and

- Examined costs incurred to operate the TEPs – including the Rockingham phase shifters – from 2012 through Q1 2015 to evaluate the accounting used to record cost of activity and the resulting impact on wholesale rate determinations.

Furthermore, audit staff conducted the following additional steps to evaluate Duke Companies' compliance with the market power mitigation conditions:

- Reviewed the companies' contract with Potomac Economics to ascertain whether the independent monitor had sufficient oversight authority and timely access to data needed to monitor compliance with interim and permanent market power mitigation measures;

- Examined the quarterly independent monitoring reports prepared by Potomac Economics detailing Duke Companies' compliance with interim and permanent market power mitigation conditions;

- Interviewed personnel responsible for reporting the status of TEP construction to Potomac Economics, and reviewed a sample of email communications between the parties;

- Interviewed personnel involved with TEP planning, engineering and design, purchasing and contracting, construction, and project management to verify that the projects were completed as required and to ascertain the amount of labor time employees spent on the projects;

- Identified scope changes made to the TEP plans and assessed the impact of changes on project cost and expected performance of the transmission system;

- Examined a sample of information that Potomac Economics relied on to conclude that the TEPs were placed into service. This information included data from the supervisory control and data acquisition (SCADA) system on the operation of the constructed projects and associated work orders;

- Analyzed photographs of TEP equipment nameplates for asset identification and facility ratings for a sample of major equipment installed, and compared nameplate information to construction work orders and internal company correspondence related to the TEPs;

- Reviewed Duke Companies' written procedures that governed implementation of the power sales agreements required by the Commission's interim market power mitigation measures. Also, interviewed personnel responsible for developing and implementing the agreements, and reviewed Potomac Economics' seasonal and event-based reports to the Commission on the company's performance under the agreements;

- Analyzed a sample of transaction data on power sales DEC and DEP made under the power sale agreements and reviewed transmission schedules on the Open Access Same-time Information System (OASIS) to verify the energy was scheduled and delivered;

- Interviewed power marketing personnel to gain information on operating procedures and processes used to comply with the requirement to set aside firm transmission capacity on the DEC-DEP interface (i.e., Stub Mitigation requirement);

- Reviewed Potomac Economics' reports on the Stub Mitigation requirement and analyzed a sample of data from OASIS regarding transmission offerings and requests for firm transmission service on the DEC-DEP interface;

- Evaluated the DEC-DEP Joint Dispatch Agreement (JDA) and associated operating procedures to understand the methods used to forecast load and determine the mix of generating resources needed to meet load demand on daily and weekly bases;

- Interviewed power marketing employees responsible for scheduling power between the DEC and DEP BAAs, and examined a sample of transactions that involved dispatch of generating resources, reserving and scheduling transmission service consistent with the JDA, and operating the respective BAAs separately. Also, tested a sample of OASIS transmission reservations and schedules to evaluate DEC and DEP's reservations of point-to-point and network transmission service to transmit energy and capacity between the two BAAs; and

- Identified instances in which DEC and DEP used network transmission to deliver power to their respective BAAs, and evaluated these transactions to assess compliance with conditions that restricted certain transactions in the BAAs.

Transmission Formula Rates

To evaluate compliance with the requirements of each company's transmission formula rate tariff, audit staff:

- Reviewed the initial applications filed seeking approval of each company's transmission formula rate tariff, intervenor responses to the filings, any associated settlement agreements with wholesale customers and interested parties, and the Commission orders that approved the transmission formula rate tariffs;

- Examined the transmission formula rate templates and all appendices and attachments used to compute key inputs to the annual transmission revenue requirement and associated formula rate protocols;

- Interviewed employees responsible for populating each public utility's transmission formula rate template, verifying data and calculations, and reviewing and obtaining management approval of the calculated transmission service rates;

- Assessed the adequacy of management oversight and verification controls that support performance of key activities;

- Evaluated data responses and conducted conference calls to understand the accounting for major items affecting the formula rate, including miscellaneous deferred debits, income taxes, and others. Also, reviewed these items to determine compliance with relevant accounting regulations, instructions, and definitions;

- Reviewed annual informational and true-up filings submitted after the initial rate years and during the audit period. Reconciled the Form No. 1 data with formula rate calculations and evaluated discrepancies. Conducted a detailed analysis of supporting worksheets and attachments to evaluate the calculation of transmission formula rate inputs;

- Analyzed footnotes included in each company's Form No. 1 to determine whether information disclosed provided for a reconciliation of publicly available data to balances used to calculate the transmission service rates;

- Performed procedures to verify that transmission formula rate inputs were supported by data reported in each company's Form No. 1;

- Evaluated the companies' accounting for merger transaction costs by assessing documented policies, operating processes, and procedures, and tested a sample of invoices and work orders that included merger activities and associated costs. Analyzed the accounting for the costs and the impact on transmission rate determinations;

- Checked plant balances used to calculate transmission revenue requirements, sampled work order charges included in construction work in progress and plant balances, and performed tests on amortized pre-commercial costs;

- Tested a sample of depreciation accruals on utility plant to assess the depreciation rates applied to the plant; and

- Performed substantive tests on a sample of invoices and work orders that included nonutility expenses, and evaluated the impact of identified misclassified items on transmission rate determinations.

Accounting and Reporting

To evaluate compliance with the Commission's accounting and reporting regulations in the USofA under 18 C.F.R. Parts 101 and 141, audit staff performed the following with respect to the merger:

- Conducted interviews and teleconferences and met with company staff to discuss accounting policies, procedures, and practices. These interviews included discussions with employees involved in the operation of each public utility subsidiary's financial accounting systems to assess the adequacy of accounting and reporting oversight controls related to the merger, and employees in leadership positions responsible for day-to-day oversight of merger activities to understand how merger-related labor was reported on timesheets;

- Examined procedures for preparing, reviewing, and obtaining management approval of the Form No. 1 reports. Reviewed disclosures in the reports to understand major accounting policies;

- Reviewed and evaluated the processes, procedures, and controls the companies used before and after merger consummation to track and account for merger transaction costs;

- Evaluated the Form No. 1 and Securities and Exchange Commission 10-K notes and disclosures related to tracking, accounting, and reporting merger transaction costs;

- Analyzed the companies' accounting entries that recorded merger-related labor, goodwill, TEP project costs and impairments, and the income tax effects of the transaction;

- Reviewed third-party lobbying expenditure disclosures, press articles, meeting schedules, and agendas of internal lobbyists. Interviewed internal lobbyists and support staff to understand the nature and extent of the companies' lobbying activities;

- Tested a sample of work orders, invoices, and associated accounting detail records that support internal lobbyists' labor costs incurred;

- Assessed the impact on wholesale rates of merger and other costs incurred by the companies that were reported in the Form No. 1;

- Tested a sample of FERC accounts for compliance with the Merger Order as well as the companies' internal policies and procedures; and

- Evaluated certain income statement and balance sheet accounts and balances reported in the companies' Form No. 1 reports for 2012 through 2014.

IV. Findings and Recommendations

1. Accounting for Merger Transaction Costs

Duke Companies did not file merger transaction accounting entries with the Commission as required by the Merger Order, and the companies recorded merger transaction costs in operating accounts, contrary to the Commission's long-standing policy that such costs be recorded in nonoperating accounts. By not filing the accounting entries, Duke Companies prevented Commission review of the merger accounting and correction of any entries that were not in accordance with Commission accounting requirements.

Pertinent Guidance

The Commission's September 30, 2011 order conditionally authorizing the Proposed Transaction established the following requirement concerning the submission of accounting entries related to the merger:

> To the extent any applicant that is subject to the Commission's Uniform System of Accounts records any aspect of the Proposed Transaction in its accounts, it is directed to file its accounting entries with the Commission within six months of the consummation of the Proposed Transaction. Further, if the accounting entities are recorded six months after the consummation of the Proposed Transaction, the applicant must file those accounting entries with the Commission within 60 days from the date they were recorded. The accounting submission must provide all accounting entries related to the Proposed Transaction, including narrative explanations describing the basis, and the rate impact, of such entries.[18]

The Commission's long-standing precedent stipulates that transaction costs incurred by public utilities associated with a merger are nonoperating in nature and should be charged to Account 426.5, Other Deductions, to the extent the costs are not retained by the parent holding company. For example, in *Allegheny Energy, Inc.*, the Commission stated in part:

> The Commission has previously determined that merger transaction costs are considered non-operating in nature and should be recorded in

[18] Merger Order, 136 FERC ¶ 61,245 at P 190.

Account 426.5, Other Deductions.[19]

18 C.F.R. Part 101, Account 426.5, Other Deductions, states:

> This account shall include other miscellaneous expenses which are nonoperating in nature, but which are properly deductible before determining total income before interest charges.

18 C.F.R. Part 101, General Instruction No. 5, Submittal of Questions, states:

> To maintain uniformity of accounting, utilities shall submit questions of doubtful interpretation to the Commission for consideration and decision.

Background

In the Merger Order, the Commission authorized Duke Companies to merge, subject to conditions. With respect to accounting, the Merger Order stated that if any Duke Energy subsidiary subject to the USofA recorded any aspect of the merger on its books, the subsidiary must file the accounting entries with the Commission within 60 days of consummation of the transaction. The Commission noted that such accounting entries include entries related to transaction costs, merger premiums, acquisition adjustments, goodwill, or any cost related to the merger.[20]

Moreover, pursuant to long-standing Commission precedent, merger transaction costs are considered nonoperating in nature and are required to be recorded to Account 426.5, Other Deductions. The text of Account 426.5 states that the account shall include expenses that are nonoperating in nature. Audit staff evaluated Duke Companies' accounting for the merger and found that the companies recorded merger transaction costs on their books. Further, contrary to the requirements of the Merger Order and Commission accounting rules, Duke Companies neither filed accounting entries with the Commission that reflected the recording of the transaction costs on the companies' books nor accounted for nonoperating merger transaction costs in Account 426.5.

[19] *See Allegheny Energy, Inc.*, 133 FERC ¶ 61,222, at P 73 (2010). *See also Midwest Power Systems, Inc. and Iowa-Illinois Gas and Elec. Co.*, 71 FERC ¶ 61,386, at 62,509 (1995); *MidAmerican Energy Co. and MidAmerican Energy Holdings Co.*, 85 FERC ¶ 61,354, at 62,370 (1998); and *Wis. Elec. Power Co.*, 74 FERC ¶ 61,069, at 61,192 (1996).

