STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-22, SUB 562
DOCKET NO. E-22, SUB 566

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-22, SUB 562 In the Matter of Application of Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina DOCKET NO. E-22, SUB 566 In the Matter of Petition of Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina for an Accounting Order to Defer Certain Capital and Operating Costs Associated with Greensville County Combined Cycle Addition	)	ORDER DECIDING MOTIONS FOR RECONSIDERATION AND CLARIFICATION, AND REQUIRING IMPLEMENTATION OF NEW RATES

BY THE COMMISSION: On February 24, 2020, the Commission issued its Order Accepting Public Staff Stipulation in Part, Accepting CIGFUR Stipulation, Deciding Contested Issues, and Granting Partial Rate Increase in the above-captioned dockets (Rate Order).

On April 24, 2020, Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (DENC or Company), filed a Motion for Reconsideration or Clarification of the Rate Order (DENC's Motion). On the same date the Public Staff filed a Motion for Reconsideration or Clarification of the Rate Order (Public Staff's Motion).

DENC'S MOTION

DENC requested that the Commission reconsider three of the decisions made by the Commission in the Rate Order that relate to the costs incurred by DENC during the period from July 1, 2016 and running through June 30, 2019 to manage liabilities associated with coal combustion residuals (the CCR Costs): (1) that DENC should have included its CCR Costs in its depreciation expense and must do so in future depreciation studies; (2) that the Company cannot earn a return on the unamortized balance of its CCR Costs over the amortization period; and (3) that DENC must amortize recovery of

CCR Costs over ten years. In addition, DENC requested clarification that it may defer its CCR Costs incurred after June 30, 2019, for consideration in a future rate case proceeding. In support of its motion, DENC cited N.C.G.S. § 62-80, and several prior Commission decisions.[1]

Inclusion of CCR Costs in Depreciation Expense

DENC requested that the Commission reconsider its decision requiring the Company to include CCR Costs as part of cost of removal in future depreciation studies. DENC contended that this approach is inconsistent with applicable accounting principles and impractical given the Company's recent retirement of several of its coal facilities.

According to DENC, under generally accepted accounting principles (GAAP) and Federal Energy Regulatory Commission (FERC) accounting rules, which the Commission has consistently held are applicable to the Company,[2] once the Company had a legal obligation to remediate CCR basins it was required to account for the costs as an asset retirement obligation (ARO),[3] and costs accounted for as AROs are not included in the cost of removal component of depreciation under GAAP[4] and FERC[5] rules. Therefore, the Company did not include CCR Costs as a component of cost of removal in its 2016 depreciation study.

In addition, DENC stated that the Commission was critical of the fact that the Company did not include CCR Costs in its past depreciation studies, but the Commission nonetheless approved the Company's depreciation expense in the Rate Order based on prior studies that did not include CCR costs. The Company further stated that the Commission's recent orders approved DENC's depreciation expense as reasonable

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[1]Order Denying Motions for Reconsideration and to Compel Discovery, Docket Nos. E-2, Sub 998, *et al.*, at 4, (Dec. 10, 2012) (noting "new evidence" as one of the permissible grounds for reconsideration in addition to change in circumstances or misapprehension of facts); Order on Reconsideration Amending Order and Scheduling New Hearing, Docket No. G-5, Sub 481, at 4, (May 21, 2007) (acknowledging that N.C.G.S. § 62-80 "permits the taking of … additional evidence" in reconsideration proceedings); Order Denying Motion for Reconsideration and/or Clarification, Docket No. P-100, Sub 133, at 8 (July 28, 2003) (recognizing that the presentation of new evidence can merit reconsideration).

[2] "ARO accounting complies with the authoritative statements of GAAP, FERC, and this Commission." Order Accepting Stipulation, Deciding Contested Issues, and Requirements Revenue Reduction, Docket No. E-7, Sub 1146, at 284 (June 22, 2018) (2017 DEC Rate Order); *see also* Commission Rule R8-27.

[3] This legal obligation occurred on April 17, 2015, when the United States Environmental Protection Agency published the final Coal Combustion Residuals Rule in the *Federal Register*.

