

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. G-5, SUB 635

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Public Service Company)
of North Carolina, Inc., for Annual)
Review of Gas Costs Pursuant to)
N.C.G.S. § 62-133.4(c) and)
Commission Rule R1-17(k)(6))
	ORDER DENYING MOTION TO STRIKE TESTIMONY OF HAW RIVER ASSEMBLY

BY THE PRESIDING COMMISSIONER: On June 1, 2021, Public Service Company of North Carolina, Inc. (PSNC), filed testimony in the above-captioned docket pursuant to N.C.G.S. § 62-133.4(c) and Commission Rule R1-17(k)(6) initiating an annual review of PSNC's cost of gas.

On July 9, 2021, Haw River Assembly (HRA) filed a Petition to Intervene in this docket. On July 19, 2021, the Commission issued an order granting HRA's petition.

On July 26, 2021, HRA filed testimony and exhibits (testimony) of Gregory M. Lander. In summary, witness Lander's testimony addresses four topics: (1) his criticism of PSNC's best cost supply strategy for gas purchases, (2) his recommendation that PSNC use an all-in costs approach in evaluating potential gas purchases, (3) his opinion that PSNC has better, less expensive alternatives to obtaining pipeline capacity than reserving capacity on the Mountain Valley Pipeline (MVP) and the Southgate MVP (collectively MVP), and (4) his recommendation that the Commission put PSNC on notice that its contracted capacity on MVP is far in excess of PSNC's demonstrated need and that PSNC should consider other alternatives before making a final commitment to reserve capacity on MVP.

On July 29, 2021, PSNC filed a motion to strike witness Lander's testimony. Quoting from N.C. Gen. Stat. § 62-133.4(c), PSNC contended that the purpose of this proceeding is to determine whether the gas costs incurred by PSNC and recovered from its customers during the 12-month review period ended March 31, 2021, were prudently incurred. According to PSNC, witness Lander's testimony presenting an all-in cost analysis of PSNC's acquisition of firm capacity on MVP is not relevant because it has no bearing on any fact that is of consequence to the determination of whether PSNC's gas costs were prudently incurred. However, PSNC acknowledged that in compliance with the Commission's Order Requiring Reporting in Docket No. G-100, Sub 91 (June 28, 2013) (Sub 91 Order), PSNC witness Rose Jackson's direct testimony filed herein provides an update of capacity opportunities that PSNC contemplated, including the status of the MVP projects. Jackson Prefiled Direct Testimony, at 11-13. Nevertheless,

PSNC submits that this update does not place the prudence of its future acquisition of the MVP capacity into issue in this case.

PSNC cited several orders in which the Commission has previously found good cause to strike prefiled direct testimony of witnesses where the testimony was irrelevant because it addressed issues outside the scope of the proceeding. In addition, PSNC cited two orders by the Public Service Commission of South Carolina finding similar testimony filed by witness Lander regarding MVP to be irrelevant in fuel cost review proceedings of electric utilities. PSNC further stated that witness Lander recognizes the irrelevance of his own testimony, admitting on page 7, lines 19-23, that “no costs resulting from PSNC’s contracts for MVP/MVP Southgate capacity have yet been incurred or passed along to PSNC’s ratepayers.”

Moreover, PSNC stated that the HRA’s website explains that its members are working together with others to stop MVP, and asserts that the apparent intent of HRA’s testimony herein is to challenge the construction and operation of MVP. PSNC also noted that HRA’s Petition to Intervene points out that its interest in this proceeding is to ensure that PSNC’s “potential capacity expansions do not harm ecological habitats in the Haw River watershed,” which PSNC maintains is not an issue relevant to this proceeding.

Finally, PSNC requested expedited treatment of its motion based on its August 5, 2021, due date to file rebuttal testimony.

On August 2, 2021, HRA filed a response to PSNC’s motion. In summary, HRA stated that witness Lander’s testimony is responsive to the testimony of PSNC witness Jackson about the PSNC’s precedent agreements with MVP, its best-cost supply strategy, and its process for acquiring capacity to meet future demand. Prefiled Direct Testimony of Rose Jackson, at 4-6; 8-10; 12-14; Jackson Ex. 2. Further, HRA asserted that the Sub 91 Order expanded the scope of relevant evidence in annual gas cost proceedings to include the issues capacity and transportation topics addressed by witnesses Jackson and Lander. Moreover, HRA stated that the Commission requires local distribution companies (LDCs), to provide such evidence in their annual gas cost proceedings so that the Commission can “exercise an appropriate level of oversight” regarding efforts by LDCs to, among other things, “balance risks and costs in obtaining interstate capacity.” (Sub 91 Order, at 18.) Finally, HRA contended that even if there was doubt about whether the issues raised in witness Lander’s testimony are relevant, PSNC opened the door by addressing the issues in its testimony.

