

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1219)	
)	
In the Matter of)	
Application of Duke Energy Progress,)	
LLC for Adjustment of Rates and)	
Charges Applicable to Electric Service)	
in North Carolina)	
)	
DOCKET NO. E-7, SUB 1214)	PUBLIC STAFF'S RESPONSE TO
)	JOINT REPLY OF DUKE ENERGY
)	CAROLINAS AND DUKE ENERGY
)	PROGRESS
)	
In the Matter of)	
Application of Duke Energy Carolinas,)	
LLC for Adjustment of Rates and)	
Charges Applicable to Electric Service)	
in North Carolina)	

NOW COMES the Public Staff, by and through its Executive Director, Christopher J. Ayers, and responds to the joint reply filed on July 9, 2020, by Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP) (DEC and DEP each a Company and collectively the Companies), to the Public Staff's responses to DEC's Second Supplemental Direct Testimony and Exhibits, and DEP's Second Supplemental Direct Testimony and Exhibits. The Public Staff respectfully shows the Commission:

1. In reply to the Public Staff's filings of July 7, 2020, the Companies submit that it is appropriate to provide the proposed updates in light of the unforeseen delay in the evidentiary hearings. In support of their position, the

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Companies make several claims, which the Public Staff believes should be clarified for the Commission's information.

2. The Companies claim that they have limited updates to only "material" items for the specific purpose of "minimizing" the amount of work it would take for parties to review and audit prior to the hearing. First, the term "material" is subjective and open to interpretation, thus there may well be disagreement between the parties with respect to whether or not an item is material. The Public Staff has not yet begun its review of the updates and cannot opine on the materiality of the items at this time, nor on the potential materiality of offsetting items that the Companies may have chosen not to adjust. Second, the Companies are well aware of the amount and scope of work it takes to perform a full audit of a Company filing, DEC having previously noted the volume of data requests the Public Staff has sent during the course of its audit in that case.¹ The audit of the proposed updates would include a review of four months of plant additions for DEC, and three months for DEP. Auditing plant additions involves reviewing the accounting entries made by the Company, selecting specific items for review, as well as more randomized samples from the numerous accounting entries, sending data requests, waiting at least ten days for responses, reviewing the voluminous responses, sending follow up data requests and waiting at least ten days for responses, and requesting conference calls to discuss. Arranging for conference calls often takes days and sometimes weeks, as Company and Public Staff schedules can be difficult to coordinate. The same sort of investigative process

¹ See, e.g., DEC's Response in Opposition to Motion to Compel Discovery filed April 17, 2020 in the DEC rate case docket.

would also need to be followed for non-plant adjustments. Then, the Public Staff must analyze all of the data and determine its position, draft, and file testimony, which again takes several weeks. This process would be multiplied by the number of issues to audit and will be occurring at the same time the Public Staff is preparing for and participating in the hearings. Additionally, the Companies provided two sets of schedules, one based on a settled return on equity (ROE) with other parties, and one without. The Public Staff would have to investigate both, and our ROE expert would need to review the filing for continued appropriateness within the context of the new updated test period.

3. The need for the Public Staff and other parties to have sufficient time to investigate the Companies' update filings is reinforced by the Commission's *Order Allowing Deferral Accounting, Denying Public Staff's Motion for Reconsideration, Granting Transfer of CPCNs, and Qualifying the Transferred Facilities as New Renewable Energy Facilities*, issued June 5, 2019, in Docket No. E-7, Sub 1181 (Order Allowing Deferral Accounting), which dealt with DEC's sale of certain hydroelectric generating facilities. In that proceeding, the Public Staff raised questions regarding the cost of certain work done to the facilities prior to the sale, which cost had been included in the pro forma cost of service in the Company's then most recent general rate case in Docket No. E-7, Sub 1146. The Public Staff asserted that the proposed hydroelectric sale was too remote, uncertain, and lacking in quantification at the time of the Public Staff's rate case investigation to put the Public Staff on notice that a detailed investigation of prior investment in those facilities was needed. The Public Staff requested that a full

investigation of the costs be deferred until the Company's next general rate case, and filed a motion for reconsideration of the last general rate case to that effect.

The Commission rejected the Public Staff's request. In the Order Allowing Deferral Accounting, the Commission stated:

The first inquiry under N.C.G.S. § 62-80 is whether there is a change in circumstances or a misapprehension or disregard of a fact that provides a basis for the Commission to rescind, alter or amend the Sub 1146 Rate Order. In Sub 1146, the bulk of the capital expenditures on the hydro plants from 2015-2017 was included in DEC's cost of service. Neither the Public Staff, nor any other party, challenged the reasonableness or prudence of the capital expenditures. As a result, a prima facie case was made that these costs were reasonably incurred. . . .

The Commission, the regulated utilities, and the Public Staff have one common purpose – to serve the public interest. The Commission and the parties may differ on how to meet that purpose, but in the end the public interest is best served when all participants in the ratemaking process are provided timely and adequate information about the manner in which ratepayers will be served and the cost of providing that service. . . .