[4] *See* DENC witness McLeod's direct testimony at 21; NCUC Form E-1, Supplemental Item No. 10 at 24; and Public Staff Witness Maness' direct testimony, at 5-6.

[5] The FERC Uniform System of Accounts defines cost of removal as "the cost of demolishing, dismantling, tearing down or otherwise removing electric plant, including the cost of transportation and handling incidental thereto. *It does not include the cost of removal activities associated with asset retirement obligations that are capitalized as part of the tangible long-lived assets that give rise to the obligation*" (CFR Title 18, Chapter I, Subchapter C Part 101, Definition 10) (emphasis added). *See also* Public Staff witness Maness' direct testimony, at 6.

despite the absence of any attempt to project possible future CCR Costs in depreciation expense.[6]

DENC contended that the record in this proceeding is inadequate to support the Commission's findings of fact and departure from past precedent. As an example, DENC stated that the Commission relied on testimony in a 2015 South Dakota proceeding as its primary support. The Company maintained that the 2015 testimony predated the Company's 2016 depreciation study, which did not include 74% of the total CCR Costs presented in this proceeding because the relevant units were retired or had been impaired for financial reporting purposes. Further, the Company contended that the Commission's reliance on a 2011 water utility case[7] in support of its determination was misplaced because the Commission issued orders in the Company's 2010 and 2012 rate cases in which DENC did not include any CCR Costs in its depreciation rates and the Commission did not raise any concerns with that approach.

Further, DENC stated that the Commission's requirement that the Company include CCR-related ARO expenses in the cost of removal component of its depreciation expenses would only apply to a small subset of future CCR Costs because many of the generating units with outstanding CCR-related AROs have either been retired or have been impaired for financial reporting purposes, and therefore, will not appear in future depreciation studies. DENC noted that since the hearing the Company has made plans for the early retirement of the remaining coal units 5 and 6 at the Chesterfield Power Station by 2023, leaving only 4% of CCR-related ARO pertaining to coal units to be included in future depreciation studies.

Finally, the Company contended that the additional administrative burden for such a small percentage of remaining coal assets more than outweighs any ratemaking benefit and noted that the CCR cost recovery methods in Virginia and North Carolina are different. According to DENC, introducing amounts to the depreciation study process for a single jurisdiction will add the need for additional procedures and analysis to ensure that costs are properly segregated between depreciation and other legacy recovery mechanisms among jurisdictions.

In conclusion, the Company requested that the Commission reconsider its Findings of Fact Nos. 56-59 to the extent they require the Company to include

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[6] *See* Order Approving Rate Increase and Cost Deferrals and Revising PJM Regulatory Conditions, Docket No. E-22, Sub 532, at 9 (Dec. 22, 2016) (2016 Rate Order) ("The costs of rate case and operating revenue deductions reflected in and underlying the Stipulation, as well as the level of operating revenues under present rates, were prudently and reasonably incurred."); Order Granting General Rate Increase, Docket No. E-22, Sub 479, at 15 (Dec. 21, 2012) ("The appropriate level of depreciation and amortization expense under present rates for use in this proceeding is $42,599,000."); Order Granting General Rate Increase, Approving Fuel Charge Adjustment, and Approving Stipulation and Supplemental Agreement, Docket No. E-22, Sub 459, at 12 (Dec. 13, 2010) ("The Commission finds and concludes that the annualized amount of depreciation and amortization expense, as updated, of $36,026,000, included as an operating revenue deduction in this proceeding under the provisions of the Stipulation, and provided on Company Joint Testimony Exhibit 2 filed on October 12, 2010, is just and reasonable.").

[7] Order Granting Partial Rate Increase, Docket No. W-218, Sub 319 (November 3, 2011).

CCR-related ARO expenses in the cost of removal component of its depreciation expense.

DISCUSSION AND CONCLUSIONS

Pursuant to N.C. Gen. Stat. § 62-80:

> The Commission may at any time upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions.