[20] Merger Order, 136 FERC ¶ 61,245 at n. 414.

Duke Companies collectively incurred over $1 billion in merger costs and recorded the costs on their Form No. 1 reports from 2011 through October 30, 2015. The costs were accounted for in numerous operating plant and expense accounts, including: A&G expense; payroll tax; customer account expense; transmission, distribution, and production operating and maintenance expense; and other accounts.

Duke Energy explained that it interpreted the Merger Order to require submittal of accounting entries only if a subsidiary used the purchase method of accounting and increased the book value of assets for goodwill acquired in the transaction. However, the Merger Order did not require the companies to file accounting entries only if they used the purchase method of accounting or increased the book value of assets for goodwill. To the contrary, the Merger Order stated that if *any entity* subject to the USofA recorded *any aspect* of the merger on its books, it must file its accounting entries with the Commission. The Merger Order further clarified that such accounting entries included entries related to transaction costs, merger premiums, acquisition adjustments, goodwill, or any cost related to the merger.

All of Duke Energy's public utility subsidiaries were subject to the Commission's USofA, therefore the companies should have filed accounting entries. By not filing the accounting entries, Duke Companies prevented Commission review of the merger accounting and correction of any entries not in accordance with Commission accounting requirements.

Furthermore, Duke Companies should have recorded merger transaction costs incurred to effectuate the merger in Account 426.5 rather than in operating accounts consistent with the text of Account 426.5 and Commission precedent.[21] Audit staff found that prior to March 2012, both Duke Energy and Progress Energy recorded merger transaction costs in operating accounts. However, in March 2012, Progress Energy transferred its merger transaction costs to Account 426.5, due to its interpretation of a Commission merger order that required such accounting. Duke Energy did not implement a similar reclassification of its merger transaction costs. Duke Energy explained that it believed costs associated with the merger were appropriately recorded in operating accounts.

[21] Post-merger integration cost (i.e., cost incurred following consummation of a merger, in which the assets, personnel, and business activities of the entities participating in the merger are combined) are recordable to operating accounts; however, the cost would be subject to the Commission's hold harmless commitments and prohibited from recovery in jurisdictional rates.

In April 2012, Duke Energy's external auditors questioned its accounting of the merger transaction costs. The external auditors informed Duke Energy of the Commission's merger accounting policy, which the auditors interpreted as requiring merger transaction costs to be recorded below-the-line in Account 426.5. Duke Energy disagreed with the auditors' interpretation. Rather than adjusting its accounting, Duke Energy and its external auditors agreed that Duke Energy's management representation letter would be revised. The letter is a signed attestation by Duke Energy management of the accuracy of its financial statements. The letter was revised to include a statement that Duke Energy was aware of Commission orders that indicated merger transaction costs should be recorded in Account 426.5, but Duke Energy nonetheless believed that its classification of merger transaction costs in operating accounts was appropriate.

The Duke Companies were required to file the accounting entries with the Commission as directed in the Merger Order. The companies' improper accounting for merger transaction costs contributed to the inappropriate recovery of merger-related internal labor and outside service costs through charges to Commission-jurisdictional customers. To the extent Duke Companies was uncertain about the appropriate accounting for the transaction, the companies should have submitted accounting questions of doubtful interpretation to the Commission for consideration and decision. The Commission expects Duke Companies, and all entities that have a reporting requirement for transactions under FPA section 203, to fully comply with the orders approving such transactions. Duke Companies' lack of compliance with the Merger Order reporting requirement is a very serious matter.

Recommendations

We recommend Duke Companies:

1. Revise accounting policies and procedures to appropriately account for merger transactions consistent with Commission accounting requirements.

2. Develop written policies and procedures to timely identify proposed accounting transactions that would trigger a notification to the Commission.

3. Develop written policies and procedures to submit accounting questions of doubtful interpretation to the Commission.

4. Provide training to employees on compliance with the merger cost accounting conditions and the revised policies, procedures, and controls for complying with the conditions. Also, develop a training program that supports the provision of periodic training in this area.

2. Merger Transaction Internal Labor Costs

Duke Companies improperly included approximately $31.4 million of merger transaction internal labor costs in wholesale power and transmission formula rate service cost determinations without first submitting a section 205 filing demonstrating that the costs were offset by quantified savings produced by the merger. As a result, the wholesale power and transmission customers' revenue requirements were inappropriately overstated by an estimated $17.5 million.

Pertinent Guidance

The Commission's Merger Order states in part:

> We accept Applicants' commitment to hold transmission and wholesale requirements customers harmless for five years from costs related to the Proposed Transaction. We interpret Applicants' hold harmless commitment to include all transaction-related costs, not only costs related to consummating the transaction.
>
> If Applicants seek to recover transaction-related costs through their wholesale power or transmission rates within the next five years, they must submit a compliance filing that details how they are satisfying the hold harmless requirement. If Applicants seek to recover transaction-related costs in an existing formula rate that allows for such recovery within the next five years, then that compliance filing must be filed in the section 205 docket in which the formula rate was approved by the Commission, as well as in the instant section 203 docket. In such filings, Applicants must: (1) specifically identify the transaction-related costs they are seeking to recover; and (2) demonstrate that those costs are exceeded by quantified savings resulting from the transaction, in addition to any requirements associated with filings made under section 205.[22]

The Commission's June 8, 2012 order accepting Duke Companies' revised compliance filing states in part:

> [T]he Commission will require Applicants to hold transmission and wholesale requirements customers harmless from the costs of the Transmission Expansion Projects in accordance with the hold harmless commitment, as set forth in the Merger Order.[23]

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[22] Merger Order, 136 FERC ¶ 61,245 at PP 169-170.

[23] June 8 Compliance Order, 139 FERC ¶ 61,194 at P 91.

The Commission's October 29, 2014 order denying rehearing and granting a motion to supplement compliance filing states in part:

> [T]he Commission requires Applicants to hold transmission and wholesale requirements customers harmless for five years from costs related to the Phase Shifters.[24]

Background

On April 4, 2011, Duke Energy, Progress Energy, and their public utility subsidiaries (collectively, Duke Companies) filed an application seeking Commission authorization of a proposal to merge under section 203 of the FPA and Part 33 of Commission regulations. In the application, Duke Companies committed to exclude costs related to the merger from transmission and wholesale requirements customers' rates, except to the extent the companies demonstrated in a section 205 rate filing that merger-related savings were equal to or in excess of merger costs included in the rate filing. On September 30, 2011, the Commission issued an order authorizing Duke Companies to merge subject to conditions. Among other things, the Commission conditioned authorization on Duke Companies maintaining its commitment to hold transmission and wholesale requirements customers harmless from costs related to the merger. Pursuant to this condition, "[a]ll transaction related costs, not only costs related to consummating the transaction," were required to be excluded from rates charged.[25] To determine if Duke Companies complied with the hold harmless requirement, audit staff examined the companies' procedures for tracking and accounting for merger costs, and excluding the costs from rates.

To track costs incurred due to the merger, the companies established special accounting processes and procedures. Audit staff found that Duke Energy and Progress Energy did not account for merger costs using the same accounting treatment prior to consummation of the merger. Prior to consummation of the merger, Duke Energy accounted for merger transaction costs in above-the-line operating accounts, whereas Progress Energy accounted for the costs below-the-line in Account 426.5, Other Deductions.[26] However, after consummation of the merger, Progress Energy adopted Duke Energy's internal accounting policy for merger transaction costs and thereafter began accounting for incurred merger transaction costs in operating accounts.

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[24] October 29 Compliance Order, 149 FERC ¶ 61,078 at P 81.

[25] Merger Order, 136 FERC ¶ 61,245 at P 169.

[26] Account 426.5, Other Deductions, 18 C.F.R. Part 101 (2015), provides for the recording of expenses that are nonoperating in nature, but which are properly deductible before determining total income before interest charges.

Duke Energy devised and distributed instructions to its public utility subsidiaries regarding accounting for merger costs, which it characterized as Costs to Achieve (CTA) the merger. Duke Energy defined CTA as "costs that are incremental and nonrecurring that would otherwise not have been incurred but for the merger or integration planning efforts."[27] The CTA instructions identified the accounting codes to be used to account for and track merger costs. The codes included the business and operating unit that incurred the cost, process, task, project ID, and other details associated with activities that involved the incurrence of merger costs. The CTA instructions were communicated to managers and staff assigned to work on the merger, and employees were trained on use of the accounting codes. Duke Energy's shared services accounting group retrieved merger cost data from the general ledgers of the public utility subsidiaries, reviewed charges for reasonableness, and compared actual and budgeted costs as part of its monthly reporting process.

Duke Energy's shared services accounting group developed additional procedures to exclude certain merger costs from wholesale power and transmission formula rate determinations of the public utility subsidiaries. The procedures included preparation of monthly spreadsheets identifying merger costs included in each subsidiary's operating accounts as reported in the Form No. 1. The rate staff of each public utility subsidiary was instructed to subtract the merger costs from operating accounts in the Form No. 1 that were used to compute the company's transmission formula rate. The procedures were designed to prevent merger costs reported in operating accounts from being incorporated in wholesale power and transmission formula rate determinations.

As a result of these procedures under which merger-related internal labor costs were not treated as CTA, audit staff found that Duke Companies' wholesale power and transmission customers' revenue requirements were inappropriately overstated by an estimated $17.5 million due to the inclusion of merger transaction internal labor costs in wholesale power and transmission rate determinations without first making a section 205 filing with the Commission as the Merger Order required. The improper charges included an estimated $17.2 million through inclusion of internal labor costs incurred in merger transaction and integration activities, and over $300,000 through inclusion of

[27] This included costs incurred in developing, executing, and obtaining approvals for the merger as well as incremental integration costs, but did not include merger-related internal labor costs Duke Companies considered non-incremental. For example, the costs included severance payments, employee relocation and retention costs, bonuses paid to employees for their work on the merger, investment banking and advisory fees, state and Federal regulatory expenses, costs for integrating accounting and information technology systems, transmission systems, fuel and dispatch systems, as well as transition costs, mitigation/concession costs, depreciation expenses for merger projects, and fees paid to providers of transmission service between the regulated utilities.

internal labor costs incurred to construct and operate the transmission expansion projects (TEPs), and repair and operate the Rockingham phase shifters.

