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March 27, 2019

VIA ELECTRONIC FILING

Ms. M. Lynn Jarvis
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

**RE: Duke Energy Carolinas, LLC's Proposed Order
Docket Nos. E-7, Sub 1181, SP-12478, Sub 0 and SP-12479, Sub 0**

Dear Ms. Jarvis:

I enclose Duke Energy Carolinas, LLC's Proposed Order for filing in connection with the referenced matter. An electronic copy is being emailed to briefs@ncuc.net.

Portions of the Proposed Order on page 10 contain commercially sensitive and proprietary cost information and thus are being filed under seal. DEC respectfully requests that they be treated confidentially pursuant to N.C. Gen. Stat. § 132-1.2. Public disclosure of this confidential information would allow competitors, vendors and other market participants to gain an undue advantage, which may ultimately result in harm to customers.

Thank you for your attention to this matter. If you have any questions, please let me know.

Sincerely,

Lawrence B. Somers

Enclosure

cc: Parties of Record
Dwight Allen, Esquire

OFFICIAL COPY

Mar 27 2019

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 1181
DOCKET NO. SP-12478, SUB 0
DOCKET NO. SP-12479, SUB 0

In the Matter of)	
)	
Transfer of Certificates of Public Convenience)	PROPOSED ORDER OF
and Necessity and Ownership Interests in)	DUKE ENERGY CAROLINAS,
Generating Facilities from Duke Energy)	LLC
Carolinas, LLC to Northbrook Carolina Hydro)	
II, LLC and Northbrook Tuxedo, LLC)	

HEARD: Hearing Room 2115, Dobbs Building, Raleigh, North Carolina on February 5, 2019 at 10 a.m.

BEFORE: Chairman, Edward S. Finley, Jr., Presiding;
Commissioners ToNola D. Brown-Bland, Jerry C. Dockham, James G. Patterson, Lyons Gray, Daniel G. Clodfelter and Charlotte A. Mitchell

APPEARANCES:

For Duke Energy Carolinas, LLC:

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For Northbrook Carolina Hydro II, LLC and Northbrook Tuxedo, LLC:

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Raleigh, North Carolina 27602

For the Using and Consuming Public:

David Drooz, Chief Counsel
Tim Dodge, Staff Attorney
Public Staff – North Carolina Utilities Commission
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BY THE COMMISSION: On July 5, 2018, Duke Energy Carolinas, LLC (“DEC” or the “Company”), Northbrook Carolina Hydro II, LLC and Northbrook Tuxedo, LLC (the two Northbrook entities collectively “Northbrook”) filed a Joint Notice of Transfer, Request for Approval of Certificates of Public Convenience and Necessity, Request for Accounting Order and Request for Declaratory Ruling (the “Petition”), pursuant to N.C. Gen. Stat. § 62-110(a), § 62-111(a), § 62-60 and § 1-253 and Commission Rule R8-27. The Petition requested approval of the sale of five hydroelectric generation facilities (collectively the “Facilities”) currently owned and operated by DEC to Northbrook, and the transfer of the respective Certificates of Public Convenience and Necessity (“CPCN”) issued or deemed to have been issued by the Commission for the four Facilities located in North Carolina. The Company also petitioned the Commission for an accounting order authorizing DEC to establish a regulatory asset for the estimated loss on the disposition of the Facilities. Additionally, DEC and Northbrook requested a declaratory ruling from the Commission that, once the Facilities have been transferred to Northbrook, each Facility shall qualify as a New Renewable Energy Facility pursuant to the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard (“REPS”) outlined in N.C. Gen. Stat. § 62-133.8, and that DEC may use any Renewable Energy Certificates (“RECs”) purchased from the Facilities for REPS compliance.

On July 25, 2018, the Commission issued an *Order Requesting Comments*, allowing parties to intervene and file comments on the Petition. The intervention of the Public Staff – North Carolina Utilities Commission (“Public Staff”) has been recognized pursuant to N.C. Gen. Stat. §62-15(d) and Commission Rule R1-19(e). No other parties participated in the proceeding.

On September 4, 2018, after obtaining an extension of time, the Public Staff filed comments. On September 18, 2018, DEC filed reply comments.

On November 29, 2018, the Commission issued its *Order Requiring Filing of Testimony and Scheduling Hearing*. In that order, the Commission scheduled an evidentiary hearing to begin on February 5, 2019, required the filing of testimony, and identified matters to be addressed in the parties’ pre-filed testimony.

On December 21, 2018, DEC pre-filed the testimony and exhibits of Greg D. Lewis, who is on an interim assignment in the Carolinas Regulated Renewables Department; Manu Tewari, Corporate Development Director; and Veronica I. Williams, Rates and Regulatory Strategy Manager. Also on that date, Northbrook pre-filed the testimony of John C. Ahlriches, President of Northbrook Energy, LLC.

On January 18, 2019, the Public Staff pre-filed the joint testimony of Dustin R. Metz, Electric Engineer in the Electric Division of the Public Staff, and Michael C. Maness, Director - Accounting Division of the Public Staff.

On January 18, 2019, the Public Staff also filed a motion, pursuant to N.C. Gen. Stat. §62-80, requesting that the Commission allow the Public Staff to investigate the reasonableness of the loss on the sale of the generating units in the next general rate case

filed by DEC, including the reasonableness of expenditures on those facilities during the 2015-2017 period.

On January 28, 2019, DEC filed a response in opposition to the Public Staff's motion.

On January 30, 2019, DEC, Northbrook and the Public Staff (the "Movants") filed a motion requesting that all evidence be stipulated into the record, that all witnesses be excused from testifying, and that the hearing be cancelled. Movants stated that they had agreed to waive cross-examination of the witnesses, consented to the introduction of testimony and exhibits into the record, and recommended that the remaining issues in controversy be addressed through briefs and proposed orders. With the motion, DEC and the Public Staff also filed their joint partially confidential Late-Filed Exhibits Nos. 1 and 2, which contained DEC's responses to Public Staff data request sets 6 and 7.