The Commission's decision to rescind, alter or amend an order upon reconsideration under N.C.G.S. § 62-80 is within the Commission's discretion. *State ex rel. Utilities Comm'n v. MCI Telecommunications Corp.*, 132 N.C. App. 625, 630, 514 S.E.2d 276, 280 (1999). However, the Commission cannot arbitrarily or capriciously rescind, alter or amend a prior order. Rather, there must be some change in circumstances or a misapprehension or disregard of a fact that provides a basis for the Commission to rescind, alter or amend a prior order. *State ex rel. Utilities Comm'n v. North Carolina Gas Service*, 128 N.C. App. 288, 293-294, 494 S.E.2d 621, 625, *rev. denied*, 348 N.C. 78, 505 S.E.2d 886 (1998) (*Commission v. NC Gas*).

DENC based its motion, in part, on its post-hearing decision to retire Chesterfield Power Station Units 5 and 6 in 2023. In addition, the Commission notes that the Virginia Clean Economy Act (VCEA) was signed into law on April 11, 2020 and was effective on July 1, 2020. Virginia General Assembly 2020 Session Laws, Ch. 1193; Code of Virginia, §§ 10.1-1308, *et al.* The VCEA, *inter alia*, mandates the retirement of Chesterfield Units 5 and 6 by 2024, unless the Company files a petition with the Virginia State Corporation Commission showing that the retirement would threaten the reliability and security of electric service. This information was included in DENC's Integrated Resource Plan (IRP) filed with the Commission in Docket E-100, Sub 165 on May 1, 2020. DENC's IRP at Sec. 5.2.1, p.83.

The Commission accepts these post-hearing developments as a change of circumstances entitled to significant weight. According to DENC, with the retirements of Chesterfield Units 5 and 6 the requirement in the Rate Order that DENC include CCR-related ARO expenses in the cost of removal component of its depreciation expense would only apply to a small subset of future CCR Costs due to the fact that many of the generating units with outstanding CCR-related AROs have either been retired or have been impaired for financial reporting purposes, and as a result will not be included in future depreciation studies. In addition DENC stated:

> Since the hearing, the Company now plans to early retire the remaining coal units 5 and 6 at the Chesterfield Power Station by 2023, leaving only 4% of

> the remaining CCR-related ARO pertaining to coal units that will be included in future depreciation studies.

DENC Motion, at 5.

With only 4% of DENC's CCR-related ARO's remaining to be included in depreciation expense, the Commission agrees that this change in circumstances is a sufficient basis for granting DENC's motion under N.C.G.S. § 62-80. As a result, the Commission concludes that it should relieve DENC of the obligation to include its CCR remediation costs in its future depreciation studies. In view of this determination it is unnecessary for the Commission to consider the additional or alternative arguments advanced by DENC in support of this portion of its motion, and the Commission expresses no view on those additional or alternative grounds.

Denial of Return on CCR Costs

DENC contended that the Commission's Findings of Fact Nos. 53-55 and the underlying discussion and conclusions denying the Company a return during the ten-year amortization period for its CCR Costs was arbitrary, inconsistent with past decisions, and unconstitutional. The Company maintained that the Commission has consistently held, including in the three most recent electric utility general rate cases, that for cost recovery, a utility must show that the costs it seeks to recover are (1) known and measurable, (2) reasonable and prudent, and (3) used and useful in the provision of service to customers.[8] DENC stated that in each of the last three electric general rate cases the Commission has held that CCR Costs meet this standard, and that the Company's CCR Costs in the current case meet this standard as well. DENC submitted that the Commission's Rate Order departs from this precedent and classifies the Company's CCR Costs as "deferred operating expenses" not entitled to a return, rather than "property used and useful" that is entitled to a return under N.C. Gen. Stat. § 62-133(b)(1) and (5).

> [T]he Commission determines that just and reasonable rates are achieved, based on the evidence in the record in this proceeding, only when the unamortized balance of CCR Costs are not allowed to earn a return. *Utilities Comm'n v. Duke Power Co.*, 305 N.C. 1, 18, 287 S.E.2d 786, 796 (1982). Accordingly, based on the record as a whole, the Commission concludes that it is appropriate to treat the CCR Costs as deferred operating expenses and not as costs of property used and useful within the meaning and scope of N.C.G.S. § 62-133(b) and to not allow a return on the unamortized balance of the CCR Costs.

