

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Virginia Electric     )  
and Power Company, d/b/a Dominion Energy     )  
North Carolina Pursuant to G.S. 62-133.2 and     )     DOCKET NO. E-22, SUB 546  
Commission Rule R8-55 Regarding Fuel and Fuel-     )  
Related Costs Adjustments for Electric Utilities     )

POST-HEARING BRIEF OF NUCOR STEEL – HERTFORD

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<b>In the Matter of Application by Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina Pursuant to G.S. 62-133.2 and Commission Rule R8-55 Regarding Fuel and Fuel- Related Costs Adjustments for Electric Utilities</b>	) ) ) ) )	<b>POST-HEARING BRIEF OF NUCOR STEEL – HERTFORD</b>
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Nucor Steel – Hertford, a division of Nucor Corporation (“Nucor”), respectfully submits this Post-Hearing Brief in support of Public Staff’s position that certain replacement power costs associated with North Anna Unit 2 and Surry Units 1 and 2 be disallowed and excluded from Rider B, the experience modification factor (“EMF”) decrement rider.

Public Staff concludes that the outages at North Anna Unit 2 from July 30, 2016, through August 3, 2016; at Surry Unit 1 from July 11 through July 22 and October 13 through November 18, 2015; and at Surry Unit 2 from July 13 through 22, 2015, December 4 through 11, 2015, and October 9 through October 13, 2016, could have been avoided had the units been prudently managed by Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (“DENC”).<sup>1</sup> Public Staff further concludes that \$1,807,896 in replacement power costs associated with these outages should be disallowed.<sup>2</sup> Nucor supports these conclusions.

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<sup>1</sup> Test. of Dustin R. Metz at 4 (Tr. at 82).

<sup>2</sup> Aff. of Sonja R. Johnson, at 4-5 (Tr. at 70-71) (“[b]ased on the recommendation of Public Staff witness Dustin R. Metz . . .”).

**A. The Presumption of Imprudence Is Not Also a Presumption of Prudence**

NCUC Rule R8-55(k) places the burden of proof on the utility “as to the correctness and reasonableness of any charge and as to whether the test year cost of fuel and fuel-related costs were reasonable and prudently incurred . . . .”<sup>3</sup> For determining the EMF rider, unless the utility can show the system-wide nuclear capacity factor in the test year is at least equal to the national average capacity factor using either test specified in the rule, there is a rebuttable presumption that the increased cost of fuel and fuel-related costs were imprudent and disallowance is appropriate.<sup>4</sup> In the present case, while DENC may be able to show that its system-wide nuclear capacity factor meets the standard(s) and thereby avoids the rebuttable presumption of imprudence, the rule does not exempt individual events from examination as to their possible imprudence.

**B. DENC Bears the Burden of Proof Regarding Prudence**

Public Staff has identified several individual events, referenced above, where prudent management would have avoided outages and replacement costs. N.C. Gen. Stat. § 62-133.2(d) makes it abundantly clear that in a fuel case, “[t]he burden of proof as to the correctness and reasonableness of the charge and as to whether the cost of fuel and fuel-related costs were reasonably and prudently incurred shall be on the utility.” The statute also instructs the Commission to “allow only that portion, if any, of a requested cost of fuel and fuel-related costs adjustment that is based on adjusted and reasonable cost of fuel and

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<sup>3</sup> NCUC Rule R8-55(k).

<sup>4</sup> *Id.*

fuel-related costs prudently incurred under efficient management and economic operations.”<sup>5</sup>

### **C. DENC Failed to Discharge the Burden of Proving its Prudence**

While DENC may have avoided a presumption of imprudence in this proceeding that does not mean that all its actions are necessarily prudent. There is no blanket exemption for individually mismanaged events occurring within a broader context of a system-wide capacity factor being equal to or exceeding a national standard. And it should be noted that the standard itself is not particularly high—merely being in the top half of the national average capacity factor for nuclear production utilities means that there is still plenty of room for improvement.

The North Carolina Supreme Court has long held that a legislatively created presumption is strictly construed in accordance with its language:

While the cardinal principle of statutory construction is that the words of the statute must be given the meaning which will carry out the intent of the Legislature, that intent must be found from the language of the act, its legislative history and the circumstances surrounding its adoption which throw light upon the evil sought to be remedied. Testimony, even by members of the Legislature which adopted the statute, as to its purpose and the construction intended to be given by the Legislature to its terms, is not competent evidence upon which the court can make its determination as to the meaning of the statutory provision.<sup>6</sup>

Both NCUC Rule R8-55(k) and N.C. Gen. Stat. § 62-133.2(d) require that the burden of proof is on the utility to show that its fuel and fuel-related charge adjustments are just and reasonable. Nothing in the statute nor the rule suggest otherwise, nor do they suggest that

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<sup>5</sup> N.C. Gen. Stat. § 62-133.2(d) (2017).

<sup>6</sup> *N.C. Milk Comm’n v. Nat’l Food Stores, Inc.*, 270 N.C. 323, 332-33, 154 S.E.2d 548, 555 (1967) (citing *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966); *Goins v. Board of Trustees*, 169 N.C. 736, 86 S.E. 629 (1915)).

if DENC can avoid the presumption of imprudence, it automatically acquires an aura of prudence for each individual outage that occurred during the period covered by this fuel proceeding.

**D. Conclusion**

Nucor concurs that Public Staff appropriately questioned the prudence of the outages identified in Public Staff's testimony, and Nucor fully supports requiring DENC to explain how its actions were prudent in each instance. Given that DENC did not meet its burden of proof that certain outages and associated costs were prudent, the Commission should adopt Public Staff's position and disallow the \$1,807,896 in replacement power costs associated with these outages.

Respectfully submitted, this 1st day of December 2017.

By: /s/ Joseph W. Eason

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### **CERTIFICATE OF SERVICE**

The undersigned attorney for Nucor Steel – Hertford hereby certifies that the foregoing document was served upon the parties of record in this proceeding by electronic email and/or depositing copies in the United States mail, postage prepaid.

This the 1st day of December 2017.

/s/ Joseph W. Eason

Joseph W. Eason

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