The Commission concludes that the Public Staff had a reasonable opportunity to ask DEC questions about the hydro capital expenditures and DEC's potential sale of the plants during the rate case hearing. At a minimum, the Public Staff could have brought the issue to the Commission's attention and requested the Commission's guidance on how to preserve the issue for later investigation by the Public Staff and consideration by the Commission. In addition, the Public Staff could have requested that the approval of DEC's recovery of the capital expenditures be conditional, that the amount received in rates for these costs be placed in a deferred account, and that the deferred account be subject to being used as an off-set to the loss on sale. The Public Staff did not follow any of these possible courses for preserving the issue of the reasonableness and prudence of DEC's capital expenditures. Based on the foregoing and the record, the Commission finds and concludes that there has been no showing of a change of circumstances, or any misapprehension or disregard of pertinent facts that provides the basis for a reconsideration of the Commission's approval of DEC's capital expenditures on the hydro plants in the Sub 1146 Rate Order. As a

result, the Public Staff's motion for reconsideration should be denied.²

Thus, the Commission essentially concluded that if the Public Staff has a reasonable chance to investigate costs during a rate case, its ability to revisit those costs afterwards is quite constrained. In the present case, the Companies did not provide anything before the Commission indicating any actual costs beyond the update periods until their recent filings seeking to update the rate cases 24 days before the ordered start of the hearing. Therefore, because it will most likely not be able to revisit the updated costs after this rate case, the Public Staff strongly believes that adequate time for its investigation should be allowed.

4. Contrary to the Companies' assertion, this situation is not similar to the issue that arose in DEC's last rate case (Docket No. E-7, Sub 1146) when DEC presented its proposal to return excess deferred income taxes to customers pursuant to the federal Tax Cuts and Jobs Act (TCJA) at the beginning of the hearing. In that situation, the TJCA was passed well within the agreed-upon update period in that case. Additionally, the TJCA proposal was one discrete issue; here, the Companies propose updating three to four months of revenue and selected costs.

5. The Companies' reference to the Clemson CHP adjustment is likewise inapposite. The costs of the Clemson CHP were included in the Company's supplemental testimony covering the period through January 31, 2020, and were therefore included in the Public Staff's supplemental and settlement

² Order Allowing Deferral Accounting, pages 24-27.

testimony regarding costs incurred through January 31, 2020. The Public Staff did not take a “second bite of the apple” in its review of the Clemson CHP.

6. While the Companies are interested in securing financial certainty in the face of long-term global economic uncertainty, the Public Staff believes the Commission should balance the ever-growing challenges customers face in light of such economic uncertainty. There must be consideration as to whether any updated amounts are representative of an ongoing level of revenues and expenses to ensure that the impacts of any update are not skewed in favor of Companies’ stockholders to the detriment of customers.

7. The Companies assert that the settled items in the DEC settlement are settlements only as to methodology, not numbers. The Public Staff strongly disagrees with this characterization, particularly with regard to growth and usage adjustments as set forth in the DEC settlement. Settlement Paragraph III.15 reads, “The Company accepts the Public Staff’s updated recommended adjustments to weather normalization, growth, and usage as reflected in Boswell Supplemental and Stipulation Exhibit 1.” This not only includes operating revenues due to adjustments to customer growth and usage growth, but also the corresponding adjustments to fuel revenues and expense and non-fuel variable O&M expenses (including adjustments related to billing related expenses). Additionally, although the DEC settlement does not explicitly reference Company proposals and Public Staff adjustments related to plant, salaries and wages, inflation, depreciation expense, accumulated depreciation (update and annualization), and property taxes, all of these were adjusted by DEC and the Public Staff to annualized

January 31, 2020 levels (albeit with possible disagreements on matters not related to the update period), consistent with adjustments made directly on the basis of changes in kWh and the number of bills, and thus required no mention in the settlement agreement. The Public Staff believes that these should be correctly understood as settled or resolved dollar amounts as well (at least with regard to the cutoff date of January 31, 2020), given that they, as well as the adjustments and end-of-period amounts of revenues and variable expenses, are explicitly dependent on the January 31, 2020, update deadline used for customer growth and usage in the DEC settlement. Thus, these additional items are “of a piece” with items determined directly on the basis of growth in customers and usage through the same end-of-period date. The only reason they were not subject to being explicitly included in the DEC settlement agreement is that there was no disagreement between DEC and the Public Staff as to the update time period to be used.

WHEREFORE, the Public Staff respectfully requests the Commission to determine (1) whether the Companies’ further update of their cases violates the Stipulation with the Public Staff, and (2) if the Companies update, whether the Commission’s current procedural schedule will stand, allowing the parties to continue to proceed to prepare for hearing, or should be revised, and (3) for such other and further relief as the Commission may deem just and proper.

This the 15th day of July, 2020.

PUBLIC STAFF
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CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing Response on all parties of record in accordance with Commission Rule R1-39, by United States mail, postage prepaid, first class; by hand delivery; or by electronic delivery upon agreement of the receiving party.

This the 15th day of July, 2020.

Electronically submitted
/s/ Dianna W. Downey