Rate Order, at 134.

[8] *See* 2016 Rate Order; Order Accepting Stipulation, Deciding Contested Issues and Granting Partial Rate Increase, Docket No. E-2, Sub 1142 (February 23, 2018) (2017 DEP Rate Order); 2017 DEC Rate Order.

DENC contended that this contravenes the Commission's findings and conclusions in the Company's 2016 Rate Order where the Commission allowed recovery of CCR Costs, with a return, after determining that "CCR repositories are and have served their purpose … they have been used and useful for [the Company's] ratepayers." 2016 Rate Order at 61.[9]

Moreover, according to DENC in the following passage the Commission solidified its position on this issue in the 2017 DEP Rate Order by referencing the Company's 2016 rate case when the Public Staff attempted to liken CCR Costs to abandoned nuclear plant costs:

> First and foremost, this case does not involve "abandoned plant" or cancellation costs. Rather, it involves "reasonable and prudent" and "used and useful" expenditures by [DEP], similar to the Commission's determination in the [Company's 2016 Rate Order].

DEP Rate Order, at 191.

DENC stated that the Commission's decision to classify the Company's funding and deferral of CCR Costs as not "used and useful," and ineligible for a return, not only departs from the Commission's three most recent rate case orders, but also runs counter to North Carolina Supreme Court precedent in *Utilities Comm'n v. Virginia Elec. & Power Co.*, 285 N.C. 398, 414-15, 206 S.E.2d 283, 295-96 (1974) (*VEPCO*), in which the Court stated that

> "[w]hile Chapter 62 of the General Statutes makes no reference to working capital, as such, the utility's own funds reasonably invested in such materials and supplies and its cash funds reasonably so held for payment of operating expenses, as they become payable, fall within the meaning of the term 'property used and useful in providing the service,' as used in N.C.G.S. § 62-133(b)(1), and are a proper addition to the rate base on which the utility must be permitted to earn a fair rate of return."

DENC stated that N.C.G.S. § 62-133 does not define the phrase "public utility's property used and useful," and does not restrict "property" to simply generators and power lines, but instead includes all assets necessary to provide electricity to the public.

[9] In the 2016 Rate Order, the Commission rejected the Attorney General's recommendation to exclude the unamortized balance of CCR ARO costs from rate base. The Commission stated "the current CCR repositories are and have served their purpose of storing CCRs for many years. In that respect they have been used and useful for [the Company's] ratepayers. However, pursuant to the CCR Final Rule, [the Company] must incur expenses to the existing repositories for environmental remediation . . . Like the existing CCR repositories, these permanent storage repositories will be used and useful for [the Company's] ratepayers." 2016 Rate Order, at 61.

According to DENC, the test is whether the property in question serves the public and was paid by debt or equity investors - “the utility’s own funds.”

The Company stated that in this case the CCR Costs were funded by the Company’s investors and, therefore, the Rate Order incorrectly classified the costs as deferred operating expenses that are not used and useful. The Company pointed to the Commission’s DEP and DEC 2017 Rate Orders, and submitted that there the Commission correctly concluded that the funds advanced by the utilities to comply with the CCR rule were “investor-supplied funds, not ratepayer supplied funds and under principles of equity, law and fairness are eligible for a return [on investment].” 2017 DEC Rate Order, at 276.

DENC further stated that the Commission recognized that a failure to allow a return on investment on these investor-supplied funds would deprive investors of the time value of money on these funds, and would ultimately increase the utility’s cost of capital. DENC asserted that the Commission’s decision to deny a return on the Company’s CCR Costs is inconsistent with these precedents, arbitrary, and synonymous with the “equitable sharing” theory that the Commission rejected in the past three rate cases, and nominally rejected in the present case. DENC contended that the Commission reversed course in the Rate Order and is attempting to use “discretion,” which the Commission recently held it does not possess, to implement the Public Staff’s equitable sharing proposal without finding any specific instance of imprudence related to the Company’s CCR Costs. Further, DENC asserted that denying the Company a return during the amortization period also constitutes an unconstitutional taking of capital, as well as a violation of Article 1, Section 19 of the North Carolina Constitution because it constitutes a deprivation of the Company’s substantive due process and equal protection rights.