Merger Transaction Internal Labor

During fieldwork, audit staff determined that Duke Energy excluded merger transaction internal labor from its definition of CTA and its CTA coding procedures. Duke Energy acknowledged that employees spent substantial time on merger activities. However, the company contended that employees performed merger activities in addition to their regular responsibilities and, therefore, no incremental internal labor costs were incurred due to the merger. Based on a belief that the hold harmless obligation applied only to incremental merger costs, Duke Energy instructed employees not to use the special CTA codes to report time devoted to merger activities on their timesheets. Consequently, public utility subsidiaries did not track all merger transaction internal labor costs or exclude all such costs from wholesale power and transmission formula rate cost computations. As a result, the subsidiaries improperly included some merger transaction internal labor costs in wholesale power and transmission formula rate determinations and inappropriately charged the costs to customers.

Contrary to Duke Energy's interpretation, the Merger Order required Duke Companies to hold customers harmless from "*all* merger transaction costs," and did not limit this requirement only to costs Duke Energy considered incremental. Duke Energy's assertion that its hold harmless obligation extended only to incremental costs must be made within a section 205 proceeding where it and other interested parties will have an opportunity to assess all evidence that supports or contradicts such a position. By excluding internal labor from its CTA tracking and reporting procedures, Duke Energy did not have the ability to determine the proportion of employee labor costs devoted to merger-related tasks, as opposed to utility-related tasks, the cost of which are appropriately recovered in rates. Moreover, even in the absence of detailed time reporting and accounting data, the companies were nonetheless prohibited from including these merger transaction costs in rate determinations without first receiving Commission authorization to do so in a section 205 proceeding in accordance with Merger Order requirements.

Since Duke Companies did not track all merger transaction internal labor costs, audit staff issued data requests and interviewed company employees during site visits and conference calls to develop its own estimate of the amount of merger transaction internal labor costs Duke Companies incurred and included in transmission formula rate charges. The information audit staff obtained confirmed that company employees spent substantial amounts of time working on the merger, as Duke Energy acknowledged. For example, Duke Energy reported in data responses that over 2,400 employees were engaged in merger activities from mid-2010 through present. The total included more than 2,300 employees who participated in over 300 merger integration projects performed to upgrade and integrate the companies' information technology, human resources, finance, and accounting systems and functions. About 140 employees were engaged in merger planning and evaluation, preparing and supporting merger applications and post-merger litigation, and developing and implementing measures to mitigate market power due to the merger. Audit staff found through assessment of data response information and interviews of company staff, that certain of these employees worked full time on the merger for the duration of their projects, while others devoted 50 percent or more of their time to assigned merger activities. Moreover, detailed analysis of integration projects with the largest budgets indicated that the assigned employees were heavily engaged in the projects for prolonged periods of time.

Audit staff used this information, interviews with employees engaged in merger activities, employees' salary information procured from data responses, and salary estimates found on publicly available sources to approximate the amount of internal labor costs incurred due to the merger. Audit staff estimated that the Duke Companies incurred between \$55 million and \$75 million of internal labor costs related to the merger, including salaries and benefits.

Audit staff then asked Duke Energy to provide its own estimate of the internal labor costs associated with each merger activity and a breakdown by FERC account. As the table below shows, Duke Energy estimated that \$78.8 million in merger transaction internal labor costs were incurred to perform four primary merger tasks. Duke Energy's estimate exceeded audit staff's high-range estimate of internal labor costs.

		A	B
Row	**Merger Tasks**	**Duke Companies' Estimated Internal Labor Cost (Million \$)**	**Estimated Internal Labor Included in the Revenue Requirements of Wholesale Power and Transmission Rates (Million \$)**
1	Merger Planning, Evaluation, Due Diligence	2.3	0.1
2	Preparation and Support for Regulatory Applications and Post-Merger Litigation	3.9	0.2
3	Development and Implementation of Measures to Mitigate Market Power	0.6	0.03
4	Planning, Management, and Execution of Merger Integration Projects	72.0	16.9
	Total	**78.8**	**17.2**

Of the \$78.8 million in merger transaction internal labor costs estimated by Duke Energy, about \$1.6 million of the costs were recorded in distribution operating and maintenance expense accounts that were not included in Commission-jurisdictional rate determinations, and $31.4 million was recorded in production and transmission operating and maintenance expense accounts incorporated in wholesale power and transmission formula rates. Duke Energy estimated that wholesale power and transmission customers' revenue requirements were inappropriately overstated by an estimated $17.2 million.[28] The remaining $45.8 million in merger transaction internal labor costs were charged to capital work orders for integration projects that are under construction and not yet completed. Duke Energy represented that these costs have been classified as CTA, and will be excluded from wholesale power and transmission formula rates when the projects are completed.

By including these merger-related tasks in its definition of CTA, Duke Energy acknowledged that the merger activities employees performed would not have been required in the absence of the merger. Since the work was not related to utility service, employee time engaged on the merger should have been excluded from transmission formula rate determinations. In accordance with the hold harmless commitment, to recover merger costs in their wholesale power or transmission rates, the companies were required to submit a section 205 filing with the Commission detailing costs to be recovered and demonstrating that the costs were offset by quantified savings produced by the merger. Duke Companies did not submit a section 205 filing; therefore, the companies should not have recovered the costs in rates charged.

TEP Operating Expenses

Duke Energy's public utility subsidiaries included an estimated $300,000 of merger transaction internal labor costs in the transmission customers' formula rate revenue requirement for costs related to the TEP projects from 2012 through 2015. This amount was incurred to repair and operate the Rockingham phase shifters. The $300,000 was recorded as transmission maintenance expenses in Account 570, Maintenance of Station Equipment. In accordance with Duke Companies' internal accounting policy, the companies neither characterize the costs as merger-related CTA nor exclude the costs from transmission formula rate determinations. As a result, the $300,000 was included in transmission formula rates, and thus a portion of these costs was inappropriately charged to transmission customers.

In its June 8 and October 29 Compliance Orders, the Commission explicitly directed Duke Companies to hold customers harmless from all costs related to the TEPs

[28] During the audit, DEC and DEP had about 20 wholesale power customers under service contracts with cost-based rates determined under a formula to which merger transaction internal labor costs were incorporated. As a result, a portion of the merger transaction labor costs included in the formula was charged to wholesale power customers.

and the Rockingham phase shifters, consistent with the hold harmless commitment established in the Merger Order. Duke Companies should not have included these internal labor charges in transmission formula rate determinations without first submitting a section 205 filing to the Commission that demonstrated that the costs were offset by quantified savings produced by the merger.

Recommendations

We recommend Duke Companies:

5. Revise all policies and procedures for tracking, accounting, and excluding merger transaction costs from wholesale power and transmission formula rates, including amounts previously charged to utility plant, accumulated deferred income taxes, construction work in progress with the associated capitalized cost of funds used during construction (AFUDC), and maintenance and operating expense accounts, and future charges to such accounts for any transaction to which a FERC hold harmless obligation applies. The revised procedures should hold customers harmless from all merger transaction costs consistent with requirements of the Merger Order. Among other things, the revised policies and procedures should include an annual review of each subsidiary's merger transaction cost adjustments as well as periodic evaluations within the year, as needed and appropriate.

6. Submit a refund analysis, within 60 days of receiving the final audit report, to DAA for review that explains and details the following: (1) calculation of refunds that include the amount of inappropriate recoveries that resulted from the inclusion of merger transaction internal labor and related costs in wholesale power and transmission formula rates during the audit period, plus interest on the costs; (2) determinative components of the refund; (3) refund method; and (4) period(s) refunds will be made.

7. File a refund report with the Commission after receiving DAA's assessment of the refund analysis.

8. Refund amounts disclosed in the refund report to wholesale power and transmission customers, with interest calculated in accordance with section 35.19a of Commission regulations.

3. Merger Transaction Outside Services and Related Costs

Duke Companies incorrectly included $1.5 million of merger transaction outside services and related costs in wholesale power and transmission formula rate service cost determinations without first submitting a section 205 application demonstrating the costs were offset by quantified savings produced by the merger. In addition, the companies recorded the merger transaction costs in operating accounts, contrary to the Commission's long-standing policy that such costs be recorded in nonoperating accounts. As a result, the wholesale power and transmission customers' revenue requirements were inappropriately overstated by an estimated $745,000.

Pertinent Guidance

The Commission's Merger Order states in part:

> We accept Applicants' commitment to hold transmission and wholesale requirements customers harmless for five years from costs related to the Proposed Transaction. We interpret Applicants' hold harmless commitment to include all transaction-related costs, not only costs related to consummating the transaction.
>
> If Applicants seek to recover transaction-related costs through their wholesale power or transmission rates within the next five years, they must submit a compliance filing that details how they are satisfying the hold harmless requirement. If Applicants seek to recover transaction-related costs in an existing formula rate that allows for such recovery within the next five years, then that compliance filing must be filed in the section 205 docket in which the formula rate was approved by the Commission, as well as in the instant section 203 docket. In such filings, Applicants must: (1) specifically identify the transaction-related costs they are seeking to recover; and (2) demonstrate that those costs are exceeded by quantified savings resulting from the transaction, in addition to any requirements associated with filings made under section 205.[29]

The Commission's long-standing precedent stipulates that transaction costs incurred by public utilities associated with a merger are nonoperating in nature and should be charged to Account 426.5, Other Deductions, to the extent the costs are not passed on to the parent holding company. For example, in *Allegheny Energy, Inc.*, the Commission stated in part:

[29] Merger Order, 136 FERC ¶ 61,245 at PP 169-170.

> The Commission has previously determined that merger transaction costs are considered non-operating in nature and should be recorded in Account 426.5, Other Deductions.[30]

> 18 C.F.R. Part 101, Account 426.5, Other Deductions, states:

> This account shall include other miscellaneous expenses which are nonoperating in nature, but which are properly deductible before determining total income before interest charges.