On February 1, 2019, the Commission issued its *Order Accepting Stipulated Exhibits and Granting in Part Motion to Excuse Witnesses*. The Commission dismissed Northbrook witness Ahlriches and DEC witness Tewari, and accepted as evidence into the record their testimony and exhibits and the two late-filed exhibits proffered by DEC and the Public Staff. However, the Commission declined to excuse DEC witnesses Lewis and Williams and Public Staff witnesses Maness and Metz from testifying at the hearing.

The matter came on for hearing as scheduled on February 5, 2019. The Petition and the pre-filed testimony and exhibits were received into evidence. The Movants having waived cross-examination, the Commission asked questions of the DEC and Public Staff witnesses, then allowed DEC and the Public Staff to ask questions based upon the Commission's questions.

On February 26 , 2019, the Commission issued a notice of mailing of transcript and ordered the parties to submit briefs and/or proposed orders no later than March 28, 2019. On March 27, 2019, DEC and the Public Staff filed proposed orders.

Based upon consideration of the pleadings, testimony, and exhibits received into evidence, and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. DEC is a public utility with a public service obligation to provide electric utility service to customers in its service area in North Carolina and is subject to the jurisdiction of the Commission.

2. Northbrook is owned by a partnership between the Alliance Fund II, LP and Northbrook Energy, LLC (“Northbrook Energy”). Northbrook Energy is a privately held independent power producer that has been in the hydroelectric power business for more than 30 years and operates hydroelectric facilities in 12 states, including in North Carolina and South Carolina.

3. Except for the transfer of the CPCN for one facility located in South Carolina, this Commission has jurisdiction over the parties and subject matter pursuant to the Public Utilities Act. A public utility or person must receive a CPCN prior to constructing electric generating facilities pursuant to N.C. Gen. Stat. §62-110.1 and Commission Rule R8-61(b). A public utility may transfer such certificates and ownership interests pursuant to N.C. Gen. Stat. §§ 62-110(a) and 62-111(a).

4. The Facilities subject to the proposed sale have a combined 18.7-megawatt generation capacity and consist of the Bryson Hydroelectric Generation Facility in Swain County; the Franklin Hydroelectric Generation Facility in Macon County; the Mission

Hydroelectric Generation Facility in Clay County; the Tuxedo Hydroelectric Generation Facility in Henderson County; and the Gaston Shoals Hydroelectric Generation Facility in Cherokee County, South Carolina.

5. After an evaluation of increasing compliance, safety and maintenance costs demonstrated that divestiture of the Facilities would be more cost-effective for customers over time than continued ownership, in May 2017 DEC decided to begin the divestiture process.

6. After soliciting and evaluating offers from other potential purchasers, on May 15, 2018, DEC entered into an asset purchase agreement (“APA”) whereby the Company will sell the Facilities to Northbrook for \$4,750,000 (the “Transaction”). The APA includes certain closing conditions, including an order from the Commission approving transfer of the North Carolina Facilities’ CPCNs and approving the establishment of a regulatory asset for the retail portion of any difference between the sales proceeds and the net book value of the plants.

7. The Facilities have a net book value of \$42 million. Accordingly, DEC has proposed to sell the Facilities to Northbrook for an estimated loss calculated as the difference between the sale proceeds of \$4.75 million and net book value of the Facilities of \$42.0 million, \$0.2 million plant material and operating supplies, \$1.4 million of legal and transaction-related costs, and \$1.6 million of transmission-related work required by the sale. The total estimated loss on the Transaction is \$40 million, of which the North Carolina retail allocable portion is \$27 million.

8. The sale of the Facilities by DEC to Northbrook as proposed and the transfer of the North Carolina CPCNs issued or deemed to have been issued for the Bryson,

Franklin, Mission and Tuxedo facilities is in the public convenience and necessity and should be approved, subject to the conditions ordered below.

9. DEC's request for Commission approval of an accounting order for regulatory and accounting purposes authorizing DEC to establish a regulatory asset for the estimated loss on the disposition of the Facilities is appropriate.

10. At the time the regulatory asset is approved by the Commission, the Facilities will be measured at the lower of carrying amount or fair value less cost to sale and classified as assets held for sale. Depreciation of the asset will cease, and the estimated loss will be recorded as a regulatory asset approved by the Commission.

11. Between 2015 and November 2018, DEC incurred capital expenditures on the Facilities of approximately \$17.4 million. More than 95% of the capital costs DEC incurred for the Facilities between 2015 and 2017 were included in net plant in rate base in DEC's general rate case approved by the Commission in its June 22, 2018 order in Docket No. E-7, Sub 1146. Such costs were reasonably and prudently incurred and are currently being recovered from customers in DEC's rates.

12. DEC met with the Public Staff and discussed the potential sale of the Facilities on August 23, 2017, February 6, 2018 and May 9, 2018 and each of these meetings occurred before or during the pendency of DEC's general rate case in Docket No. E-7, Sub 1146. During these meetings, DEC informed the Public Staff that it expected to sell the Facilities at a loss, that the net book value of the Facilities began to significantly increase beginning in 2015 due to required regulatory spending, and that DEC intended to seek Commission approval to establish a regulatory asset for the retail portion of the loss.

13. The Public Staff had adequate opportunity to investigate the potential sale, the underlying capital costs incurred by DEC at the Facilities, and the expected loss on the sale during the general rate case proceeding in Docket No. E-7, Sub 1146, and in this docket, and to recommend to the Commission any adjustments that it believed should be made. The Public Staff made no such recommendations.

14. The Public Staff's request and motion to preserve the ability of the Public Staff to investigate the 2015-2017 capital costs of the Facilities and hold open the issue of the reasonableness of recovery of the deferred costs until DEC's next general rate case is not timely and any subsequent reviews and recommendations for adjustment to costs shall be limited to transaction costs only.