DISCUSSION AND CONCLUSIONS

In the Rate Order’s preamble to the Commission’s discussion of DENC’s CCR Costs the Commission stated:

> The testimony and exhibits regarding DENC’s CCR Costs are voluminous. The Commission has carefully considered all of the evidence and the record as a whole. However, the Commission has not attempted to recount every statement of every witness. Rather, the following is a summary of the evidence that is in the record. Likewise, while the Commission has read and fully considered the parties’ post-hearing briefs, it has not in this order attempted expressly to discuss every contention advanced or authority cited in the briefs.

Rate Order, at 85-86.

In fact, the Commission considered all of the points now made by DENC in its Motion for Reconsideration. For example, the Commission discussed the facts and holding in *VEPCO*, and expressly rejected DENC’s interpretation of the holding. *Id.* at

133. Likewise, the Commission considered its decision in the 2016 DENC Rate Order and expressly stated that because that order was based on a settlement it does not have precedential value with respect to the CCR issues in this case. *Id.* at 122-23.

Further, in *State ex rel. Utilities Comm'n. v. Thornburg*, 325 N.C. 463, 385 S.E.2d 451 (1989) (*Thornburg I*), a general rate case, the Attorney General appealed the Commission's order allowing CP&L to recover as operating expenses the cost of abandoned units 2, 3 and 4 of the Shearon Harris Nuclear Plant. In three prior general rate cases, the Commission had approved the recovery of portions of the costs of the abandoned Shearon Harris units. However, none of those three Commission orders were appealed. In *Thornburg I*, CP&L asserted that the Attorney General was barred from re-litigating the issue of recovery of the abandoned plant costs. The Supreme Court rejected CP&L's argument. The Court held that the Commission's exercise of its ratemaking authority in a general rate case is a legislative rather than a judicial function and, therefore, the Commission's orders in general rate cases are not *res judicata*.

> [I]n fixing rates to be charged by CP&L, the Commission was exercising a function delegated to it by the legislative branch of government. This exercise of the Commission's ratemaking power is not governed by the principles of *res judicata*.[cites omitted]

Id. at 469, 385 S.E.2d at 454. *See also*, *State ex rel. Utilities Com. v. Carolina Power & Light Co.*, 250 N.C. 421, 430, 109 S.E.2d 253, 260 (1959) (the final order of the Commission in a general rate case is not within the doctrine of *stare decisis*.) Of course, the Commission is mindful of the need for regulatory certainty and endeavors to achieve regulatory certainty through compliance with and application of the provisions of the Act to the facts in evidence. Nonetheless, each general rate case must be decided based on the evidence in the record in that proceeding.

DENC further contended that the Commission's exercise of its authority to set just and reasonable rates in this case by disallowing a return on the Company's CCR Costs violated DENC's due process rights and is synonymous with the Public Staff's proposed "equitable sharing" approach. The Commission disagrees and finds that DENC conveniently disregards the Commission's discussion on pages 133-134 of the Rate Order. *See also* N.C.C.S. § 62-133(b)(1) and N.C.G.S. § 62-130(a). Suffice it to say, that the Commission's decisions regarding the ratemaking treatment of DENC's CCR Costs are based on competent, material and substantial evidence of record, as well as a proper application of the Act and case law. Consequently, DENC's contention that the Commission's ratemaking treatment of the CCR Costs— which does not allow DENC to earn a return on the unamortized balance of those costs during the amortization period— is arbitrary, capricious and a violation of its due process rights is without merit.

DENC presented no new evidence, change of circumstances, or misapprehension or disregard of a fact by the Commission. On this issue, the Commission fully considered all of the facts in evidence, applied the various provisions of the Act to those facts in evidence and reached its decisions as to the ratemaking treatment that should be

afforded to DENC's CCR Costs in the interest of achieving just and reasonable rates. As a result of the foregoing, the Commission finds and concludes that DENC's Motion on this issue should be denied.