Background

In the process of evaluating Duke Companies' compliance with the hold harmless commitment, audit staff issued data requests and interviewed company employees regarding the accounting and formula rate impact of activities engaged prior to and after public announcement of the merger, such as outside service costs incurred to facilitate the merger and associated internal corporate costs. In reviewing materials received, audit staff found that Duke Energy's corporate development group incurred over $1.5 million in merger transaction costs in the second half of 2010 (i.e., prior to the merger announcement in January 2011) and allocated those costs to its then public utility subsidiaries – DEC, DEI, DEO, and DEK – prior to consummation of the merger.

The costs included $1.35 million paid to outside consultants, lawyers, and accountants for financial forecasting, analysis of market power issues and related services, and $150,000 of internal labor and other costs related to this work. The subsidiary companies improperly recorded the merger transaction outside service costs in Account 923, Outside Services Employed, and most of the associated internal labor and other costs in Account 920, Administrative and General Salaries. Account balances reported in each company's Form No. 1 were included in the determination of the company's wholesale power and transmission formula rate service charges.

DEC, DEI, DEO, and DEK reported these costs in their respective 2010 Form No. 1 reports. The companies neither characterized the costs as merger-related CTA following the merger announcement and issuance of the Merger Order, nor excluded the costs from wholesale power and transmission formula rate determinations in 2011 or subsequent years.

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[30] *See Allegheny Energy, Inc.*, 133 FERC ¶ 61,222 at P 73 (2010). See also *Midwest Power Systems, Inc. and Iowa-Illinois Gas and Elec. Co.*, 71 FERC ¶ 61,386, at 62,509 (1995); *MidAmerican Energy Co. and MidAmerican Energy Holdings Co.*, 85 FERC ¶ 61,354, at 62,370 (1998); and *Wis. Elec. Power Co.*, 74 FERC ¶ 61,069, at 61,192 (1996).

Pursuant to the hold harmless commitment, the companies should not have included the $1.5 million in merger transaction costs in wholesale rate determinations without first submitting a section 205 filing to the Commission that demonstrated the costs were offset by quantified savings produced by the merger. Moreover, pursuant to long-standing Commission precedent, the merger transaction costs the companies recorded in Accounts 920 and 923 are considered nonoperating in nature and, as such, were required to be recorded to Account 426.5. The text of Account 426.5 states that the account shall include expenses that are nonoperating in nature. Duke Energy estimated that wholesale power and transmission customers' revenue requirements were inappropriately overstated $745,000.

Recommendations

We recommend Duke Companies:

9. Revise accounting policies and procedures to appropriately account for merger transaction costs consistent with Commission accounting requirements.

10. Submit a refund analysis, within 60 days of receiving the final audit report, to DAA for review that explains and details the following: (1) calculation of refunds that include the amount of inappropriate recoveries that resulted from the inclusion of merger transaction outside services and related costs in wholesale power and transmission formula rate charges during the audit period, plus interest on the costs; (2) determinative components of the refund; (3) refund method; and (4) period(s) refunds will be made.

11. File a refund report with the Commission after receiving DAA's assessment of the refund analysis.

12. Refund amounts disclosed in the refund report to wholesale power and transmission customers, with interest calculated in accordance with section 35.19a of Commission regulations.

4. Use of the Consolidated Method of Accounting

DEC and DEP accounted for investments in subsidiaries on a consolidated basis in their Form No. 1 reports, contrary to the Commission's long-standing accounting policy.

Pertinent Guidance

Order No. 469 revised and amended sections of 18 C.F.R. Parts 101 and 201 to adopt the equity method of accounting for long-term investments in subsidiaries and add new balance sheet and income statement accounts, and definitions. Order No. 469 states in part:

> Under the equity method of accounting, the utility's investment account is increased or decreased to reflect the utility's proportionate share of a subsidiary's current earnings applicable to common stock regardless of whether the earnings are actually paid out as dividends to the utility. When dividends are received, the investment account is reduced by an equivalent amount.[31]

18 C.F.R. Part 101, Account No. 123.1, Investment in Subsidiary Companies, states:

> A. This account shall include the cost of investments in securities issued or assumed by subsidiary companies and investment advances to such companies, including interest accrued thereon when such interest is not subject to current settlement plus the equity in undistributed earnings or losses of such subsidiary companies since acquisition. This account shall be credited with any dividends declared by such subsidiaries.
>
> B. This account shall be maintained in such a manner as to show separately for each subsidiary: the cost of such investments in the securities of the subsidiary at the time of acquisition; the amount of equity in the subsidiary's undistributed net earnings or net losses since acquisition; advances or loans to such subsidiary; and full particulars regarding any such investments that are pledged.

[31] *Revisions in the Uniform System of Accounts, and Annual Report Forms No.1 and No. 2 to Adopt the Equity Method of Accounting for Long-Term Investments in Subsidiaries*, Order No. 469, 49 FPC 326, *reh'g denied*, 49 FPC 1028 (1973).

18 C.F.R. Part 101, Account 216.1, Unappropriated Undistributed Subsidiary Earnings, states:

> This account shall include the balances, either debit or credit, of undistributed retained earnings of subsidiary companies since their acquisition. When dividends are received from subsidiary companies relating to amounts included in this account, this account shall be debited and account 216, Unappropriated Retained Earnings, credited.

18 C.F.R. Part 101, Account No. 418.1, Equity in Earnings of Subsidiary Companies, states:

> This account shall include the utility's equity in the earnings or losses of subsidiary companies for the year.

Background

DEC and DEP formed wholly owned special purpose subsidiaries, Duke Energy Receivables Finance Company, LLC (DERF) and Duke Energy Progress Receivables, LLC (DEPR), respectively, in 2003 and 2013. The companies accounted for their investments in the subsidiaries using the consolidated method of accounting. Specifically, DEC consolidated DERF in its Form No. 1 reports from 2003 through 2013; and DEP consolidated DEPR in its Form No. 1 in 2013. The accounting resulted in the recognition of property, expenses, revenue, debt, and equity of the subsidiaries in DEC and DEP's respective Form No. 1 reports. During the course of the audit, in 2014, the companies ceased accounting for their investments in the subsidiaries using the consolidation method of accounting and began using the equity method of accounting.

Prior to 2014, DEC and DEP's accounting for their investments in the subsidiaries was not consistent with the Commission's accounting requirements, which required the companies to account for the investments using the equity method of accounting. In accordance with the provisions of Order No. 469, the companies were required to account for the subsidiaries as investments in Account 123.1, Investments in Associated Companies, and record equity in earnings of the subsidiaries in Account 418.1, Equity in Earnings of Subsidiary Companies, and undistributed retained earnings of the subsidiaries in Account 216.1, Unappropriated Undistributed Subsidiary Earnings.[32]

[32] *Id*.

On August 19, 2015, during the course of the audit, Duke Energy submitted a request to the Commission on behalf of the companies for retroactive and prospective waivers of the equity method accounting requirement.[33] In the filing, among other things, DEC and DEP acknowledged that they had inappropriately accounted for investments in their subsidiaries using the consolidation method of accounting, and improperly included the results of the subsidiaries' operations in cost of service formula rate determinations. On December 18, 2015, the companies submitted a filing to the Commission under section 205 of the FPA seeking approval of proposed amendments to the formula rates in their Joint OATT and wholesale power agreements to provide for consolidation of the subsidiaries for cost of service rate determination purposes.[34]

Duke Energy did not notify audit staff of the inappropriate consolidation accounting, or of its request for waiver of the equity accounting requirements. The company should have disclosed the erroneous accounting to audit staff when it discovered the matter, which according to its representation occurred in late 2014. However, neither audit staff nor the Commission was notified of the improper accounting and the associated rate impacts until August 2015. Duke Energy's lack of timely disclosure of DEC and DEP's noncompliance with Commission regulations is problematic. The company should take necessary steps to ensure that its corporate compliance culture and program are strengthened to prevent situations like this on a going forward basis.

[33] Duke Energy Carolinas, LLC, et al., Request for Waiver, Docket No. AC15-174-000, (filed Aug. 19, 2015). The filing requested waivers of the equity accounting requirement on behalf of DEC, DEP, and DEF, which formed a wholly owned subsidiary Duke Energy Florida Receivables, LLC (DEFR) in 2014. The Chief Accountant issued a delegated letter order on February 12, 2016 that granted the requested waivers to the companies and directed specific accounting regarding sales of accounts receivable. Duke Companies filed a request for rehearing of the letter order on March 14, 2016.

[34] *Duke Energy Carolinas, LLC, et al.*, Docket Nos. ER16-577-000, ER16-578-000, and ER16-579-000. The Commission issued delegated letter orders on February 11, 2016, accepting for filing the amendments to the Joint OATT and rate schedules to provide for DEC, DEP, and DEF's use of the consolidated method of accounting for ratemaking purposes.

Recommendations

We recommend Duke Companies:

13. Review and, as needed, revise accounting policies, practices, and procedures to ensure that investments in subsidiaries are accounted for consistent with the Commission's equity method accounting requirements.

14. Evaluate the accounting applied to Duke Companies' existing subsidiaries and notify DAA of any areas of noncompliance with Commission accounting requirements.

15. Revise documented policies, procedures and processes to ensure timely notice is provided to relevant regulators regarding instances of noncompliance with regulations, rules, and orders.

16. Provide training to staff on procedures, practices, and available tools to transparently or anonymously report instances of noncompliance to senior management, the Board of Directors, and relevant regulators.

5. Accounting for Sales of Accounts Receivable

DEC, DEP, and DEF misclassified an estimated $94.7 million of nonoperating expenses and receivables arising from transactions with their subsidiaries during the audit period. As a result, the wholesale power and transmission customers' revenue requirements were inappropriately overstated by an estimated $61 million.

Pertinent Guidance

18 C.F.R. Part 101, Account 930.2, Miscellaneous General Expenses, states in part:

> This account shall include the cost of labor and expenses incurred in connection with the general management of the utility not provided for elsewhere.

18 C.F.R. Part 101, Account 426.5, Other Deductions, states in part:

> This account shall include other miscellaneous expenses which are nonoperating in nature, but which are properly deductible before determining total income before interest charges.