15. Once the Transaction is complete and the Facilities have been transferred to Northbrook, each Facility shall qualify as a New Renewable Energy Facility pursuant to the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard REPS as outlined in N.C Gen. Stat. §62-133.8, and it is appropriate that DEC use any RECs purchased from the Facilities for REPS compliance.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-3

These findings are informational, procedural, and jurisdictional in nature and are uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4-8

The evidence in support of these findings is based upon the Petition and the testimony and exhibits of DEC witnesses Tewari, Lewis, and Williams, and the testimony of Public Staff witnesses Maness and Metz.

The Facilities have a combined 18.7-megawatt generation capacity and consist of the Bryson Hydroelectric Generation Facility in Swain County, North Carolina; the Franklin Hydroelectric Generation Facility in Macon County, North Carolina; the Mission Hydroelectric Generation Facility in Clay County, North Carolina; the Tuxedo Hydroelectric Generation Facility in Henderson County, North Carolina; and the Gaston Shoals Hydroelectric Generation Facility in Cherokee County, South Carolina. The Facilities are some of the oldest in DEC's portfolio, having entered service more than ninety years ago: Gaston Shoals began commercial operation in 1908, Tuxedo began commercial operation in 1920, Mission began commercial operation in 1924, and Bryson and Franklin began commercial operation in 1925. Combined, the Facilities contribute less than one percent of DEC's hydroelectric generation. These small stations were once an important part of the 1900's electrical system, and they served their communities well. However, today, they represent a very small portion of Duke Energy Carolinas' generating system, and their strategic importance in serving DEC customers has significantly diminished. Testimony of Greg Lewis, Transcript ("T."), pp. 31-32. In the Petition, DEC stated that it will seek appropriate approval from the Public Service Commission of South Carolina ("PSCSC") regarding the Gaston Shoals CPCN.

Due to the significantly escalating compliance, safety, and maintenance costs associated with the small hydro facilities, DEC evaluated a potential sale and determined

that divesting these small hydro facilities is more economical than continued ownership and will result in net savings for customers over time. In addition, the Transaction will allow DEC to optimize its capital investments by focusing on higher priority generation facilities, will eliminate the risk for continued significant investment in the Facilities, and thereby enhance DEC's ability to provide continued affordable and reliable service to its customers. In May 2017, DEC began the divestiture process and proceeded to the market test. Lewis, T. pp. 32-35; Tewari, T. p.15.

Company witness Lewis described the Present Value Revenue Requirement ("PVRR") analysis that DEC performed to determine the benefits of divesting and purchasing back the power of the small hydro facilities versus continuing operation and ownership. The PVRR assessed future cost probabilities based on current and expected regulatory requirements for equipment maintenance, dam safety, licensing plans and risks, and operations and maintenance. This analysis compared the difference in the present value of the anticipated future costs to the present value of purchasing back the power from a third party. The PVRR analysis considered three scenarios which produced customer benefits ranging from approximately [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL]. Public Staff witnesses Maness and Metz testified to the Public Staff's detailed review of DEC's PVRR analysis and their conclusion that it was reasonably performed and indicates "a significant PVRR advantage to disposing of the facilities in the 2018 time frame." Maness and Metz, T. pp. 143-46; Lewis, T. pp. 111-12. By divesting the Facilities, DEC will only be required to pay for the power produced versus the long-term obligations of ownership and operations. The Company's PVRR analysis

shows the sale of the small hydro units will provide significant benefits to customers. Lewis, T. p. 34.

After DEC determined that it was more cost-effective to sell the hydro units rather than to continue to own and operate them in August 2017, DEC assembled a core team to develop a project plan and related marketing material for the potential sale using a two-phase process: Phase 1 to invite indicative non-binding offers and Phase 2 to invite binding offers to negotiate a definitive APA. Phase 1 of the process concluded on November 15, 2017 with the receipt of non-binding offers from 11 interested parties. Thereafter, DEC evaluated the Phase I offers and moved to Phase 2 of the process with four bidders. DEC ultimately negotiated with Northbrook over four weeks, which concluded with the execution of the APA on May 15, 2018. Pursuant to the May 15, 2018 APA, DEC will sell and transfer the Facilities to Northbrook for \$4,750,000. The APA includes the following key closing conditions for the transaction: (1) FERC License Transfer Approval to transfer each of the FERC Licenses to the applicable Purchaser; (2) an order from the Commission approving (i) the establishment of a regulatory asset for the retail portion of any difference between the sales proceeds and the net book value of the plants and (ii) the transfer of the plant CPCNs from the Seller to the applicable Purchaser; and (3) an order from the PSCSC (i) granting permission to sell utility property and (ii) approving the establishment of a regulatory asset for the retail portion of any difference between the sales proceeds and the net book value of the plants. In summary, approval of the requested accounting treatment is a condition to closing the Transaction, and DEC would have no obligation under the APA to consummate the sale if the accounting order is not approved. The deadline for

meeting all the closing conditions described above is on or before May 15, 2019, or either party can terminate the agreement. Tewari, T. pp. 15-23.

The Company has asked the Commission for an accounting order for regulatory and financial accounting purposes authorizing DEC to establish a regulatory asset for the estimated loss on the disposition of the hydro units. The loss is calculated as the difference between the sale proceeds of \$4.75 million and the net book value of the Facilities of \$42 million, \$0.2 million of plant material and operating supplies, \$1.4 million of legal and transaction-related costs, and \$1.6 million of transmission-related work required by the sale. The North Carolina retail allocable portion of the total estimated loss of \$40 million is approximately \$27 million. Williams, T. pp. 53-54.

