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JUL 29 2021

July 29, 2021

**VIA Electronic Filing**

Ms. Antonia Dunston, Interim Chief Clerk  
North Carolina Utilities Commission  
Dobbs Building  
430 North Salisbury Street  
Raleigh, North Carolina 27603

*Re: Petition for Annual Review of Gas Costs  
Docket No. G-5, Sub 635*

Dear Ms. Dunston:

Public Service Company of North Carolina, Inc., d/b/a Dominion Energy North Carolina, submits for filing in the above-referenced docket its Motion to Strike the Direct Testimony and Exhibits of Gregory M. Lander and Request for Expedited Treatment.

Please do not hesitate to contact me should you have any questions. Thank you for your assistance with this matter.

Very truly yours,

/s/Mary Lynne Grigg

MLG:kjg

Enclosure

cc: Gina Holt

**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)	) ) ) ) )	<b>MOTION TO STRIKE THE DIRECT          TESTIMONY AND EXHIBITS OF          GREGORY M. LANDER AND          REQUEST FOR EXPEDITED          TREATMENT</b>
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NOW COMES Public Service Company of North Carolina, Inc., d/b/a Dominion Energy North Carolina (“PSNC” or “the Company”), by and through counsel and pursuant to Rules R1-7 and R1-24 of the Rules and Regulations of the North Carolina Utilities Commission (“Commission”) and Rule 402 of the North Carolina Rules of Evidence, and hereby moves to strike the testimony of Mr. Gregory M. Lander filed on July 26, 2021, by Haw River Assembly. This motion is based on the fact that Haw River Assembly’s testimony concerning PSNC’s precedent agreements with the yet-to-be in service Mountain Valley Pipeline (“MVP”) is irrelevant to – in fact, wholly unrelated to – the sole matter before the Commission in this proceeding, which is whether the gas costs incurred by the Company during the 12-month review period ended March 31, 2021, were prudently incurred pursuant to N.C. Gen. Stat. § 62-133.4(c). In support of this Motion, the Company states as follows:

**MOTION TO STRIKE**

On June 7, 2021, the Commission issued its *Order Scheduling Hearing, Requiring Filing of Testimony, Establishing Discovery Guidelines and Requiring Public Notice*. The Order states that N.C. Gen. Stat. § 62-133.4 authorizes gas cost adjustment proceedings for

natural gas local distribution companies, and provides that the Commission shall “conduct annual review proceedings to compare each natural gas utility’s **prudently incurred costs with costs recovered from all of the utility’s customers during the test period**” pursuant to N.C. Gen. Stat. § 62-133.4(c).<sup>1</sup> Accordingly, the Commission’s Order establishes that the purpose of this proceeding is to review costs already incurred by PSNC and recovered from the Company’s customers during the 12-month review period.

On July 9, 2021, Haw River Assembly filed a Petition to Intervene. Although Haw River Assembly first stated that its interest in this proceeding was in part based on the fact that “some” of its members are customers of PSNC, Haw River Assembly also stated that it is “interested in ensuring PSNC’s operations and **potential capacity expansions do not harm ecological habitats in the Haw River watershed.**”<sup>2</sup> PSNC did not oppose the Petition to Intervene based on Haw River Assembly’s assertion that some of its members are customers of PSNC. On July 19, 2021, the Commission granted Haw River Assembly’s Petition to Intervene.

On July 26, 2021, Haw River Assembly filed the direct testimony and exhibits of Gregory M. Lander. The testimony submitted by Witness Lander centers around an “All-In Cost Analysis of [PSNC’s] acquisition of firm pipeline capacity on the [MVP] and MVP Southgate pipeline.” PSNC submits that the filed testimony is beyond the scope of, and not relevant to, the issues in this proceeding.<sup>3</sup> Accordingly, for the reasons set forth herein, the testimony filed by Haw River Assembly should be stricken from the record.

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<sup>1</sup> *Order Scheduling Hearing, Requiring Filing of Testimony, Establishing Discovery Guidelines and Requiring Public Notice*, at 1, Docket No. G-5, Sub 635 (July 7, 2021) (emphasis added).

<sup>2</sup> Haw River Assembly Petition to Intervene, at 2, Docket No. G-5, Sub 635 (July 9, 2021) (emphasis added).

<sup>3</sup> In compliance with the *Commission’s Order Requiring Reporting* in Docket No. G-100, Sub 91, PSNC witness Rose M. Jackson’s direct testimony provides an update of capacity opportunities that the Company contemplated, including the status of the MVP projects. Jackson Direct Testimony, Pages 11-13. This update does not place the prudence of the future acquisition of that capacity at issue in this case.