The Commission addressed the appropriate accounting for the sale of accounts receivable in Opinion No. 375, which stated in part:

> From an accounting standpoint, we find that the record supports the staff and intervenors' position – which the initial decision adopted – that the loss on the sale of accounts receivable was erroneously recorded by SERI [System Energy Resources, Inc.] in Account 930.2. . ..[35]

Background

During audit fieldwork, audit staff analyzed data regarding transactions between DEC, DEP, and DEF and the companies' respective nonutility subsidiaries, DERF, DEPR, and DEFR, and interviewed employees responsible for accounting for the transactions. The transactions involved the companies' sales of accounts receivable to their subsidiaries. The receivables arose from billings on sales of electricity and related services by the companies. The companies sold the receivables to their subsidiaries at a loss (or discount), and accounted for the loss as an expense by debiting Account 930.2, Miscellaneous General Expenses, an account included in wholesale power and transmission service cost formula rate determinations, for the amount of the loss. DEC,

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[35] *System Energy Resources, Inc.*, 60 FERC ¶ 61,131 (1992).

DEP, and DEF recognized total losses of $149.6 million, $35.1 million, and $23.5 million, respectively, from 2011 through 2014.

Audit staff also discovered that there were similar transactions involving sales of accounts receivable by DEI, DEO, and DEK to Cinergy Receivables, a Duke Energy subsidiary. However, through discussions with audit staff, Duke Energy represented that instead of recording losses on sold receivables in Account 930.2, DEI, DEO, and DEK accounted for the losses in Account 904, Uncollectible Accounts, an account not included in wholesale power or transmission service cost formula rate determinations.

DEC, DEP, and DEF performed collection services on behalf of their subsidiaries associated with the sold receivables whereby the companies collected bill payments from customers and remitted funds received to the subsidiaries. The companies charged the subsidiaries a fee for performing the collection service, which effectively resulted in a reimbursement of the collection service cost incurred by the companies. Expenses incurred by the companies associated with performing the collection service were accounted for by debiting the costs to Account 903, Customer Records and Collection Expenses. These expenses were also accounted for as a debit in Account 930.2 that Duke Energy represented was the fee billed to the subsidiaries for performing the collection service. As a result of this accounting, DEC, DEP, and DEF double-counted expenses in their respective Form No. 1 reports associated with collection services performed. Furthermore, the companies accounted for the reimbursements of their incurred collection service expenses that resulted from their billed subsidiaries by crediting Account 421, Miscellaneous Non-Operating Income.

Duke Companies' accounting for the loss on the sale of the receivables was not consistent with the Commission's accounting requirements and precedent. Under the Uniform System of Accounts (USofA), sales of accounts receivable constitute the disposition of utility assets. The USofA contemplates that in transactions of this nature, a company should recognize a gain or loss, measured by the difference between the net book value of the asset at the date of the sale and the proceeds from the sale, less related fees and expenses of the sale. Further, the USofA requires a company to record any gains or losses from the disposition of assets in nonoperating expense accounts, except with respect to the sale of future use property.[36] The instructions to Account 426.5, Other Deductions, provide for the recording of nonoperating expenses of this nature. Additionally, the Commission has previously addressed the matter of the appropriate

[36] With respect to future use property recorded in Account 105, Electric Plant Held for Future Use, the USofA requires a company to include a gain on a sale in Account 411.6, Gains from Disposition of Utility Plant, and a loss in Account 411.7, Losses from Disposition of Utility Plant.

accounting for sales of receivables in its Opinion No. 375, wherein it was determined that the loss on the sale of receivables should be accounted for in Account 426.5.[37]

In addition, DEC, DEP, and DEF's accounting for reimbursements of incurred collection service expenses was not consistent with the Commission's accounting requirements. The USofA contemplates that such reimbursements of collection service expenses incurred by DEC, DEP, and DEF on behalf of their respective subsidiaries be recorded as a reduction of the expenses. Accordingly, the companies should have accounted for the reimbursements through a credit entry to the collection service expenses recorded in Account 903.

Duke Energy represented that prior to 2014, DEC and DEP's accounting for the losses on the sales of receivables and collection service fees billed to the subsidiaries that were recorded in Account 930.2 had no impact on service rates charged to wholesale power and transmission formula rate customers due to accounting entries the companies made associated with consolidation method accounting that offset the items and neutralized the rate impact. Duke Energy indicated that the companies made the offsetting entries from the respective dates their subsidiaries were established and transactions initiated through 2013.[38] However, in 2014, DEC and DEP ceased their practice of using the consolidation method of accounting.[39] Cessation of consolidation method accounting led the companies to end their practice of recording the offsetting entries. Moreover, DEF established its subsidiary, DEFR, in 2014, and did not record any accounting entries to offset its losses on the sales and collection service fees billed to its subsidiary. As a result, rates charged by DEC, DEP, and DEF based on amounts reported in the companies' respective 2014 Form No.1 reports included the nonoperating losses and collection service fees that were misclassified in Account 930.2 and not offset by other entries. This led to DEC, DEP, and DEF inappropriately including the losses and fees of $38.1 million, $33.1 million, and $23.5 million, respectively, in rate determinations.

The companies' accounting mistakes led to an estimated $94.7 million of costs being inappropriately included in wholesale power and transmission formula rate service cost determinations during the audit period. Duke Energy estimated that this resulted in wholesale power and transmission customers' revenue requirements being inappropriately overstated by an estimated $61 million.

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[37] *System Energy Resources, Inc.*, 60 FERC ¶ 61,131 (1992).

[38] DEC's subsidiary, DERF, was established in 2003, and DEP's subsidiary, DEPR, was established in 2013.

[39] *See* Finding No. 4, Consolidation Method of Accounting.

On March 14, 2016, Duke Companies filed a request for rehearing of the Chief Accountant letter order in Docket No. AC15-174-000 challenging the order's decision regarding the appropriate accounting for losses on the sale of receivables, which is also addressed by this Audit Finding. In light of the current challenge to the Chief Accountant's order and uncertain outcome, as well as, the potential of a contested audit over the identical issue, in this instance the portions of this Audit Finding that relate to the losses issues, including Recommendations 17 and 18, shall be held in abeyance and shall be subject to the outcome of the rehearing request and any subsequent petitions for court review. Although the recommendations regarding the portion of this Audit Finding relating to the losses issues are held in abeyance and subject to the outcome of the rehearing request and any subsequent petitions for court review, the requirement to make refunds in accordance with Recommendation 21 below is not impacted by the rehearing request.

Recommendations

We recommend Duke Companies:

17. Revise procedures to ensure that all costs and account balances associated with the sale of accounts receivable are accounted for in accordance with Commission accounting regulations. Among other things, the corrected accounting should ensure that all losses associated with receivable sales are recorded in Account 426.5.

18. Provide the revised procedures to DAA for review within 60 days of receiving the final audit report.

19. Recalculate charges to wholesale power and transmission customers of DEC, DEP, and DEF and submit the recalculations in a refund analysis to DAA for review within 60 days of receiving the final audit report. The refund analysis should explain and detail the: (1) return of collection service billings charged in 2014; (2) return of losses on the sales included in rates; (3) determinative components of the refund; (4) refund method; (5) period(s) refunds will be made; and (6) interest calculated in accordance with section 35.19 of Commission regulations.

20. File a refund report with the Commission after receiving DAA's assessment of the refund analysis.

21. Refund amounts disclosed in the refund report to wholesale power and transmission customers, with interest calculated in accordance with section 35.19a of Commission regulations.

6. Accounting for Lobbying Expenses

Duke Companies recorded approximately $2.4 million of lobbying expenses in above-the-line operating accounts from 2011 to 2013. As a consequence, Duke Companies improperly included these costs in wholesale power and transmission formula rate service cost determinations.

Pertinent Guidance

18 C.F.R. Part 101, Account 426.4, Expenditures for Certain Civic, Political, and Related Activities, states in part:

> This account shall include expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances . . . or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials. . . .

Background

Audit staff evaluated costs incurred by Duke Companies associated with civic, political, and related activities during the audit period. Audit staff reviewed third-party lobbying expenditure disclosures, press articles, internal lobbyist meeting schedules and agendas, and interviewed internal lobbyists and support staff to understand the nature and extent of the companies' lobbying activities. In addition, audit staff tested a sample of work orders, invoices, and associated accounting detail records that support internal lobbyists' labor costs incurred. Audit staff discovered that Duke Companies improperly recorded nearly $2.4 million in lobbying costs to above-the-line operating accounts rather than to Account 426.4, Expenditures for Certain Civic, Political, and Related Activities, as required.

Account 426.4 provides for reporting expenditures for the purpose of influencing public opinion, such as lobbying expenses. Audit staff found that Duke Companies recorded a portion of these costs associated with wages and salaries of internal lobbyist and support staff in Account 426.4 as required, but failed to properly charge other related costs to the account associated with the labor, such as payroll taxes, retirement, health, and other benefits. Audit staff also found that the companies incorrectly accounted for amounts paid to outside firms that lobby on behalf of the companies. Duke Companies improperly included these expenses in wholesale power and transmission formula rate determinations and recovered a portion of the costs through charges to customers.

Further, audit staff found that Duke Companies lacked formal procedures and oversight controls to help ensure that lobbying costs were accounted for appropriately.

The companies should implement procedures to reduce the risk that lobbying costs are inappropriately accounted for and included in jurisdictional rate determinations.

Recommendations

We recommend Duke Companies:

22. Establish and implement written procedures governing the methods used to account for, track, report, and review lobbying costs incurred.

23. Provide training on Commission accounting requirements and the impact of accounting on cost-of-service rate determinations to employees involved in lobbying and lobbying-related work, and those with oversight responsibility for lobbying cost allocations. Also, develop a training program that supports the provision of periodic training in this area.

24. Submit a refund analysis, within 60 days of receiving the final audit report, to DAA for review that explains and details the following: (1) calculation of refunds that include the amount of inappropriate recoveries that resulted from the improper inclusion of lobbying costs in operating accounts during the audit period, plus interest on the costs; (2) determinative components of the refund; (3) refund method; and (4) period(s) refunds will be made.

25. File a refund report with the Commission after receiving DAA's assessment of the refund analysis.

26. Refund amounts disclosed in the refund report to wholesale power and transmission customers, with interest calculated in accordance with section 35.19a of Commission regulations.