In its September 4, 2018 comments filed with the Commission, the Public Staff recommended that the Commission approve the transfer of the CPCNs requested by DEC and Northbrook. Public Staff Comments at p. 12. No party opposed the CPCN transfers. The Commission agrees and concludes that approval of the Transaction will enable DEC to divest these facilities and avoid significant, ongoing maintenance costs while retaining the relatively small output when compared to the remainder of DEC's generation portfolio. DEC has determined that divestiture of the Facilities is more economical than continued ownership and maintenance because it will make it easier for DEC to optimize and prioritize its ongoing investments in higher priority generation facilities, thereby resulting in net savings to customers over time. Northbrook Energy has been in the hydroelectric power business for over 30 years, and operates hydroelectric facilities in 12 states, including in North and South Carolina, and is qualified to operate the Facilities. As part of the Transaction, DEC has agreed to purchase all of the energy and RECs generated by

the Facilities for five years following the Transaction through renewable power purchase agreements (“RPPAs”) with Northbrook. As such, through the Transaction, the Facilities will continue to serve customers with clean renewable energy, but at a lower cost over time. The proposed sale of the Facilities, and the transfer of the CPCNs issued or deemed to have been issued for the Bryson, Franklin, Mission and Tuxedo hydroelectric facilities is in the public convenience and necessity and the Commission concludes that the sale should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-10

The evidence in support of these findings is based upon the Petition and the testimony and exhibits of Duke Energy Carolinas witness Williams and the testimony of Public Staff witnesses Maness and Metz.

Company witness Williams described DEC’s request for an accounting order authorizing DEC to establish a regulatory asset for the estimated loss on the disposition of the Facilities (calculated as the difference between the sale proceeds and net book value of the Facilities, plant material and operating supplies, transaction-related costs and transmission-related work required by the sale). DEC proposed to amortize the regulatory asset over a period of time and at the approved return, as determined in the next general rate case. At the time the regulatory asset is approved by the Commission, the cost of the Facilities will be removed from plant in service, the appropriate amounts reflecting the sale will be recorded as assets held for sale, depreciation of the assets will cease, and the estimated loss will be recorded in the regulatory asset approved by the Commission. Absent the accounting treatment requested, DEC would be forced to write off the North Carolina Retail allocation of approximately \$27 million for the loss associated with the sale

of the Facilities if DEC were to proceed with the Transaction. As previously noted, approval of the accounting treatment is a condition to closing the Transaction. Williams, T. pp. 53-53.

DEC witness Williams testified to the deferral standard the Company recommended the Commission utilize in considering its request. Witness Williams stated that the two-prong test the Commission sometimes utilizes of considering: (1) whether the costs in question are unusual or extraordinary in nature and (2) whether absent deferral the costs would have a material impact on the Company's financial condition, should not apply to the Company's request in this docket because this transaction is unique. She discussed Docket No. E-7, Sub 828, in which the Commission approved deferral and amortization of costs related to another unique set of facts – work performed to establish the GridSouth Regional Transmission Organization (“RTO”), which had been curtailed as a result of a change in FERC regulatory policy. In that docket, the Commission also decided that the costs in question were “clearly unusual and not part of the ordinary cost of providing service,” and further noted that the amounts at issue were “clearly material,” citing comparable past deferrals ranging from approximately \$15 million to \$40 million. The Commission noted that its decision as to the deferral and amortization of any item of cost includes the consideration of equitable treatment for both shareholders and customers. Williams, T. pp. 55-56.

Company witness Williams noted that the sale of generating assets by the regulated utility is certainly unusual, not part of the conduct of its ordinary course of business, and would not normally be reflected in any given general rate case. The loss associated with this sale is not immaterial in the context of other deferrals and costs itemized in general

rate case proceedings. She also explained that allowing the deferral and amortization of the prudently-incurred costs required to achieve the future benefits of lower costs of service provides an equitable balancing of the interests of customers and the Company's shareholders. It is the Company's position that because customers received the benefits of the units under regulation, it is appropriate that the loss resulting from the sale should be included in the Company's cost of service and recovered over a reasonable period of time. DEC argues that this is particularly true because customers will receive an ongoing benefit due to decreased cost of service in the future. Williams, T. pp. 55-57.

As to the amortization period, DEC witness Williams testified that because depreciation of these assets is currently in rate base, it is appropriate to continue to recognize amortization expense at the level of depreciation expense currently in rates until DEC's next general rate case, at which time DEC will address the appropriate amortization period for the remaining regulatory asset balance. It is appropriate that the amortization begin at the time that the regulatory asset is recorded on the books and not at the completion of the Transaction. Williams, T. p 58.

In its comments filed on September 4, 2018 in this docket, the Public Staff supports DEC's request to establish a regulatory asset because of the benefits to customers resulting from the overall transaction. In their testimony, Public Staff witnesses Maness and Metz testified that they agreed with Ms. Williams' proposed deferral standard "in part." Maness and Metz, T. p. 150. Public Staff witnesses Maness and Metz agreed that it is reasonable for the Commission to consider the apparent benefit of the Transaction to customers and authorize the creation of a regulatory asset to be amortized over time, subject to review in DEC's next rate case. The Public Staff does not necessarily agree that the Transaction is

otherwise unusual or large enough to merit deferral but, rather, that a deferral is justified in this case because the Transaction is expected to reduce the future cost of service below what would have been experienced in the absence of the sale. *Id.* at pp. 150-51. The Public Staff argues, however, that these costs should be subject to further review. *Id.* at p. 153. The Public Staff argues that its rationale for supporting the Company's requested deferral should not be considered precedential. *Id.* at p. 154.

The Public Staff recommends that the Commission require DEC to begin amortization in the month in which the Transaction closes, subject to reevaluation and adjustment in the next general rate case. In addition, the Public Staff recommends that the amortization period for the regulatory asset be set at approximately 20 years, which it asserts is the average remaining book life of the Facilities, but should be subject to reevaluation and adjustment in the Company's next general rate case. Maness and Metz, T. pp. 157-61. Because depreciation on these assets is currently approved in rates, DEC witness Williams agrees that it would be reasonable and appropriate in this instance to recognize amortization expense at the level of depreciation currently approved in rates until the time of its next general rate case, at which time DEC would address the appropriate amortization period for the remaining regulatory asset balance. Williams, T. p. 58. As such, the Company proposes approval of the regulatory asset, with amortization beginning at the time the regulatory asset is recorded on the books, at a rate equivalent to the remaining 20-year life of the assets. Once established, the Company would plan to address the proper amortization period for the then-remaining regulatory asset balance in its next general rate case. In their testimony, Public Staff witnesses Maness and Metz explained that although there might be slight differences between the annual amounts of amortization

expense recorded under the Company's proposal and the Public Staff's proposal, the Public Staff considers the Company's proposal reasonable. Maness and Metz, T. p. 161.