## ARGUMENT

The purpose of this proceeding is to determine whether, pursuant to N.C. Gen. Stat. § 62-133.4(c), the gas costs incurred by the Company and recovered from customers during the 12-month review period ended March 31, 2021, were prudently incurred. The language of N.C. Gen. Stat. § 62-133.4(c) is clear:

Each natural gas local distribution company shall submit to the Commission information and data for an **historical 12-month test period** concerning the **utility's actual cost of gas, volumes of purchased gas, sales volumes, negotiated sales volumes, and transportation volumes**. This information and data shall be filed on an annual basis in the form and detail and at the time required by the Commission. The Commission, upon notice and hearing, **shall compare the utility's prudently incurred costs with costs recovered from all the utility's customers that it served during the test period**.<sup>4</sup>

As illustrated by the plain language of the statute, the Commission, in this specific proceeding, is to compare PSNC's prudently incurred costs with costs recovered from PSNC's customers that it served during the test period. N.C. Gen. Stat. § 62-133.4(c) does not prescribe that the Commission evaluate the prudence of future capacity acquisitions or costs that have yet to be incurred or passed along to PSNC's customers.

The Commission's orders must be based on competent, material, and substantial evidence.<sup>5</sup> Where practicable, the Commission applies the same rules of evidence used in the superior courts in civil matters.<sup>6</sup> Pursuant to Rule 402 of the North Carolina Rules of Evidence, only relevant evidence is admissible. Under Rule 401 of the North Carolina Rules of Evidence, "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

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<sup>4</sup> (emphasis added).

<sup>5</sup> *Order Granting Motion to Strike and Reserving Decision on Motion in Limine*, at 3, Docket Nos. E-2, Sub 1095, E-7, Sub 1100, G-9, Sub 682 (June 28, 2016).

<sup>6</sup> See N.C. Gen. Stat. § 62-65(a).

more probable or less probable than it would be without the evidence.”<sup>7</sup> The Commission has previously found good cause to strike pre-filed testimony of witnesses where the testimony was irrelevant and addressed issues outside the scope of the proceeding.<sup>8</sup>

With regard to the admissibility of Haw River Assembly’s testimony, “the main question is whether the testimony has a bearing on any fact that is of consequence to the determination of the action.”<sup>9</sup> Witness Lander’s testimony presenting an “All-In Cost analysis” of PSNC’s acquisition of firm capacity on the MVP and MVP Southgate pipelines has no bearing on any fact that is of consequence to the determination of whether, pursuant to N.C. Gen. Stat. § 62-133.4(c), the gas costs incurred by the Company and recovered from customers during the 12-month review period ended March 31, 2021, were prudently incurred. In fact, the Public Service Commission of South Carolina has found

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<sup>7</sup> N.C. Gen. Stat. § 8C-1, Rule 401.

<sup>8</sup> See, e.g., *In re Application of Duke Energy Carolinas, LLC for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina*, Order Granting in Part and Denying in Part Motion to Strike, Docket No. E-7, Sub 1026 (July 3, 2013) (granting, in part, motion to strike testimony of Greenpeace witness arguing that Company plants and improvements should be cancelled, as irrelevant to the general rate case proceeding); *In the Matter of Application of Duke Energy Progress, LLC for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina*, Order Granting in Part and Denying in Part Motion to Strike Testimony, Docket No. E-2, Sub 1142 (Nov. 3, 2017) (granting, in part, motion to strike testimony of witness concerning details of Advanced Meter Infrastructure functionality, software and proposed guidelines regarding customer usage not relevant to and beyond the scope of the docket, but denying the motion to strike with regard to testimony concerning the issue of cost recovery for the utility’s Customer Information System); *In re Application of Duke Energy Corporation and Piedmont Natural Gas, Inc. to Engage in a Business Combination Transaction and Address Regulatory Conditions and Code of Conduct*, Order Granting Motion to Strike and Reserving Decision on Motion in Limine, Docket No. E-2, Sub 1095 (June 28, 2016) (granting the public utilities’ motion to strike testimony regarding environmental emissions, potential inadequacy of future natural gas supplies and possible higher natural gas prices) (“*Duke-Piedmont Merger Motion to Strike Order*”); *In re Petition of Carolina Power & Light Company for Approval of DSM and Energy Efficiency Cost Recovery and Rider*, Order on Motions to Strike, Docket No. E-2, Sub. 931 (January 6, 2009). “[T]he main question is whether the testimony has any bearing on any fact that is of consequence to the determination of the action.” *Duke-Piedmont Merger Motion to Strike Order*, at p. 3 (internal quotation marks omitted).

<sup>9</sup> *Order Granting Motion to Strike and Reserving Decision on Motion in Limine*, at 3, Docket Nos. E-2, Sub 1095, E-7, Sub 1100, G-9, Sub 682 (June 28, 2016).

similar testimony filed by Witness Lander regarding MVP to be irrelevant in fuel cost review proceedings and has declined to consider it on two occasions.<sup>10</sup>

Witness Lander himself recognizes the irrelevance of his own testimony, admitting on Page 7 at 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...” Despite this fact, Witness Lander asks “that the Commission put PSNC on notice in its final order in this case that the contracted capacity on the MVP and MVP Southgate pipelines is far in excess of PSNC’s demonstrated need.”<sup>11</sup> Witness Lander goes on to claim that “there may be few remaining opportunities for the Commission to consider the risks to ratepayers before such costs are incurred and proposed to be recovered.”<sup>12</sup> What Witness Lander requests of the Commission is clearly outside the scope of this proceeding. This proceeding is about the prudence of costs that have been incurred, not future costs that may or may not be incurred.