CCR Amortization Period of Ten Years

The Company asserted that the ten-year amortization period for recovery of its CCR Costs violates the due process principles recognized in *Hope* and *Bluefield* and is arbitrary and capricious, unconstitutional, and unsupported by substantial evidence. It stated that in the Commission's Findings of Fact Nos. 53-55, the only basis the Commission provided for the ten-year amortization period is its authority to implement "just and reasonable" rates to reach a division of the CCR Costs between the Company's shareholders and customers that the Commission determined was equitable and that this is contrary to the five-year amortization period found appropriate in the Company's 2016 Rate Order, as well as in DEP's and DEC's 2017 Rate Orders.

In addition, DENC contended that the ten-year amortization period fails to allow the Company a reasonable opportunity to recover its CCR expenses, ensures that DENC will not recover its expenses since it will recover those expenses with less valuable future dollars, and is contrary to the Commission's acknowledgement that "one of the fundamentals of cost-based ratemaking as it has developed in this state is that the full cost of providing utility service should be recovered, as near as may be possible, from rates in effect in the period in which service is provided." Rate Order, at 137. According to DENC, the Company's proposed five-year amortization period would result in less intergenerational inequity than the ten-year amortization period because the costs would be recovered over a shorter period, and a ten-year amortization period will result in "pancaking" of CCR Costs approved in the present case with the recovery of future costs. Finally, DENC asserted that the ten-year amortization period is rooted in the equitable sharing theory that the Commission found to be arbitrary, and appears to, in part, be based on the Company's failure to include CCR Costs in its depreciation expense.

DISCUSSION AND CONCLUSIONS

Similar to its arguments regarding the ratemaking treatment afforded to its CCR Costs, DENC presented no new evidence, change of circumstances, or misapprehension or disregard of a fact by the Commission with respect to the Commission's decision to adopt a ten-year amortization period. For example, DENC asserted that the only basis the Commission provided for the ten-year amortization period is the Commission's authority to implement just and reasonable rates. That is not correct. In the Rate Order the Commission stated, in pertinent part:

> The Commission concludes that based on the evidence in the record, the magnitude and nature of the costs involved and the rate impact to customers as testified to by the Public Staff, a ten-year amortization period strikes the more appropriate and fairer balance. This decision is consistent with the Commission's historical treatment of major plant cancellations. *See*

> Anna/Surry Order at 355 (noting that [t]his Commission has consistently used a write-off period of 10 or fewer years for all major plant cancellations).

Id. at 135. Further, as stated previously the Commission rejected DENC's contention that the 2016 DENC Rate Order was precedent in the present case.

The Commission fully considered all of the facts in evidence and the applicable precedents in reaching its decision to set the amortization period for CCR Costs at ten years. The Commission's decision was based on substantial evidence, is not arbitrary or capricious, and does not violate DENC's due process rights. As a result, the Commission finds and concludes that DENC's Motion for Reconsideration on this issue should be denied.

Finally, the Commission confirms that it intended to authorize DENC to defer its CCR Costs incurred after June 30, 2019, for consideration in the Company's next general rate case. Further, as in the Rate Order, the Commission's decision herein does not address the issue of return on CCR Costs incurred after June 30, 2019.

PUBLIC STAFF'S MOTION

> (1) The Public Staff requested clarification and/or reconsideration of the requirement that DENC include CCR-related ARO expenses in the cost of removal component of its depreciation expense. Ultimately, the Public Staff requested the Commission to address three questions: Does the Commission intend the depreciation method to be used only for CCR Costs associated with ash produced in the future, and thus inherently related to future operations? If so, does the Commission intend for future CCR expenditures associated with past operations to be recovered through the method approved in this proceeding for historic CCR expenditures?
>
> (2) Does the Commission instead intend the full amount of future CCR expenditures to be recovered through the depreciation method going forward, whether or not related to ash produced in the future?
>
> (3) Does the Commission intend that recovery of CCR Costs through revised depreciation rates include a sharing or balancing of those costs between ratepayers and shareholders?

DISCUSSION AND CONCLUSIONS

The Commission's decision herein on the recording of future depreciation expense with respect to CCR Costs renders the Public Staff's request for reconsideration or clarification moot. On this record the Commission declines to issue an advisory ruling with respect to the questions presented by the Public Staff's motion.