The Commission concludes that DEC's requested accounting order is reasonable and appropriate. After considering DEC and the Public Staff's proposed deferral standards, the Commission concludes that DEC's approach is preferable and should be approved. The Commission's deferral decision in Docket No. E-7, Sub 828, the GridSouth RTO cancellation case, represents a similar, unique set of facts, and the rationale adopted by the Commission in that Docket is applicable here. If the Facilities were to be sold at a gain, the Commission would expect that customers receive the benefit of all, or at least a portion, of the gain because the cost of the units was included in rates while the units were in service and under regulation. The same regulatory policy should be followed when the units are sold at a loss, particularly when the sale produces net benefits to customers over time. Absent a deferral and reasonable amortization period, the Company would be denied recovery of costs that benefitted customers and will continue to benefit customers in the future. Further, allowing deferral of the costs provides the necessary balancing of equities between customers and shareholders, which is consistent with the regulatory compact. Accordingly, DEC's request for Commission approval for an accounting order for regulatory and accounting purposes authorizing DEC to establish a regulatory asset for the estimated loss on the disposition of the Facilities is appropriate. At the time the regulatory asset is approved by the Commission, the Facilities will be measured at the lower of carrying amount or fair value less cost to sale and classified as assets held for sale; depreciation of the assets will cease; and the estimated loss will be recorded in the regulatory asset approved by the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 11-14

The evidence in support of these findings is based upon the Petition and the testimony and exhibits of Duke Energy Carolinas witnesses Lewis and Williams, the joint late-filed exhibits, and the testimony of Public Staff witnesses Maness and Metz.

Between 2015 and November 2018, DEC incurred capital expenditures on the Facilities of approximately \$17.4 million. DEC witness Lewis testified in detail as to the projects and pointed out that they were required to comply with license obligations, dam safety requirements, and personnel safety. Lewis, T. pp. 35-39, 86-87, 123-24; Lewis Exhibit 2; Joint Partially Confidential Late-Filed Exhibit Nos. 1 and 2. Company witness Lewis made the analogy to the Model T Ford, which was produced in the same general timeframe of 1908 to 1925 when the Facilities were commissioned, and when many regulatory agencies such as the Federal Energy Regulatory Commission ("FERC") and the Environmental Protection Agency did not exist. As FERC license and environmental regulations evolved over the decades, Mr. Lewis explained that regardless of their small generating capability, their antiquated designs, and their lack of economies of scale, the small hydro facilities must also comply with continuously evolving regulations, standards, and expectations. Lewis, T. pp. 36-37.

DEC witness Lewis testified to the lengthy FERC relicensing process for the Gaston Shoals, Bryson, Franklin and Mission facilities. The Company made the decision to relicense the Gaston Shoals facility in the 1990 timeframe and received the new FERC license in 1996. The decision to relicense the Bryson, Franklin and Mission facilities was made in the 1999-2000 timeframe, but the new FERC licenses were not received until 2011. Lewis, T. pp. 82-83; Joint Late-Filed Exhibit 2, DEC Response to Public Staff DR

7-3. During the lengthy FERC relicensing process, the Company asked FERC to allow it to delay making an investment in the units until it determined if new licenses would be issued and, if so, what the new conditions would be. Lewis, T. pp. 121-22. Mr. Lewis offered examples of the “onerous” new FERC license conditions the Company received, including maintaining lake levels within one and a quarter of an inch. Lewis, T. pp. 84, 121; Joint Late-Filed Ex. 1, DEC Responses to Public Staff DR 6-3 and 6-4. After receiving the new FERC licenses in 2011, the Company went through a two-year period of engineering and design work, and thereafter, with FERC’s approval, staggered the work necessary to complete the projects required to comply with the new FERC licenses. Lewis, T. pp. 99-102, 122-23.

Company witness Lewis testified that none of the approximately \$17.5 million in capital projects was incurred to make the units more attractive to a potential buyer. Lewis, T. pp. 124, 128. Furthermore, Mr. Lewis testified that none of the projects were initiated for the primary purpose of upgrading the units. Instead, any upgrade was a secondary benefit of replacing aging, deteriorated equipment with modern replacements as a means of reliably managing flows and staying in compliance. Lewis, T. p. 40. DEC witness Lewis explained that the Facilities’ capital costs were significantly lower in 2017 and 2018, after the Company put some projects on hold due to their pending sale. DEC notified prospective buyers that such projects would need to be completed after acquisition. Lewis, T. pp. 39-40; Joint Late-Filed Ex. 1.

More than 95% of the capital costs DEC incurred for the Facilities between 2015 and 2017 were included in net plant in rate base in DEC’s last general rate case approved by the Commission in its June 22, 2018 order in Docket No. E-7, Sub 1146, and the

remaining capital costs were mostly associated with a project that was suspended pending the sale. Williams, T. p. 59; Lewis, T. pp. 37-39; Lewis Ex. 2. Public Staff witnesses Maness and Metz acknowledged that the approximately \$17.5 million of the costs at issue in this docket are 100% capital. Maness, T. p. 188. Public Staff witnesses Maness and Metz testified to the extensive investigation the Public Staff conducted into DEC's 2015-2017 capital expenditures at the Facilities in this docket, including multiple data requests and "multiple detailed meetings and conference calls with DEC personnel regarding these investments." Maness and Metz, T. pp. 148-49. Despite the extensive information available to it in this docket alone, obtained through approximately 75 data requests and several meetings and conference calls, the Public Staff concluded that "we are unable to determine if the costs were for timely compliance with license and safety requirements, reflected capital projects that were deferred from previous years that were made to secure the sale of the assets, or other reasons." Maness and Metz, *Id.* Lewis, T. p. 107. The Commission is not persuaded by the Public Staff's request that it be given additional time to conduct further investigations into these matters. The overwhelming, detailed, and convincing evidence from DEC demonstrates that the approximately \$17.5 million in capital costs incurred at the Facilities from 2015-2017 were incurred for compliance, safety and operational purposes, and not to entice buyers or for other reasons. The Commission concludes that such costs were reasonably and prudently incurred and are currently being recovered from customers in DEC's rates previously found to be reasonable and approved by the Commission in Docket No. E-7, Sub 1146.

