



Lawrence B. Somers
Deputy General Counsel

NCRH 20 / P.O. Box 1551
Raleigh, NC 27602

o: 919.546.6722
c: 919.546.2694

bo.somers@duke-energy.com

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Sep 18 2018

September 18, 2018

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 Reply Comments
Docket Nos. E-7, Sub 1181, SP-12478, Sub 0 and SP-12479, Sub 0**

Dear Ms. Jarvis:

Pursuant to the Commission's July 25, 2018 *Order Requesting Comments* and the extension granted on August 27, 2018, I enclose Duke Energy Carolinas, LLC's Reply Comments for filing in connection with the referenced matter.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Lawrence B. Somers', written over the word 'Sincerely,'.

Lawrence B. Somers

Enclosure

cc: Parties of Record

BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION

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 and Necessity |) | |
| and Ownership Interests in Generating |) | DUKE ENERGY CAROLINAS, |
| Facilities from Duke Energy Carolinas, LLC |) | LLC'S REPLY COMMENTS |
| to Northbrook Carolina Hydro II, LLC and |) | |
| Northbrook Tuxedo, LLC |) | |

NOW COMES Duke Energy Carolinas, LLC ("DEC" or the "Company") pursuant to the North Carolina Utilities Commission's ("Commission") August 27, 2018 *Order Granting Extensions of Time* and hereby submits these reply comments in response to the Comments of the Public Staff filed on September 4, 2018 in this matter. Although Duke Energy Carolinas appreciates the Public Staff's support for DEC's request to transfer the Certificates of Public Convenience and Necessity ("CPCN") issued or deemed to have been issued by the Commission for the Bryson, Franklin, Mission, and Tuxedo Hydroelectric Generation Facilities, as well as the sale of the Gaston Shoals Hydroelectric Generation Facility in Cherokee County, South Carolina¹ (collectively the "Facilities") to Northbrook Carolina Hydro II, LLC and Northbrook Tuxedo, LLC (collectively "Northbrook") and for the establishment of a regulatory asset, as is set forth below in more detail, some of the Public Staff's proposed conditions related to the requested accounting order are unreasonable and should be rejected by the Commission.²

¹ DEC has filed for appropriate approval from the Public Service Commission of South Carolina ("PSCSC") regarding the Gaston Shoals CPCN.

² The Public Staff also supports the declaratory judgment request in the Joint Notice regarding the new renewable energy facility status of the Facilities subsequent to the Transaction.

Background

In its July 5, 2018 Joint Notice of Transfer, Request for Approval of CPCNs, Request for Accounting Order and Request for Declaratory Ruling (“Joint Notice”), DEC asked, in pertinent part, for the Commission to establish a regulatory asset to defer North Carolina Retail’s allocated portion of approximately \$27 million of the total estimated loss on the disposition of the Facilities of \$40 million to Northbrook (the “Transaction”). The estimated loss on the disposition of the Facilities includes 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 costs³ and \$1.6 million of transmission-related work required by the sale. DEC proposed to amortize the regulatory asset over a period of time at the approved return in the next rate case. DEC proposed that 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 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 nonetheless proceed with the Transaction. Approval of the requested accounting treatment is a condition to closing the Transaction,

³ In the Joint Notice, DEC estimated the legal and transaction-related costs at \$1.0 million. DEC subsequently revised this specific estimate to \$1.4 million based upon increased estimates associated with project surveys and the inclusion of the estimated lease buyout for certain equipment to be transferred to Northbrook, and provided support for the estimate to the Public Staff pursuant to a data request response.

so DEC would have no obligation to consummate the sale if the accounting order is not approved.

I. The Public Staff's Request to Reserve the Ability to Challenge The Reasonableness and Prudence of Known and Approved Capital Costs in a Future Rate Case is Impermissible.

In its comments, the Public Staff supports the Transaction due to the substantial customer benefits it would provide, yet indicates that it has questions about capital projects at the Facilities totaling approximately \$18 million that were incurred and completed by DEC in 2015-2017, as well as approximately \$865,000 budgeted or invested in 2018. The Public Staff argues that the Commission should allow the Public Staff to investigate these projects further and that the question of whether it is reasonable for DEC to recover the full \$27 million loss due to Transaction should “be preserved as an open issue until DEC’s next general rate case when the reasonableness of recovery of the deferred costs will be addressed.” (Public Staff Comments at p. 5). Although the Public Staff acknowledged that it and the Commission recently completed their investigations of the Company’s retail electric rates and charges in the general rate case completed in Docket No. E-7, Sub 1146 (*Id.*), it nonetheless asserts that the Commission should somehow allow the Public Staff the ability to review the reasonableness and prudence of capital costs already approved and being recovered in rates again in the next rate case. In support of this unprecedented request, the Public Staff asserts that the Company’s proposal to sell the Facilities is “new information that creates special circumstances.” (*Id.*) Contrary to the Public Staff’s assertion, it was well aware of the proposed sale of the Facilities and had more than ample opportunity to investigate any costs associated with the Facilities during the recent DEC general rate case proceeding.