7. Allocation of Lobbyist Labor Costs

Duke Companies accounted for the labor costs of internal lobbyists and their support staff in operating accounts that lacked support for inclusion in the accounts. Improper accounting for the costs can lead to inappropriate recovery of the costs through rates charged and billed to customers.

Pertinent Guidance

18 C.F.R. Part 101, General Instruction No. 9, Distribution of Pay and Expenses of Employees, states:

> The charges to electric plant, operating expense and other accounts for services and expenses of employees engaged in activities chargeable to various accounts, such as construction, maintenance, and operations, shall be based upon the actual time engaged in the respective classes of work, or in case that method is impracticable, upon the basis of a study of the time actually engaged during a representative period.

18 C.F.R. Part 101, General Instruction No. 10, Payroll Distribution, states:

> Underlying accounting data shall be maintained so that the distribution of the cost of labor charged direct to the various accounts will be readily available. Such underlying data shall permit a reasonably accurate distribution to be made of the cost of labor charged initially to clearing accounts so that the total labor cost may be classified among construction, cost of removal, electric operating functions (steam generation, nuclear generation, hydraulic generation, transmission, distribution, etc.) and nonutility operations.

18 C.F.R. Part 101, Account 426.4, Expenditures for Certain Civic, Political, and Related Activities, states in part:

> This account shall include expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances . . . or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials . . . .

Background

In connection with the evaluation of Duke Companies' expenditures for lobbying activities, audit staff discovered that the companies' allocation of the labor costs of internal lobbyists and their support staff was based in part on the amount of time that state legislatures and Congress were in session. Duke Energy explained that these entities were in session on average 180 days a year, and that lobbying activities of its staff to influence legislation would typically be performed while the legislatures and Congress were in session. This resulted in the companies using a default allocator that charged 50 percent of lobbying costs above-the-line to operating accounts and 50 percent below-the-line to Account 426.4, Expenditures for Certain Civic, Political, and Related Activities.

Audit staff interviewed internal lobbyists and their support staff to understand their roles and job assignments, and reviewed lobbyists' schedules as documented in email, itineraries from industry conferences, and other materials. Duke Energy represented that the companies' internal lobbyist performed internal corporate functions such as (1) budgeting, (2) performance appraisals, (3) training, and (4) other activities. However, audit staff could not determine based on documentation provided, that the 50/50 labor allocation split between above- and below-the-line accounting for lobbying and related costs was accurate or reasonable. Moreover, audit staff discovered that the companies neither had a formal oversight review process to assess the accuracy of the labor allocations nor maintained documentation to support the allocations.

General Instructions No. 9, Distribution of Pay and Expenses of Employees, and No. 10, Payroll Distribution, require public utilities to charge lobbying-related labor to operations based on actual time engaged in utility operations or on a representative time study, and to maintain data supporting distribution of the labor to operating costs. Audit staff found that Duke Companies' charges of lobbying and support staff labor to operations were neither based on actual time engaged in utility operations nor derived from representative time studies, as required. The companies also did not maintain data supporting distribution of the costs to utility operations. Duke Companies' accounting for lobbying labor time charges was not consistent with Commission accounting requirements and could have resulted in the inclusion of inappropriate costs in operating accounts, and consequently, in charges to transmission service formula rate and wholesale requirements customers. This could have led to the overcharging of wholesale ratepayers.

Recommendations

We recommend Duke Companies:

27. Revise written policies and procedures to create a process to document and verify appropriate allocation of lobbying and lobbying-related costs, and maintain auditable support for the cost included in rate determinations.

28. Retain an independent third-party entity to conduct a representative labor time study to determine an appropriate allocation of internal lobbyist labor, support

staff, and associated costs that should be accounted for in operating and nonoperating accounts based on time spent by employees engaged in the activities. Provide the study results to audit staff within 180 days of receiving the final audit report.

29. Include the results of the labor time study in the determination of lobbying-related labor cost allocations as of January 1, 2016.

30. Implement policies and procedures to perform a labor time study at least biennially using an independent third-party or internal company resources that are able to attest to the results of the study. Revise the lobbying-related labor cost allocations based on the results of the study.

8. Nonutility Expenses in Operating Accounts

Duke Companies recorded approximately $490,000 of nonutility expenses in operating accounts in 2014. As a result, inappropriate costs were included in wholesale power and transmission formula rate service cost determinations and charged to customers.

Pertinent Guidance

Accounting Release 12, Discriminatory Employment Practices, states in part:

> Expenditures resulting from employment practices found to be discriminatory by a judicial or administrative decree or that were the result of a compromise settlement or consent decree are not just and reasonable cost of utility operations and as such must be charged to nonoperating expense accounts.

18 C.F.R Part 101, Account 426.1, Donations, states:

> This account shall include payments or donations for charitable, social, or community welfare purposes.

18 C.F.R. Part 101, Account 426.5, Other Deductions, states:

> This account shall include other miscellaneous expenses for which are non-operating in nature, but which are properly deductible before determining total income before interest charges.

Background

Audit staff reviewed a sample of expenses charged to administrative and general (A&G) accounts to determine whether the charges were accounted for in accordance with Commission accounting requirements. The sample included charges to Accounts 920, Administrative and General Salaries, 923, Outside Services Employed, and 926, Employee Pensions and Benefits, in 2012. Audit staff reviewed accounting records and documentation supporting amounts reported in the accounts, such as invoices, work orders, and billings. Audit staff also interviewed Duke Companies' employees with responsibility for documenting and accounting for costs reported in the accounts.

Audit staff's review found that Duke Companies accounted for $100,000 of expenditures resulting from employment practices found to be discriminatory as operating expenses. However, in accordance with the requirements of Accounting Release 12, Discriminatory Employment Practices, expenses of this nature should be accounted for as nonoperating expenses. Of the $100,000, audit staff found that $40,000 was improperly recorded to Account 923 and inappropriately included in transmission formula rate determinations. The remaining $60,000 was incorrectly accounted for in production and distribution operating accounts, including Accounts 519, Coolants and Water, 524, Miscellaneous Nuclear Power Expenses, and 583, Overhead Line Expenses. The costs should have been charged to Account 426.5, Other Deductions, consistent with the instructions of the account. Account 426.5 provides for recording expenses that are nonoperating in nature, and are properly deductible before determining total income before interest charges.

Further, audit staff also found that Duke Companies improperly charged about $39,000 in costs related to donations and charitable contributions to above-the-line operating accounts rather than Account 426.1, Donations, as required. Account 426.1 provides for reporting payments or donations for charitable, social, or community welfare purposes. The sampled invoices that audit staff reviewed included expenditures for charity-related activities that were improperly charged to operating accounts.

Because audit staff's review involved a select, small sample of transactions out of a larger population of transactions that involved expenses charged to Accounts 920, 923, and 926, audit staff believes that review of a larger number of transactions charged to these accounts may have revealed additional accounting errors that could have resulted in inappropriate charges to wholesale power and transmission formula rate customers. Duke Companies represented that they performed an analysis of all charges to the 900 series expense accounts for April 2014 through December 2014, and estimated that they incorrectly accounted for approximately $490,000 of costs in the accounts in 2014. These errors are the result of Duke Companies' lack of documented policies and insufficient training of employees on Commission requirements pertaining to accounting for nonoperating expenses. Employees with responsibility for recording expenses of this nature should have knowledge of the importance of appropriate accounting and the impact of improper accounting on rates charged through transmission formula rates.

Recommendations

We recommend Duke Companies:

31. Develop and implement written policies, procedures, and controls to ensure proper accounting and reporting of nonutility expenses.

32. Provide training for employees involved in the invoicing process on Commission accounting requirements and the impact of the accounting on cost-of-service rate determinations.

33. Within 60 days of receiving the final audit report, provide documentation supporting the analysis performed of invoiced expenses recorded to A&G accounts in 2014 that identified misclassified nonutility expenses included in A&G accounts. Develop an estimate of misclassified nonutility expenses accounted for in operating accounts in 2011 through 2013 and 2015.

34. Implement policies and procedures to provide periodic audits or reviews of A&G transactions by external or internal auditors.

35. Submit a refund analysis, within 60 days of receiving the final audit report, for review to DAA that explains and details the following: (1) calculation of refunds that include the amount of inappropriate recoveries that resulted from the improper inclusion of identified and estimated nonutility expenses in charges to wholesale power and transmission customers during the audit period, plus interest on the costs; (2) determinative components of the refund; (3) refund method; and (4) period(s) refunds will be made. Include the results of the invoice analysis in the refund analysis.

36. File a refund report with the Commission after receiving DAA's assessment of the refund analysis.

37. Refund amounts disclosed in the refund report to wholesale power and transmission customers, with interest calculated in accordance with section 35.19a of Commission regulations.

Appendix: Duke Energy's Comments on Audit Report

DUKE ENERGY.

Brian D. Savoy
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March 30, 2016

Mr. Bryan K. Craig
Director and Chief Accountant
Division of Audits and Accounting
Office of Enforcement
Federal Energy Regulatory Commission
888 First Street NE, Room 5K-13
Washington, DC 20426

RE: Office of Enforcement
Docket No. PA14-2-000
Duke Energy Corporation

Dear Mr. Craig:

On February 19, 2016, the Division of Audits and Accounting ("DAA") within the Office of Enforcement of the Federal Energy Regulatory Commission (the "Commission") issued a draft audit report setting forth the DAA's findings and recommendations resulting from the audit of Duke Energy Corporation ("Duke Energy") and its public utility subsidiaries' compliance with (1) conditions in Commission merger authorization orders, (2) transmission formula rate tariff requirements, and (3) accounting and financial reporting regulations. After several constructive discussions between DAA staff and Duke Energy, the draft audit report was revised several times. DAA staff sent the latest revision to Duke Energy dated March 29, 2016. Duke Energy is responding to the March 29 revision.

SUMMARY

In the draft audit report as revised, the DAA made eight findings and 37 associated recommendations. In sum, Duke Energy accepts five of the eight findings and all associated recommendations. Duke Energy respectfully disagrees with, but will not contest, two of the eight findings (findings 2 and 3) and agrees to comply with all associated recommendations. Duke Energy disagrees with a portion of, but will not contest under 18 CFR Part 41, one of the eight findings (finding 5) and all recommendations as they apply to the portion with which it disagrees, and accepts in part finding 5 and all recommendations as they apply to the accepted portion.