The Public Staff was aware of the proposed sale of the Facilities, their increasing net book value due to required regulatory spend, the expected loss on the sale, and DEC's

plan to seek Commission approval to establish a regulatory asset for the retail portion of the loss, almost a year prior to the initiation of the current docket. The Company first met with the Public Staff to discuss the proposed sale of the Facilities on August 23, 2017 - - two days before DEC filed its general rate case application in Docket No. E-7, Sub 1146. Subsequent meetings were held with the Public Staff to discuss the proposed sale on February 6, 2018 and on May 9, 2018, both while the general rate case was pending. Williams, T. p. 60 Lewis, T. p. 115; Joint Late-Filed Ex. 1, DEC Response to Public Staff DR 6-11.

During the initial August 23, 2017 meeting, DEC informed the Public Staff that its PVRR analysis showed divestiture was positive for customers, the expected forced regulatory spend was significantly contributing to net book value growth and that the sale price was expected to be less than the current net book value. Lewis, T. pp. 115-17; Joint Late-Filed Ex. 1, DEC Response to Public Staff DR 6-11; Maness and Metz, T. pp. 189-90. DEC again met with the Public Staff on February 6, 2018 to provide an update on the sale, including the status of bids it had received to date. In that meeting, slides provided to the Public Staff stated, “Non-binding offers imply expected proceeds from divestiture to be considerably lower than net book value of the assets; if DEC agrees to sell the assets, it plans to make a regulatory asset request for the retail portion of the stranded costs.” Lewis, T. p. 118. During that meeting, DEC also informed the Public Staff that the net book value of the Facilities was approximately \$42 million. *Id.* In the May 9, 2018 meeting, DEC again updated the Public Staff on the status of the sale and provided more details of the expected regulatory asset for the loss on the sale. Joint Late-Filed Ex. 1, DEC Response to Public Staff DR 6-11. Public Staff witness Maness agreed that the Public Staff had the

opportunity to review the reasonableness and prudence of the 2015-2017 capital costs in DEC's Sub 1146 rate case. Maness, T. pp. 193-94.

In this docket, the Public Staff engaged in significant discovery with the Company. In fact, Company witness Lewis testified that the Public Staff sent an incredible number of data requests and even went so far to state that, "I spent more time answering questions on the three Nantahala assets than I had spent at those plants in my entire career." Lewis, T. p. 107. Public Staff witnesses Metz and Maness testified that the Public Staff asked every question of the Company it wanted to in this docket and that DEC had not refused to answer a single one. Metz, T. pp. 190-91; Maness, T. pp. 191, 196.

The Public Staff testified that its main issue was that DEC allegedly failed to conduct a "holistic" evaluation of its investments to justify the continued operation of the Facilities at the time it sought FERC license extensions. Maness and Metz, T. p. 149. DEC witness Lewis, however, in response to Commission questions explained that DEC, or Nantahala as appropriate, did evaluate all of the options available to it before deciding to seek the FERC license renewals. Lewis, T. pp. 70-73, 83-85. Mr. Lewis further explained that DEC had considered three options: (1) continue operating the Facilities in compliance with their licenses; (2) surrender the licenses; or (3) transfer the licenses to a willing purchaser; and that DEC chose the option that was best for its customers. Lewis, T. pp. 107-109. Mr. Lewis also explained the marked differences that led the Company to decide to retire some units at the Rocky Creek, Great Falls, and Ninety-Nine Islands hydro facilities instead of divesting those assets. T. pp. 79-82, 119-120.

The Public Staff had adequate opportunity to investigate the potential sale, the underlying capital costs incurred by DEC at the Facilities, and the expected loss on the sale

during the general rate case proceeding in Docket No. E-7, Sub 1146, and in this docket, and to recommend to the Commission any adjustments that it believed should be made. The Public Staff made no such recommendations. In response to Commission questions, the Public Staff did not adequately explain why it either reviewed and did not oppose, or chose not to review, the approximately \$17.5 million in capital improvements to the hydroelectric facilities during the rate case proceeding, even though it was aware of a possible sale, except to explain that it cannot review in detail all expenditures in a general rate case. Maness and Metz, T. pp. 207-08. In response to Commission questions about whether the Public Staff had asked DEC why the net book value of the Facilities was increasing during the August 23, 2017 meeting, the Public Staff indicated it did not believe so. T. p. 176. Even when given a final opportunity at the hearing to allege that even a single dollar of the approximately \$17.5 million at issue was unreasonably or imprudently incurred by DEC, the Public Staff chose not to do so. See Maness, T. pp. 196-97.

In its Motion pursuant to N.C. Gen. Stat. §62-80, and in its testimony, the Public Staff argues that the Commission should include in its ruling on the Petition an ordering paragraph to the effect that the reasonableness of the loss on sale may be reviewed in DEC's next rate case, including the reasonableness of expenditures on those facilities during the 2015 – 2017 period. Despite having more than 17 months to fully investigate the 2015-2017 costs at issue in its Motion, the Public Staff still has not alleged nor come forward with any new evidence or sufficient arguments to warrant the Commission's reconsideration of the rates established in Docket No. E-7, Sub 1146. In fact, in its Motion, the Public Staff, even after its extensive discovery, states that its motion "does not forecast

or suggest that there is anything unreasonable or imprudent about DEC's 2015-2017 expenditures on its hydroelectric facilities." Public Staff Motion at ¶ 7.