Haw River Assembly’s website explains that its members and others are “Working Together to Stop Mountain Valley Pipeline Southgate.”<sup>13</sup> The apparent intent of Haw River Assembly’s intervention and testimony in this proceeding is to challenge the construction and operation of MVP—not to weigh in on the prudence of PSNC’s incurred

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<sup>10</sup> *In re: Annual Review of Base Rates for Fuel Costs for South Carolina Electric & Gas Company*, Order Approving Fuel Costs and Adopting Stipulation, SCPSC Order No. 2019-316, Docket No. 2019-2-E (Apr. 30, 2019) (finding that “issues related to the Mountain Valley Pipeline,” as raised by Witness Lander in testimony “are not properly before the Commission in this proceeding”); *In re: Annual Review of Base Rates for Fuel Costs for Dominion Energy South Carolina*, SCPSC Order No. 2020-331, Docket No. 2020-2-E (Apr. 30, 2020) (“Witness Lander recommends that the [Public Service Commission of South Carolina] not allow DESC full recovery of the costs associated with its Precedent Agreements with Mountain Valley Pipeline...the issues related to the Mountain Valley Pipeline...are properly not before the Commission in this proceeding, and the Commission declines to issue any ruling on these matters”).

<sup>11</sup> Direct Testimony and Exhibits of Gregory M. Lander on Behalf of Haw River Assembly, at Page 4, lines 1-4, Docket No. G-5, Sub 635 (July 26, 2021).

<sup>12</sup> *Id.* at Page 7, lines 21-23.

<sup>13</sup> HAW RIVER ASSEMBLY, *News: Working Together to Stop Mountain Valley Pipeline*, available at <https://hawriver.org/submit-public-comments-on-the-mvp-401-permit-by-dec-2/> (accessed July 28, 2021).

gas costs during the review period. For example, and as mentioned above, Haw River Assembly'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," again an issue irrelevant to this proceeding. Further illustrating this point is the fact that Witness Lander's testimony mentions "MVP" approximately *one hundred times*. In contrast, his testimony mentions N.C. Gen. Stat. § 62-133.4(c) a mere two times and a version of the word "prudence" approximately six times, and, not once in those instances does he provide an evaluation of, or opinion on, the prudence of PSNC's gas costs incurred during the review period.

PSNC recognizes the value of environmental quality, importance of resource planning, and desire for parties to advocate for their own interests. However, Haw River Assembly cannot alter this annual proceeding at the expense of both the Commission and other parties to advocate on behalf of issues that are wholly irrelevant to, outside the scope of, and unable to be determined in this proceeding. To do so would result in judicial inefficiencies and wasted time and costs—a result that is not in the public interest and directly in opposition to the stated duties of the Commission as an administrative agency.<sup>14</sup>

PSNC should not be required to respond to Haw River Assembly's testimony in this proceeding, and neither the Commission nor the other parties to this proceeding should

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<sup>14</sup> See N.C. Gen. Stat. § 62-23 stating:

The Commission is hereby declared to be an administrative board or agency of the General Assembly created for the principal purpose of carrying out the administration and enforcement of this Chapter, and for the promulgation of rules and regulations and fixing utility rates pursuant to such administration; and in carrying out such purpose, the Commission shall assume the initiative in performing its duties and responsibilities **in securing to the people of the State an efficient and economic system of public utilities** in the same manner as commissions and administrative boards generally. In proceedings in which the Commission is exercising functions judicial in nature, it shall act in a judicial capacity as provided in G.S. 62-60. The Commission shall separate its administrative or executive functions, its rule making functions, and its functions judicial in nature to such extent as it deems practical and advisable in the public interest. (emphasis added).

be required to conduct a hearing on issues that, according to statute, cannot be resolved in this proceeding. Therefore, PSNC's motion to strike should be granted.

### **CONCLUSION**

WHEREFORE, Public Service Company of North Carolina, Inc. d/b/a Dominion Energy North Carolina, respectfully moves that the direct testimony and exhibits of Haw River Assembly Witness Gregory M. Lander be stricken from the record as requested above. Further, PSNC seeks expedited treatment of this Motion to Strike in light of the August 5, 2021 deadline for rebuttal testimony in this proceeding.

Respectfully submitted this, the 29<sup>th</sup> day of July, 2021.

/s/Mary Lynne Grigg

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## CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing Motion to Strike the Direct Testimony and Exhibits of Gregory M. Lander and Request for Expedited Treatment, as filed in Docket No. G-5, Sub 635, was served electronically or via U.S. mail, first-class, postage prepaid, upon the parties of record.

This, the 29<sup>th</sup> day of July, 2021.

/s/Mary Lynne Grigg

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