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 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 during the pendency of the general rate case proceeding. In addition to the meetings discussed above, the Company has responded to numerous formal and informal data requests from the Public Staff regarding the Transaction. The Company asserts that the Public Staff has had more than adequate opportunity to investigate the capital investments made by the Company to ensure the safe and reliable operation of the Facilities and to comply with Federal Energy Regulatory Commission license requirements over the past 36 months, and if it had any questions about, or even challenges to, the reasonableness and prudence of such investments, its opportunity to raise them was in the Sub 1146 rate case proceeding. To allow the Public Staff to have the ability to review the incurrence of these costs yet again in the next general rate case through some sort of hindsight analysis - - especially based solely on the Company's decision to sell the assets for the benefit of customers - - is contrary to the very purpose of the ratemaking process and would inject unprecedented and impermissible uncertainty into the determination and recovery of just and reasonable costs. 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 Commission v. Intervenor Residents*, 305 N.C. 62, 76-77, 286 S.E.2d 770, 779 (1982)). Although it was well aware of the pending Transaction, the Public Staff made no challenge to the reasonableness of the Facilities' costs incurred by the Company in the

Sub 1146 rate case proceeding and should be estopped from seeking another bite at the apple. The Company and stakeholders react and rely on the Commission's Orders in making decisions, and the Public Staff's proposal to insert uncertainty into the decision making process on a retroactive basis is simply not reasonable.⁴

DEC's requested accounting order would not preclude the Commission or parties from addressing the reasonableness of the deferred costs arising from the Transaction itself (*i.e.*, legal and transaction-related costs) in the next general rate proceedings filed by DEC.⁵ The Public Staff's request to hold open potential challenges to reasonable and prudent costs that it could have challenged in the Sub 1146 rate case if it so chose, however, is unreasonable and should be denied by the Commission. If the Public Staff's conditions were imposed, the alternative could be that the Company cannot effectuate the Transaction due to the regulatory uncertainty created by Public Staff's recommendation.

II. Amortization Expense Should Be Recognized at the Level of Depreciation Currently Approved in Rates Until DEC's Next General Rate Case.

In its comments, the Public Staff supports DEC's request to establish a regulatory asset, but 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. (Public Staff Comments at p. 7). 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. (*Id.* at pp.

⁴ Assuming *arguendo* that the Facilities' costs were found not to be reasonable and prudent in the next rate case, which the Company denies, taken to an extreme conclusion, the Public Staff's recommendation could otherwise potentially result in impermissible retroactive ratemaking. *Id.* at p. 67.

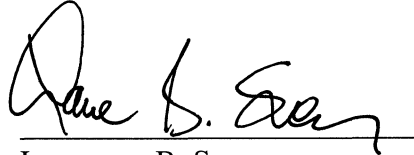
⁵ Notwithstanding DEC's strong objection to this Public Staff proposed condition, subsequent to the Public Staff filing its comments, DEC has met with the Public Staff via conference call to provide information about the referenced capital projects and will continue to cooperate with the Public Staff.

10, 12). Because depreciation on these assets is currently approved in rates, DEC agrees that it would be appropriate 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. DEC's proposed treatment of amortization expense actually results in slightly higher expense than the Public Staff's proposal, and this proposed accounting treatment is reasonable and appropriate.

As noted in the Joint Notice, and supported by the Public Staff's investigation, DEC has determined that the 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. For all the foregoing reasons, the Commission should allow DEC to establish a regulatory asset for the estimated loss on the sale of the Facilities in the amount of \$27 million on a North Carolina retail basis until Duke Energy Carolinas' next general rate case. Approval of the request will allow the Company to continue to advance the Transaction and its overall customer benefits.

WHEREFORE, Duke Energy Carolinas respectfully requests that the North Carolina Utilities Commission approve the requests contained in the Joint Notice, issue an accounting order as requested by the Company, and not adopt the conditions recommended by the Public Staff as set forth herein.

Respectfully submitted, this the 18th day of September, 2018.

A handwritten signature in black ink, appearing to read "Lawrence B. Somers", written over a horizontal line.

Lawrence B. Somers
Deputy General Counsel
Duke Energy Corporation
P. O. Box 1551/NCRH 20
Raleigh, North Carolina 27602
919-546-6722
Attorney for Duke Energy Carolinas, LLC

CERTIFICATE OF SERVICE

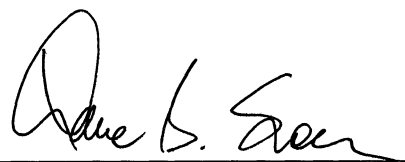
I certify that a copy of Duke Energy Carolinas, LLC's Reply Comments, in Docket Nos. E-7, Sub 1181, SP-12478, Sub 0, and SP-12479, Sub 0, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid to the following parties of record:

David T. Drooz, Chief Counsel
Tim Dodge, Staff Counsel
Public Staff
North Carolina Utilities Commission
4326 Mail Service Center
Raleigh, NC 27699-4300
david.drooz@psncuc.nc.gov
tim.dodge@psncuc.nc.gov

Katherine Ross
Parker Poe
P.O. Box 389
Raleigh, North Carolina 27602
katherineross@parkerpoe.com

This the 18th day of September, 2018.

By: _____



Lawrence B. Somers
Deputy General Counsel
Duke Energy Corporation
P.O. Box 1551/NCRH 20
Raleigh, North Carolina 27602
Tel 919.546.6722
bo.somers@duke-energy.com