IMPLEMENTATION OF NEW RATES

On October 11, 2019, DENC filed motions requesting Commission approvals under N.C. Gen. Stat. § 62-135 of the proposed customer notice implementing temporary rates on and after November 1, 2019, and the Company's proposed financial undertaking to secure its obligation to refund any overcollection, plus interest, if its temporary rates resulted in charges greater than the rates ultimately approved by the Commission.

On October 18, 2019, the Commission issued an Order approving DENC's proposed customer notice implementing temporary rates, and an Order approving DENC's financial undertaking to secure its potential refund obligation.

The following Ordering Paragraphs were included in the Rate Order:

> 10. That as soon as practicable following the issuance of this Order DENC shall file with the Commission the annual revenue requirement and accompanying rate schedules and terms and conditions that are consistent with the findings and conclusions of this Order and the Public Staff Stipulation, with the exception of Section VII.A. The Company shall work with the Public Staff to verify the accuracy of the filing. Further, DENC shall file schedules summarizing the gross revenue and the rate of return that the Company should have the opportunity to achieve based on the Commission's findings and determinations in this proceeding;
>
> 11. That DENC is hereby authorized to adjust its rates and charges in accordance with the findings in this Order effective for service rendered on and after the following day after the Commission issues an Order accepting the calculations required by Ordering Paragraph No. 10;

Rate Order, at 149-50.

DENC has not yet complied with the directives of Ordering Paragraphs Nos. 10 and 11 of the Rate Order. The Commission finds good cause to require that within ten days of the date of this Order DENC shall file the necessary documents to comply with the above Ordering Paragraphs, as more specifically set forth in the Ordering Paragraphs below.

IT IS, THEREFORE, ORDERED as follows:

1. That DENC shall be, and is hereby, authorized to defer its CCR Costs incurred after June 30, 2019, for consideration in the Company's next general rate case;

2. That DENC's Motion for Reconsideration and Clarification shall be, and is hereby, granted as to the inclusion of DENC's CCR Costs in its future depreciation studies, and such costs shall not be required to be included in DENC's future depreciation studies;

3. That the Public Staff's Motion for Clarification is dismissed as moot;

4 That DENC's Motion for Reconsideration and Clarification shall be, and is hereby, denied as to the Rate Order's provisions relating to the ratemaking treatment afforded the CCR Costs and the amortization period for CCR Costs;

5. That within ten days of the date of this Order DENC shall file with the Commission the annual revenue requirement and accompanying rate schedules and terms and conditions that are consistent with the findings and conclusions of the Rate Order and the Public Staff Stipulation, with the exception of Section VII.A. The Company shall work with the Public Staff to verify the accuracy of the filing. Further, DENC shall file schedules summarizing the gross revenue and the rate of return that the Company should have the opportunity to achieve based on the Commission's findings and determinations in the Rate Order;

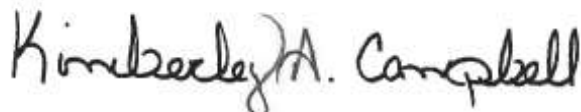
6. That along with the filing required by Ordering Paragraph No. 6 above, DENC shall file statements and workpapers demonstrating the difference in the revenue received by DENC under its temporary rates and the revenue that DENC would have received from November 1, 2019 through July 31, 2020, under the revenue requirement and accompanying rate schedules filed in response to Ordering Paragraph No. 4 above; and

7. That along with the filing required by Ordering Paragraph No. 7 above, DENC shall file statements and workpapers setting forth its proposed plan for refunding to its customers, effective for service beginning August 1, 2020, the difference in the revenue received by DENC under its temporary rates and the revenue that DENC would have received from November 1, 2019 through June 30, 2020, under the Rate Order, plus interest.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of July, 2020.

NORTH CAROLINA UTILITIES COMMISSION



Kimberley A. Campbell, Chief Clerk

Commissioners Kimberly W. Duffley, Jeffrey A. Hughes and Floyd B. McKissick, Jr., did not participate in this decision.