

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. G-5, SUB 585

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of | | |
| Petition of Application of Public Service |) | ORDER APPROVING |
| Company of North Carolina, Inc. for |) | WAIVER OF CODE OF |
| Waiver of Code of Conduct Provision |) | CONDUCT PROVISION |

BY THE COMMISSION: On August 5, 2020, Public Service Company of North Carolina, Inc. (PSNC or Company) filed a petition requesting that the Commission enter an order waiving the transfer pricing guideline in Section III.D.3(a) of PSNC's Code of Conduct Governing the Relationship Among Dominion Energy North Carolina, Public Service Company of North Carolina, Inc., Their Affiliates, and Their Nonpublic Utility Operations (Code of Conduct) in connection with leases to be entered into by the Company with affiliates Dominion Energy Southeast Services, Inc. (DESS) and Dominion Energy Services, Inc. (DES) to use space in the Company's Gastonia facility for the purpose of providing services to Utility Affiliates, as defined in the Code of Conduct. The waiver would allow the Company to lease the space to DESS and DES at PSNC's Fully Distributed Cost instead of at the higher of Market Value or Fully Distributed Cost, as the capitalized terms are defined in the Code of Conduct.

DESS is a Service Company, as defined in the Code of Conduct, providing gas dispatch services and gas measurement services for PSNC and Dominion Energy South Carolina, Inc. (DESC) from the Company's Gastonia facility. DESC is a Utility Affiliate under the Code of Conduct. DES is a Service Company that provides shared services to PSNC and its Affiliates, including Utility Affiliates. PSNC and DES intend to enter into a lease in order for DES to use the Company's Gastonia facility in connection with the provision of gas dispatch services to The East Ohio Gas Company, doing business as Dominion Energy Ohio (DEO). Because DESS and DES are Non-Utility Affiliates of PSNC, Section III.D.3(a) of the Code of Conduct requires that they pay PSNC the higher of Market Value or PSNC's Fully Distributed Cost as rent under their respective leases. The transfer pricing guideline in Section III.D.3(d) of the Code of Conduct requires that, for un-tariffed goods and services provided by PSNC to Utility Affiliates, the transfer price on such transactions shall be the Affiliate's Fully Distributed Cost. Therefore, the Company requested that the Commission waive the application of the transfer pricing guideline in Code of Conduct Section III.D.3(a) and apply the guideline in Section III.D.3(d) applicable to transfers involving Utility Affiliates so that the rent can be set at PSNC's Fully Distributed Cost. PSNC further states that under these leases, DESS and DES will use the Gastonia facility only to provide services to PSNC and its Utility Affiliates and that the leases will have no negative impact on PSNC customers' rates and service and are in the public interest.

On September 8, 2020, the Commission issued an order requesting additional information from the Applicant and Public Staff comments. On September 11, 2020, the Company filed a response to Commission questions (Response). In its Response, PSNC provided additional information on the facilities being utilized under the proposed lease agreements, as well as the number of employees and functions being performed in each building. PSNC further stated in the Response that it believes that the waiver is in the public interest because it will promote efficient and cost-effective provision of utility service and will result in Utility Affiliates paying a share of the cost of a portion of PSNC's facilities that otherwise would be borne entirely by PSNC.

The Public Staff filed comments on September 16, 2020, stating that it had reviewed the Company's Code of Conduct waiver request, the proposed lease agreements, and the Company's responses to Commission questions filed in this docket. Additionally, the Public Staff stated it had numerous discussions with the Company and sent informal data requests for information prior to PSNC's Code of Conduct waiver filing. The Public Staff determined that if the primary intent of the proposed lease agreements was for PSNC to lease office space to two of its Utility Affiliates, DESC and DEO, then the appropriate pricing between the two Utility Affiliates should be PSNC's fully distributed cost as reflected in Section III.D.3(d) of its Code of Conduct. The Public Staff further explained that because PSNC's two service companies, DES and DESS, are the entities that will actually be billing each of the Utility Affiliates instead of PSNC billing them directly, the transfer pricing standard has become an issue in this docket. The Public Staff recognized, however, that it is beneficial to the utility customers for PSNC to charge DES and DESS the fully distributed cost for these rent payments rather than charging market prices, as the payments will ultimately be passed on to customers in rates through the Company's Utility Affiliates, DESC and DEO. Therefore, the Public Staff believes that no utility customers are harmed by charging the fully distributed cost.

In addition, in response to the Commission's question about whether PSNC or the Public Staff conducted an analysis regarding the Market Value of the proposed leases to the Service Companies, the Public Staff noted that it asked the same questions to PSNC prior to the Code of Conduct waiver filing and determined that no market study had been completed by PSNC. The Public Staff submitted that it also had not done a market value analysis, since it believes the burden of proof would be on the Company to perform one if the agreement necessitated a market study.

The Public Staff presented this matter at the Commission's Staff Conference on October 12, 2020. The Public Staff recognized that pursuant to the proposed lease agreements with DES and DESS, services will be provided to PSNC's Utility Affiliates. The Public Staff stated that it believes that the proposed lease agreements are in the public interest and recommended that the transfer pricing waiver requested by PSNC should be granted subject to the following conditions, which have been agreed to by PSNC: (1) the waiver only applies to the DESS and DES lease agreements filed herein, (2) if similar lease agreements arise, PSNC shall file them with the Commission for approval, (3) PSNC shall maintain adequate documentation of the rent amounts charged to DESS and DES, (4) such approval does not constitute approval of the amount of any

compensation paid thereunder, and (5) such approval does not prejudice the right of any party to take issue with any provision of the lease agreements in question in a future proceeding.

The Commission has closely examined the Code of Conduct waiver requested by PSNC. Based upon the Commission's review of the petition and the recommendation of the Public Staff, the Commission concludes that it should grant the waiver of the application of the transfer pricing guideline in Code of Conduct Section III.D.3(a) subject to the conditions recommended by the Public Staff and agreed to by the Company.

IT IS, THEREFORE, ORDERED as follows:

1. The waiver of PSNC's Code of Conduct Section III.D.3(a) as proposed in the Company's August 8, 2020 petition in this docket is hereby approved;
2. That the waiver only applies to the DESS and DES lease agreements filed herein;
3. That if similar lease agreements arise, PSNC shall file them with the Commission for approval;
4. That PSNC shall maintain adequate documentation of the rent amounts charged to DESS and DES;
5. That such approval does not constitute approval of the amount of any compensation paid thereunder; and
6. That such approval does not prejudice the right of any party to take issue with any provision of the lease agreements in question in a future proceeding.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of October, 2020.

NORTH CAROLINA UTILITIES COMMISSION



Kimberley A. Campbell, Chief Clerk