RESPONSE TO FINDINGS

In accordance with the procedures set forth in 18 C.F.R. 41.1, Duke Energy responds to each of the findings as follows:

- **Finding 1.** *Accounting for Merger Transaction Costs* – Duke Companies did not file merger transaction accounting entries with the Commission as required by the Merger Order, and the companies recorded merger transaction costs in operating accounts, contrary to the Commission's long-standing policy that such costs be recorded in nonoperating accounts. By not filing the accounting entries, Duke Companies prevented Commission review of the merger accounting and correction of any entries that were not in accordance with Commission accounting requirements.

Response: Duke Energy accepts this finding.

- **Finding 2.** *Merger Transaction Internal Labor Costs* – Duke Companies improperly included approximately $31.4 million of merger transaction internal labor costs in wholesale power and transmission formula rate service cost determinations without first submitting a section 205 filing demonstrating that the costs were offset by quantified savings produced by the merger. As a result, the wholesale power and transmission customers' revenue requirements were inappropriately overstated an estimated $17.5 million.

Response: Duke Energy respectfully disagrees with this finding, but will not contest it. For the purpose of establishing a complete record, Duke Energy explains its position as follows.

Duke Energy acknowledges its obligation to hold transmission and wholesale power customers harmless for five years from costs related to the merger of Duke Energy and Progress Energy, Inc. (the "Merger").

Between the time of the Commission's Merger Order issued on September 30, 2011 and the closing of the Merger on July 2, 2012, Duke Energy determined that its hold harmless commitment is intended to apply to costs caused by the Merger ("Incremental Costs") and not to costs that would have been incurred even in the absence of the Merger ("Non-Incremental Costs"). No Commission orders squarely addressed this issue, and it seemed to be inherent in the nature of a *hold harmless* commitment that it would protect customers only from costs that they would not have incurred otherwise.

On the basis of this logic, Duke Energy did not treat as transaction-related costs any portion of the regular compensation that employees would have received in the absence of the Merger even if the employees spent some of their time working on transaction-related activities. The company would have paid those same salaries to the employees with or without the Merger. Thus the regular compensation of employees was viewed as Non-Incremental Costs. On the other hand, Duke Energy did treat as transaction-related costs any compensation paid to employees that would *not* have been incurred but for the Merger. For example, this included any bonuses paid to employees in recognition of the extended hours many employees worked to fulfill their regular duties and to work on merger activities. It also included temporary employees and contractors hired to backfill for work that could not be absorbed in this manner. These costs were viewed as Incremental Costs and accordingly were excluded from FERC-jurisdictional rates.

Treatment of internal labor costs in the context of a hold harmless obligation was certainly not a settled issue in early 2012 or even today. This uncertainty was reflected in the Commission's notice of proposed *Policy Statement on Hold Harmless Commitments* issued January 22, 2015 in Docket No. PL15-3. In this notice of proposed policy statement issued two and a half years after the closing of the Merger, the Commission states as follows:

> "...we propose to clarify those costs to which hold harmless commitments will apply. Although the Commission has provided broad guidance regarding the costs that should be covered under hold harmless commitments, it has never defined those costs with much specificity, leading to inconsistency with respect to this issue."[1]

The Commission proposed to clarify that internal labor costs should be treated as transaction-related costs and stated as follows:

> "If the duties of employees are not solely dedicated to activities related to a transaction, internal labor costs deemed merger-related should be determined in a manner that is proportionally equal to the amount of time spent on the merger compared to other activities of the utility and tracked accordingly."[2]

While this *proposal* is clear on this issue, it is worth repeating that it was issued two and a half years after the Merger closed. It is also important to note that it is just a proposal at this time because the final policy statement has not been issued. In addition, some commenters specifically disagreed with this point.[3] Finally, the Commission stated in the notice of proposed policy statement that it would have prospective effect only.[4]

Notwithstanding Duke Energy's belief that its failure to exclude from rates Non-Incremental internal labor costs was not a violation of any settled policy and in fact was based on the most reasonable interpretation of its hold harmless commitment, Duke Energy will not expend the resources necessary to contest this issue and will comply with all associated recommendations in the audit report. Duke Energy reserves all rights in the event that the Commission issues an order

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[1] Paragraph 16 of the notice of proposed policy statement.
[2] Footnote 41 of the notice of proposed policy statement.
[3] See the comments of Edison Electric Institute filed on March 30, 2015 at p. 15-16.
[4] Paragraph 20 of the notice of proposed policy statement.

in the proposed policy statement proceeding or any other proceeding that is not consistent with Finding 2.
Duke Energy estimates that the total refunds that will be due to transmission and wholesale power customers arising from this finding will be approximately $1.2 million plus interest.

- **Finding 3.** *Merger Transaction Outside Services and Related Costs* – Duke Companies incorrectly included $1.5 million of merger transaction outside services and related costs in wholesale power and transmission formula rate service cost determinations without first submitting a section 205 filing demonstrating the costs were offset by quantified savings produced by the merger. In addition, the companies recorded the merger transaction costs in operating accounts, contrary to the Commission's long-standing policy that such costs be recorded in nonoperating accounts. As a result, the wholesale power and transmission customers' revenue requirements were inappropriately overstated an estimated $745,000.

Response: Duke Energy respectfully disagrees with this finding, but will not contest it. For the purpose of establishing a complete record, Duke Energy explains its position as follows.

The costs which are the subject of this finding are costs incurred in 2010 to investigate, agree to, and perform preliminary due diligence regarding, the Merger prior to the announcement of the Merger. Duke Energy made the determination that its hold harmless commitment was not intended to include such costs incurred during the formative stage of a potential transaction before it was clear that the company would even pursue the transaction. Like most utility holding companies, Duke Energy has a corporate development group that regularly investigates and reviews potential transactions as part of its routine operations. Only a very small percentage of potential transactions reviewed are ever consummated. In order to comply with a hold harmless commitment as interpreted in this Finding 3 for a transaction that is eventually consummated, the company would have to track all its costs for each and every potential transaction it reviews even though the vast majority will never be consummated. This would be unwieldy and wasteful. Because these potential transactions often will benefit customers, discouraging investigation of them is not in the best interests of customers.

Treatment of such investigation costs incurred prior to the announcement of a transaction in the context of a hold harmless obligation was certainly not a settled issue in early 2012 or even today. This uncertainty was reflected in the Commission's notice of proposed *Policy Statement on Hold Harmless Commitments* discussed in Duke Energy's response to Finding 2 above.

In the notice of proposed policy statement, the Commission proposed to clarify that such investigation costs would be subject to the hold harmless commitment.[5]

[5] Paragraph 22 of the notice of proposed policy statement.

As in Duke Energy's response to Finding 2 above, we will point out again that the notice of proposed policy statement was issued two and a half years after the Merger closed, and is just a proposal at this time because the final policy statement has not been issued. In addition, some commenters specifically disagreed with this point.[6]

Notwithstanding Duke Energy's belief that its failure to exclude pre-announcement costs that are the subject of Finding 3 was not a violation of any settled policy, Duke Energy will not expend the resources necessary to contest this issue and will comply with all associated recommendations in the audit report.

Duke Energy estimates that the total refunds that will be due to transmission and wholesale power customers arising from this finding will be approximately $60,000 plus interest.

- **Finding 4.** *Use of the Consolidation Method of Accounting* – DEC and DEP accounted for investments in subsidiaries on a consolidated basis in their FERC Form No. 1, Annual Reports (Form No. 1), contrary to the Commission's long-standing accounting policy.

Response: Duke Energy accepts this finding.

- **Finding 5.** *Accounting for Sales of Accounts Receivable* – DEC, DEP, and DEF misclassified an estimated $94.7 million of nonoperating expenses and receivables arising from transactions with their subsidiaries during the audit period. As a result, the wholesale power and transmission customers' revenue requirements were inappropriately overstated by an estimated $61 million.

Response: Duke Energy disagrees with the portion of this finding that concerns accounting for losses on the sale of receivables. However, Duke Energy will not contest this finding under 18 CFR Part 41 because the portion of this finding that relates to accounting for losses on the sale of receivables, including recommendations 17 and 18, will be held in abeyance and will be subject to the outcome of Duke Energy's request for rehearing in Docket No. AC15-174-001 pursuant to the draft audit report.

- **Finding 6.** *Accounting for Lobbying Expenses:* Duke Companies recorded approximately $2.4 million of lobbying expenses in above-the-line operating accounts from 2011 through 2013. As a consequence, Duke Companies improperly included these costs in wholesale power and transmission formula rate service cost determinations.

Response: Duke Energy accepts this finding.

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[6] See the comments of Edison Electric Institute filed March 30, 2015 at p. 14-15.

- **Finding 7.** *Allocation of Lobbyist Labor Costs:* Duke Companies accounted for the labor costs of internal lobbyists and their support staff in operating accounts that lacked support for inclusion in the accounts. Improper accounting for the costs can lead to inappropriate recovery of the costs through rates charged and billed to customers.

Response: Duke Energy accepts this finding.

- **Finding 8.** *Nonutility Expenses in Operating Accounts:* Duke Companies recorded approximately $490,000 of nonutility expenses in operating accounts in 2014. As a result, inappropriate costs were included in wholesale power and transmission formula rate service cost determinations and charged to customers.

Response: Duke Energy accepts this finding.

RESPONSE TO RECOMMENDATIONS

Duke Energy will comply with all recommendations except as otherwise stated below. As requested, Duke Energy proposes target completion dates below for each recommendation wherever the recommendation does not specify the completion date.

Accounting for Merger Transaction Costs

1. Revise accounting policies and procedures to appropriately account for merger transactions consistent with Commission accounting requirements.

Target Completion Date: September 30, 2016

2. Develop written policies and procedures to timely identify proposed accounting transactions that would trigger a notification to the Commission.