N.C. Gen. Stat. §62-80 states in pertinent part, "The Commission may at any time upon notice to the public utility and to 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." The statute does not allow for a party, including the Public Staff, to request that the Commission hold open for investigation a review of costs already reviewed, approved and included in rates by this Commission.

The Public Staff did not timely appeal the Commission's Sub 1146 Order as to the 2015-2017 costs at issue. The Public Staff filed its motion, pursuant to N.C. Gen. Stat. §62-80,¹ 182 days after the Commission entered its Sub 1146 Order, and 162 days after DEC filed its Petition in this docket. The North Carolina Supreme Court has held that N.C. Gen. Stat. §62-80 does not grant a party the right to seek a motion to rescind after expiration of the 30-day appeal period. In *Utilities Commission v. Edmisten*, 291 N.C. 575, 581-82, 232 S.E.2d 177 (1977), the Supreme Court held that, "We think it clear that, *at least until the order became final by expiration of the time allowed for appeal*, G.S. 62-80 authorized the Commission, upon its own motion or upon the motion of any party, to reconsider its previously issued order . . ." (emphasis added). In *State ex rel. Utilities Com'n v. Carolina Water Service*, 335 N.C. 493, 498, 439 S.E.2d 127, 129-30 (1994) the Supreme Court denied an attempted appeal and held as follows:

Thirty days after the final order was entered, the Commission's order could no longer be appealed. While the Commission can choose to rescind, alter,

¹ In its Motion the Public Staff did not actually ask the Commission to rescind or modify its Sub 1146 Order, instead it asked the Commission to allow the Public Staff to potentially (although it has not come forward with any such challenge despite ample opportunity to do so) hold open the possibility of making such a challenge in DEC's next general rate case.

or amend a final decision on its own accord, *it is not required to rehear an issue brought by a party after the order has been final for thirty days*. We hold CWS should have followed the correct channel of appeal at the time of the initial decision and appealed the final decision of the full Commission to the Supreme Court within 30 days.

(citations omitted, emphasis added). The North Carolina Supreme Court has held that costs are presumed to be reasonable unless challenged. *State ex rel. Utilities Com. v. Conservation Council of North Carolina*, 312 N.C. 59, 64, 320 S.E.2d 679, 683 (1984) (citing *Utilities Com. v. Intervenor Residents*, 305 N.C. 62, 76-77, 286 S.E.2d 770, 779 (1982)). In response to Commission questions about whether the Public Staff was aware of any example where the Commission, after a general rate case had been concluded, went back and took items out of rate base that had been included in a prior general rate case, the Public Staff witness responded, “I’m not aware of any.” T. p 186. Similarly, in response to Commission questions, the Public Staff testified that it was not aware of any motion for reconsideration that had been granted with respect to this particular set of facts. T. p 187. The Public Staff was aware of the additional capital investments and the possibility of a sale of the assets, but made no challenge to the reasonableness of the Facilities’ costs incurred by the Company in the Sub 1146 rate case proceeding. Accordingly, based upon N.C. Gen. Stat. §§62-90 and 62-80 and Supreme Court case law, the Public Staff’s motion is time barred and should be denied.

Even if the Public Staff’s motion were not time barred, the Commission concludes that it nonetheless would fail on its merits. The Commission has no power to modify or set aside its prior order under N.C. Gen Stat. §62-80, absent any additional evidence or change in conditions requiring it for the public interest. *State ex rel. Utilities Com’n v. North Carolina Gas Service*, 128 N.C. App. 288, 494 S.E.2d 621, *rev. denied* 348 N.C. 78,

505 S.E.2d 886 (1998) (citing *State ex Rel. Utilities Com. v. Carolina Coach Co.*, 260 N.C. 43, 50, 132 S.E.2d 249, 254 (1963)). In its December 23, 2004 *Order Denying Complainants' Motion for Reconsideration* in Docket No. E-7, Sub 743, the Commission followed this language and held, "Absent any new evidence or argumentation in this docket, the Commission will not rescind, alter, or amend its ruling."

Contrary to the position of the Public Staff, the question of whether the capital additions made by DEC were prudent is not related to the sale of the Facilities. Whether DEC was prudent in making those capital investments is entirely separate and independent of DEC selling the Facilities following the improvements. The Public Staff could have challenged the capital costs in the Sub 1146 proceeding, if it had any concerns. Now, the Public Staff is apparently using the sale of the assets as a reason to *potentially* go back and challenge those capital projects retroactively even though it has been explicit in stating that it has found no reason to challenge those costs and may never do so.

The Public Staff also argues that its position would not result in impermissible retroactive ratemaking and cites *State ex rel. Utilities Com. v Nantahala Power & Light Co.*, 326 N.C. 190, 206 (1990). The Public Staff, however, is now functionally asking the Commission to allow the Public Staff to revisit prior approved expenditures and possibly reduce or disallow those expenditures in a future rate case. For purposes of this case, the decision does not turn on whether the Public Staff's proposal is called retroactive ratemaking or something else. The fact remains that the Public Staff had ample opportunity to address the prudence of the 2015-2017 hydro investments in the Sub 1146 proceeding and chose not to do so. The prudence question does not turn on whether or not the assets were sold as the Public Staff contends.

DEC has continuously acknowledged that the Public Staff is entitled to review or challenge the prudence of the Transaction costs associated with the sale itself. As stated in the Company's July 5, 2018 Petition, "An accounting order granting the relief that DEC seeks will not preclude the Commission or parties from addressing the reasonableness of the costs deferred *arising from the Transaction* in the next general rate proceedings filed by DEC." Petition at ¶12 (emphasis added).

Accordingly, the Commission concludes that the Public Staff's request and motion to preserve the ability of the Public Staff to investigate the 2015-2017 capital costs of the Facilities and hold open the issue of the reasonableness of recovery of the deferred costs until DEC's next general rate case is not timely, and any subsequent reviews and recommendations for adjustment to costs should be limited to Transaction costs only.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence in support of this finding is based upon the Petition and the record as a whole.