Discussion and Conclusion

The Commission’s orders must be based on competent, material and substantial evidence. Where practicable, the Commission applies the same rules of evidence used in the superior courts in civil matters. See N.C.G.S. § 62-65(a).

Pursuant to Rule 402 of the North Carolina Rules of Evidence, only relevant evidence is admissible. Under Rule 401, “relevant evidence” is defined as

[e]vidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

N.C.G.S. § 8C-1, Rule 401.

As PSNC noted, N.C.G.S. § 62-133.4(c), requires LDCs to annually file information about their purchases of natural gas as a basis for Commission review of the gas costs incurred by the LDC and recovered from ratepayers during a 12-month review period. However, the Commission's annual reviews are also based on N.C.G.S. § 62-133.4(a), which states:

Rate changes for natural gas local distribution companies occasioned by changes in the cost of natural gas supply *and transportation* may be determined under this section rather than G.S. 62-133(b), (c) or (d).
[emphasis added]

The Commission's Sub 91 Order was based on N.C.G.S. § 62-36B (recodified in 2015 as § 62-36.01), which primarily addresses the costs and reliability of the LDC's interstate pipeline transportation resources. The statute states:

Whenever the Commission, after notice and hearing, finds that additional natural gas service agreements (including "backhaul" agreements) with interstate or intrastate pipelines will provide increased competition in North Carolina's natural gas industry and (i) will likely result in lower costs to consumers without substantially increasing the risks of service interruptions to customers, or (ii) will substantially reduce the risks of service interruptions without unduly increasing costs to consumers, the Commission may enter and serve an order directing the franchised natural gas local distribution company to negotiate in good faith to enter into such service agreements within a reasonable time. In considering costs to consumers under this section, the Commission may consider both short-term and long-term costs.

In the Sub 91 proceeding the Public Staff recommended several points of information that would be relevant to the Commission's understanding of the potential for LDCs to lower costs by entering into additional service agreements with interstate pipelines. These included projected changes in an LDC's customer mix during the next ten years; an explanation of how the changes will impact the LDC's gas supply, transportation, and storage requirements; the LDC's one-day design peak demand requirements used by the LDC for planning purposes for the review period and forecasted for each of the next five winter seasons; significant storage, transmission, and distribution upgrades required to fulfill the LDC's peak day requirements during the next (5) years; an explanation of how the LDC determines which type(s) of resource to be acquired or developed for meeting its deliverability needs; and the factors evaluated in deciding whether the Company should acquire pipeline transportation capacity, acquire a storage service, or develop additional on-system storage deliverability. (Sub 91 Order at 10-11) The Commission agreed with the Public Staff's recommended information points, and

discussed the best method for obtaining the information in a timely manner that would enable the Commission to provide LDCs with guidance about acquiring additional transportation resources. The Commission concluded that the best method would be to require the filing of such information by the LDCs during their annual review proceedings.

IT IS, THEREFORE, ORDERED that the natural gas local distribution companies shall file the information described by the Public Staff in the body of this order as discussed and modified herein with the Commission in their Annual Review of Gas Cost proceedings. Through this process and other regular, timely and ongoing communications, it is the Commission's expectation that the natural gas local distribution companies shall inform the Commission of their efforts to secure natural gas service agreements from competitive suppliers far enough in advance that the Commission may exercise its authority under G.S. 62-36B if it chooses to do so.

Id. at 18.

As is the Commission's practice in contested or potentially contested proceedings, the Commission expected the Public Staff and parties to file responsive testimony on the Sub 91 information submitted by the LDCs in annual review proceedings. Indeed, in the present docket Public Staff witness Neha R. Patel discusses PSNC's demand-day calculations and future capacity needs, and PSNC's plans for meeting future capacity needs. Prefiled Direct Testimony of Neha R. Patel, at 2-6. Further, in PSNC's 2020 annual review Order the Commission included an extensive discussion of the evidence presented by PSNC and the Public Staff on demand-day calculations, future capacity needs, and PSNC's plans for meeting future capacity needs, in part, by contracting with the MVP. Order on Annual Review of Gas Costs, Docket No. G-5, Sub 622, at 8-11 (December 1, 2020).

Based on the foregoing and the record in this docket, the Presiding Commissioner concludes that witness Lander's testimony is evidence of facts of consequence to the Commission in its review of the information required by the Sub 91 Order in this proceeding. As a result, the Presiding Commissioner finds good cause to deny PSNC's motion to strike the testimony of HRA witness Lander.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of August, 2021.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script, appearing to read "Lindsey A. Worley".

Lindsey A. Worley, Acting Deputy Clerk