Target Completion Date: September 30, 2016

3. Develop written policies and procedures to submit accounting questions of doubtful interpretation to the Commission.

Target Completion Date: September 30, 2016

4. Provide training to employees on compliance with the merger cost accounting conditions and the revised policies, procedures, and controls for complying with the conditions. Also, develop a training program that supports the provision of periodic training in this area.

Target Completion Date: December 31, 2016

Merger Transaction Internal Labor Costs

If the Commission issues a policy statement on hold harmless commitments and such policy statement is inconsistent with Finding 2 or Finding 3, then Duke Energy reserves the right to seek relief from compliance with any of recommendations 5 – 12 as appropriate.

5. Revise all policies and procedures for tracking, accounting, and excluding merger transaction costs from wholesale power and transmission formula rates, including amounts previously charged to utility plant, accumulated deferred income taxes, construction work in progress with the associated capitalized cost of funds used during construction (AFUDC), and maintenance and operating expense accounts, and future charges to such accounts for any transaction to which a FERC hold harmless obligation applies. The revised procedures should hold customers harmless from all merger transaction costs consistent with requirements of the Merger Order. Among other things, the revised policies and procedures should include an annual review of each subsidiary's merger transaction cost adjustments as well as periodic evaluations within the year, as needed and appropriate.

Target Completion Date: September 30, 2016

6. Submit a refund analysis, within 60 days of receiving the final audit report, to DAA for review that explains and details the following: (1) calculation of refunds that include the amount of inappropriate recoveries that resulted from the inclusion of merger transaction internal labor and related costs in wholesale power and transmission formula rates during the audit period, plus interest on the costs; (2) determinative components of the refund; (3) refund method; and (4) period(s) refunds will be made.

7. File a refund report with the Commission after receiving DAA's assessment of the refund analysis.

Target Completion Date: 45 days after receiving DAA's assessment of the refund analysis

8. Refund amounts disclosed in the refund report to wholesale power and transmission customers, with interest calculated in accordance with section 35.19a of Commission regulations.

Target Completion Date: 45 days after receiving DAA's assessment of the refund analysis

Merger Transaction Outside Services and Related Costs

9. Revise accounting policies and procedures to appropriately account for merger transaction costs consistent with Commission accounting requirements.

Target Completion Date: September 30, 2016

10. Submit a refund analysis, within 60 days of receiving the final audit report, to DAA for review that explains and details the following: (1) calculation of refunds that include the amount of inappropriate recoveries that resulted from the inclusion of merger transaction outside services and related costs in wholesale power and transmission formula rate charges during the audit period, plus interest on the costs; (2) determinative components of the refund; (3) refund method; and (4) period(s) refunds will be made.

11. File a refund report with the Commission after receiving DAA's assessment of the refund analysis.

Target Completion Date: 45 days after receiving DAA's assessment of the refund analysis

12. Refund amounts disclosed in the refund report to wholesale power and transmission customers, with interest calculated in accordance with section 35.19a of Commission regulations.

Target Completion Date: 45 days after receiving DAA's assessment of the refund analysis

Use of the Consolidation Method of Accounting

13. Review and, as needed, revise accounting policies, practices, and procedures to ensure that investments in subsidiaries are accounted for consistent with the Commission's equity method accounting requirements.

Response and Target Completion Date: Duke Energy will comply with this recommendation, but notes that the Commission has granted to DEC, DEP, and DEF a waiver from the requirement to use the equity method as discussed above. Target Completion date is 60 days after receiving the final audit report.

14. Evaluate the accounting applied to Duke Companies' existing subsidiaries and notify DAA of any areas of noncompliance with Commission accounting requirements.

Target Completion Date: 60 days after receiving the final audit report.

15. Revise documented policies, procedures and processes to ensure timely notice is provided to relevant regulators regarding instances of noncompliance with regulations, rules, and orders.

Target Completion Date: September 30, 2016

16. Provide training to staff on procedures, practices, and available tools to transparently or anonymously report instances of noncompliance to senior management, the Board of Directors, and relevant regulators.

Target Completion Date: December 31, 2016

Accounting for Sales of Accounts Receivable

17. Revise procedures to ensure that all costs, revenues, and account balances associated with the sale of accounts receivable are accounted for in accordance with Commission accounting regulations. Among other things, the corrected accounting should ensure that all discounts, fees, and revenues associated with receivable sales are recorded in Account 426.5, and that the cost of performing collection services on behalf of the subsidiaries, including employee labor, expenses, and an appropriate allocation of overhead and utility plant, are recorded in Account 426.5.

Response and Target Completion Date: In accordance with the draft audit report, the portions of this recommendation that relate to accounting for losses on the sale of receivables are held in abeyance and subject to the outcome of the rehearing request and any subsequent petitions for review proceedings. The target completion date for portions that do *not* relate to accounting for losses on the sale of receivables is 60 days after receiving the final audit report.

18. Provide the revised procedures to DAA for review within 60 days of receiving the final audit report.

Response and Target Completion Date: In accordance with the audit report, the portions of this recommendation that relate to accounting for losses on the sale of receivables are held in abeyance and subject to the outcome of the rehearing request and any subsequent petitions for review proceedings.

19. Recalculate charges to wholesale power and transmission customers of DEC, DEP, and DEF and submit the recalculations in a refund analysis to DAA for review within 60 days of receiving the final audit report. The refund analysis should explain and detail the: (1) return of collection service billings charged in 2014; (2) return of losses on the sales included in rates; (3) determinative components of the refund; (4) refund method; (5) period(s) refunds will be made; and (6) interest calculated in accordance with section 35.19 of Commission regulations.

20. File a refund report with the Commission after receiving DAA's assessment of the refund analysis.

Target Completion Date: 45 days after receiving DAA's assessment of the refund analysis

21. Refund amounts disclosed in the refund report to wholesale power and transmission customers, with interest calculated in accordance with section 35.19a of Commission regulations.

Target Completion Date: 45 days after receiving DAA's assessment of the refund analysis

Accounting for Lobbying Expenses

22. Establish and implement written procedures governing the methods used to account for, track, report, and review lobbying costs incurred.

Response: Duke Energy has completed this action. Duke Energy will update its procedures upon completion of the labor time study referenced in recommendation 28.

23. Provide training on Commission accounting requirements and the impact of accounting on cost-of-service rate determinations to employees involved in lobbying and lobbying-related work, and those with oversight responsibility for lobbying cost allocations. Also, develop a training program that supports the provision of periodic training in this area.

Response: Duke Energy has completed this action. Duke Energy will update its procedures upon completion of the labor time study referenced in recommendation 28.

24. Submit a refund analysis, within 60 days of receiving the final audit report, to DAA for review that explains and details the following: (1) calculation of refunds that include the amount of inappropriate recoveries that resulted from the improper inclusion of lobbying cost in operating accounts during the audit period, plus interest on the costs; (2) determinative components of the refund; (3) refund method; and (4) period(s) refunds will be made.

25. File a refund report with the Commission after receiving DAA's assessment of the refund analysis.

Target Completion Date: 45 days after receiving DAA's assessment of the refund analysis

26. Refund amounts disclosed in the refund report to wholesale power and transmission customers, with interest calculated in accordance with section 35.19a of Commission regulations.

Target Completion Date: 45 days after receiving DAA's assessment of the refund analysis

Allocation of Lobbyist Labor Costs

27. Revise written policies and procedures to create a process to document and verify appropriate allocation of lobbying and lobbying-related costs, and maintain auditable support for the cost included in rate determinations.

Response: Duke Energy has completed this action. Duke Energy will update its procedures upon completion of the labor time study referenced in recommendation 28.

28. Retain an independent third-party entity to conduct a representative labor time study to determine an appropriate allocation of internal lobbyist labor, support staff, and associated costs that should be accounted for in operating and nonoperating accounts based on time spent by employees engaged in the activities. Provide the study results to audit staff within 180 days of the date of the final audit report.

29. Include the results of the labor time study in the determination of lobbying-related labor cost allocations as of January 1, 2016.

Target Completion Date: 180 days after the date of the final audit report

30. Implement policies and procedures to perform a labor time study biennially using an independent third-party or internal company resources that are able to attest to the results of the study. Revise the lobbying-related labor cost allocations based on the results of the study.

Target Completion Date: 180 days after the date of the final audit report

Nonutility Expenses in Operating Accounts

31. Develop and implement written policies, procedures, and controls to ensure proper accounting and reporting of nonutility expenses.

Response: Duke Energy has completed this action.

32. Provide training for employees involved in the invoicing process on Commission accounting requirements and the impact of the accounting on cost-of-service rate determinations.

Response: Duke Energy has completed this action.

33. Within 60 days of receiving the final audit report, provide documentation supporting the analysis performed of invoiced expenses recorded to administrative and general (A&G) accounts in 2014 that identified misclassified nonutility expenses included in A&G accounts. Develop an estimate of misclassified nonutility expenses accounted for in operating accounts in 2011 through 2013 and 2015.

34. Implement policies and procedures to provide periodic audits or reviews of A&G transactions by external or internal auditors.

Target Completion Date: 60 days after the date of the final audit report

35. Submit a refund analysis, within 60 days of receiving the final audit report, to DAA for review that explains and details the following: (1) calculation of refunds that include the amount of inappropriate recoveries that resulted from the improper inclusion of identified and estimated nonutility expenses in charges to wholesale power and transmission customers during the audit period, plus interest on the costs; (2) determinative components of the refund; (3) refund method; and (4) period(s) refunds will be made. Include the results of the invoice analysis in the refund analysis.

36. File a refund report with the Commission after receiving DAA's assessment of the refund analysis.

Target Completion Date: 45 days after receiving DAA's assessment of the refund analysis

37. Refund amounts disclosed in the refund report to wholesale power and transmission customers, with interest calculated in accordance with section 35.19a of Commission regulations.

Target Completion Date: 45 days after receiving DAA's assessment of the refund analysis

Duke Energy acknowledges and appreciates the professionalism and the courtesy with which DAA staff conducted this audit.

Sincerely,

Brian D Savoy by Paul King

Brian D. Savoy
Senior Vice President, Chief Accounting
Officer and Controller

OFFICIAL COPY

Apr 05 2016

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Notification of FERC Audit Report in Docket Nos. E-7, Sub 986E and E-2, Sub 998E has been served on all parties of record either by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid.

This the 5th day of April, 2016.

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