DEC has agreed to purchase all of the energy and RECs generated by the Facilities for five years following the Transaction through renewable power purchase agreements ("RPPAs") with Northbrook. As such, through the Transaction, the Facilities will continue to serve customers with clean renewable energy, but at a lower cost over time. In accordance with the Commission's June 23, 1995 *Order Establishing Standard Rates and Contract Terms for Qualifying Facilities* in Docket No. E-100, Sub 74, DEC and Northbrook filed form RPPAs for the Facilities agreed to by DEC and Northbrook, which will be entered into by the parties at closing of the Transaction. In its comments, the Public Staff recommends that the Commission grant the applicants' requested declaratory ruling.

Pursuant to N.C. Gen. Stat. §62-133.8(b)(2), an electric public utility such as DEC may meet its REPS compliance requirement through several methods, including by “generat[ing] electric power at a new renewable energy facility” or “purchasing renewable energy certificates from a new renewable energy facility.” In addition, the definition of a new renewable energy facility in N.C. Gen. Stat. §62-133.8(a)(5)(c) includes “a hydroelectric power facility with a generation capacity of 10 megawatts or less that delivers electric power to an electric power supplier.”

The Commission accepted the registration of many of the DEC-owned hydroelectric facilities less than 10 megawatts as renewable energy facilities, but not as new renewable energy facilities, in its July 31, 2009 *Order Accepting Registration of Renewable Energy Facilities* in Docket Nos. E-7, Subs 886, 887, 888, 900, 903, and 904, and its December 9, 2010 *Order Accepting Registration of Renewable Energy Facilities* in Docket Nos. E-7, Subs 942, 943, 945, and 946 (collectively, the “Registration Orders”). In the Registration Orders, the Commission specifically cited its June 17, 2009 *Order on Public Staff’s Motion for Clarification* in Docket No. E-100, Sub 113, where it concluded that these utility-owned hydroelectric facilities do not, however, meet the delivery requirement of N.C. Gen. Stat. §62-133.8(a)(5)(c), which requires the delivery of electric power to an electric power supplier, such as DEC, by an entity other than the electric power supplier in order to qualify as a new renewable energy facility. In this case, the transfer of the Facilities to Northbrook will result in the electric power from these hydroelectric facilities, all of which are less than 10 megawatts in capacity, being delivered to DEC, thereby meeting the statutory criteria to be designated as a new renewable energy facility.

As part of the Petition, Northbrook filed registration statements for each of the hydroelectric facilities as new renewable energy facilities. The Public Staff reviewed the registration statements and determined they contain the certified attestations required by Commission Rule R8-66(b). Therefore, the Public Staff also recommends that the Commission accept the registration statements for each of the Facilities.

Based on the foregoing, the Commission concludes that the transfer of certificates for the Facilities from DEC to Northbrook is justified by the public convenience and necessity and should be approved and that the certificates shall be issued to Northbrook upon the closing of the Transaction. Further, the Commission authorizes DEC to establish a regulatory asset for the estimated loss on the disposition of the Facilities and issues a declaratory ruling that, once the Facilities have been transferred to Northbrook, each Facility shall qualify as a New Renewable Energy Facility pursuant to the REPS statute, and that DEC may use any RECs purchased from the Facilities for REPS compliance.

IT IS, THEREFORE, ORDERED:

1. That the transfer of the Bryson, Franklin, Mission, Tuxedo and Gaston Shoals hydroelectric generating facilities by DEC is hereby approved. The transfer of CPCNs which were issued or deemed to have been issued to DEC for the Bryson, Franklin, and Mission facilities to Northbrook Carolina Hydro II, LLC, and the transfer of the CPCN which was issued or deemed to have been issued for the Tuxedo facility from DEC to Northbrook Tuxedo, LLC, are approved, contingent upon the closing of the Transaction.

2. That DEC's certificates for the four North Carolina hydroelectric generating facilities are hereby cancelled and reissued to Northbrook upon the closing of the Transaction.
3. That DEC shall notify the Commission and the Public Staff within 10 days of the date of closing the Transaction.
4. That DEC shall provide the Commission and the Public Staff with the accounting entries related to the Transaction within sixty (60) days of the date of closing the Transaction.
5. That DEC is hereby authorized to establish a regulatory asset for the estimated loss on the disposition of the hydro units of approximately \$27 million on a North Carolina retail allocable basis. DEC is further authorized to amortize the regulatory asset over a period of time and at the approved return, as determined in its next general rate case. The Facilities shall be measured at the lower of carrying amount or fair value less cost to sell and classified as assets held for sale, depreciation of the asset will cease, and the estimated loss will be recorded in the regulatory asset approved by the Commission.
6. That the Public Staff's request and motion to preserve the ability of the Public Staff to investigate the 2015-2017 capital costs of the Facilities and hold open issue of the reasonableness of recovery of the deferred costs until DEC's next general rate case is denied.
7. That, for ratemaking purposes, the issuance of this Order is without prejudice to the right of the Public Staff or any party to take issue with the reasonableness of the deferred costs arising from the Transaction itself (the legal and

transaction-related costs currently estimated by DEC at \$1.4 million) and their treatment for ratemaking purposes in DEC's next general rate case.

8. That DEC may use RECs purchased from the Facilities for REPS compliance.
9. That Northbrook's registration statements are accepted.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of April, 2019.

NORTH CAROLINA UTILITIES COMMISSION

M. Lynn Jarvis, Chief Clerk

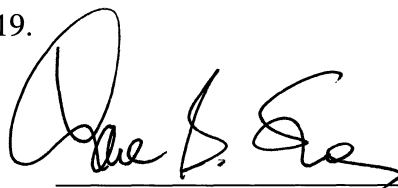
CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC's Proposed Order, in Docket Nos. E-7, Sub 1181, SP-12478, Sub 0, and SP-12479, Sub 0, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid to the following parties of record:

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This is the 27th day of March, 2019.



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