

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-2, SUB 1095  
DOCKET NO. E-7, SUB 1100  
DOCKET NO. G-9, SUB 682

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

<p>In the Matter of Application of Duke Energy Corporation ) and Piedmont Natural Gas Company, ) Inc., to Engage in a Business ) Combination Transaction and Address ) Regulatory Conditions and Code of ) Conduct )</p>	<p>JOINT PROPOSED ORDER OF DUKE ENERGY CORPORATION, PIEDMONT NATURAL GAS COMPANY, INC., AND THE PUBLIC STAFF APPROVING MERGER SUBJECT TO REGULATORY CONDITIONS AND CODE OF CONDUCT</p>
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HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 18-19, 2016

BEFORE: Chairman Edward S. Finley, Jr., Presiding; Commissioners Bryan E. Beatty, ToNola D. Brown-Bland,<sup>1</sup> Don M. Bailey, Jerry C. Dockham, James G. Patterson, and Lyons Gray

APPEARANCES:

For Duke Energy Corporation:

Kodwo Ghartey-Tagoe, Senior Vice President, State and Federal Regulatory Legal Support, 550 S. Tryon Street, Charlotte, North Carolina 28202

Lawrence B. Somers, Deputy General Counsel, Post Office Box 1551/NCRH 20, Raleigh, North Carolina 27602

For Piedmont Natural Gas Company, Inc.:

James H. Jeffries IV, Moore & Van Allen PLLC, 100 N. Tryon Street, Suite 4700, Charlotte, North Carolina 28202

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<sup>1</sup> Commissioner Brown-Bland was unable to attend portions of the hearing in person but her participation in the consideration of this matter was consented to by all parties based upon her review of the transcript.

For North Carolina Waste Awareness and Reduction Network, Inc., The Climate Times, Inc., and North Carolina Housing Coalition, Inc.:

John D. Runkle, 2121 Damascus Church Road, Chapel Hill, North Carolina 27516

For the Public Works Commission of the City of Fayetteville:

James P. West, West Law Offices, PC, 434 Fayetteville Street, Suite 2325, Raleigh, North Carolina 27601

For Carolina Utility Customers Association, Inc.:

Robert F. Page, Crisp, Page & Currin, LLP, 4010 Barrett Drive, Suite 205, Raleigh, North Carolina 27609

For the Environmental Defense Fund:

Tatjana Vujic, Director, Southeast Clean Energy, 4000 Westchase Boulevard, Suite 510, Raleigh, North Carolina 27607

For the Using and Consuming Public:

Antoinette R. Wike, Chief Counsel, and Elizabeth D. Culpepper, Staff Attorney, Public Staff – North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699

BY THE COMMISSION: On January 15, 2016, pursuant to G.S. 62-111(a), Commission Rule R1-5 and Regulatory Condition 9.1, Duke Energy Corporation (“Duke Energy”) and Piedmont Natural Gas Company, Inc. (“Piedmont”) (collectively referred to hereinafter as the “Applicants”), filed an application for authorization to: (i) engage in a business combination transaction (“transaction” or “merger”); and (ii) revise and apply Duke Energy Carolinas, LLC’s (“DEC”) and Duke Energy Progress, LLC’s (“DEP”) Regulatory Conditions and Code of Conduct to Piedmont (“Application”). The Application included a copy of the Agreement and Plan of Merger between Duke Energy, Forest Subsidiary, Inc. (“Forest”), and Piedmont (“Merger Agreement”) as well as a cost-benefit analysis (“Cost-Benefit Analysis”) and a market power analysis (“Market Power Analysis”) as required by

the Commission's *Order Requiring Filing of Analyses*, issued November 2, 2000, in Docket No. M-100, Sub 129 ("M-100, Sub 129 Order"). The Applicants also filed the testimony of Lynn J. Good, Thomas E. Skains, Frank Yoho, Steven K. Young, and James D. Reitzes.

Concurrent with the filing of the Application in this proceeding, Duke Energy also filed a Request of Duke Energy for Expedited Approval of Piedmont Transaction-Related Financing seeking authorization to engage in certain debt and equity transactions necessary to effectuate the proposed business combination.

On January 29, 2016, the Commission issued an order approving Duke Energy's request for approval of transaction-related financing.

On March 2, 2016, the Commission issued its *Order Scheduling Hearing, Establishing Procedural Deadlines, and Requiring Public Notice* ("Order Scheduling Hearing"). This order, among other things, established a hearing date of July 18, 2016, set prefiled testimony dates, and required the Applicants to give notice to their customers of the hearing on this matter. In addition, the Order Scheduling Hearing found and concluded that the Application satisfied the requirements of the M-100, Sub 129 Order.

Petitions to intervene were filed by the Public Works Commission of the City of Fayetteville ("FPWC"); Carolina Utility Customers Association, Inc. ("CUCA"); Environmental Defense Fund ("EDF"); and North Carolina Waste Awareness and Reduction Network, Inc., the Climate Times, Inc., and the North Carolina Housing Coalition, Inc. (collectively "NC WARN"). By various orders, the Commission granted these petitions to intervene. The intervention of the Public Staff – North

Carolina Utilities Commission (“Public Staff”) is recognized pursuant to G.S. 62-15(d) and Commission Rule R1-19(e).

On May 9, 2016, Piedmont filed objections to FPWC’s first data request. On May 11, 2016, FPWC filed a motion to compel a response (“Motion to Compel”), which was answered by Piedmont on May 12, 2016. On May 23, 2016, the Commission issued its order denying FPWC’s motion.

Limited admission to practice before the Commission was granted to an out-of-state attorney for EDF.

On May 24, 2016, Dr. Richard Fireman filed a timely petition to intervene, which was opposed by the Applicants in a May 25, 2016 filing. Dr. Fireman responded to the opposition of the Applicants on May 31, 2016. On June 9, 2016, the Chairman issued an Order denying Dr. Fireman’s petition. On June 20, 2016, Dr. Fireman filed a document requesting full review by the Commission of his petition to intervene. Dr. Fireman’s request for full review was denied by Commission Order dated June 23, 2016.

On May 27, 2016, Columbia Energy, LLC (“Columbia”) filed a timely petition to intervene, which was opposed by the Applicants in a June 2, 2016 filing. Columbia filed a response on June 8, 2016. On June 27, 2016, the Commission issued an Order denying Columbia’s petition to intervene.

On June 9, 2016, EDF filed the testimony and exhibits of Dianne Munns.

On June 10, 2016, the Public Staff filed an Agreement and Stipulation of Settlement between the Applicants and the Public Staff, which included stipulated Regulatory Conditions and a Code of Conduct, and the supporting testimony of

Public Staff witness James G. Hoard.

Also on June 10, 2016, testimony was filed in this proceeding by NC WARN witnesses Touché Howard and J. David Hughes.

On June 13, 2016, the Public Staff filed Appendix A to its witness Hoard's testimony, which was inadvertently omitted from the Public Staff's June 10, 2016 filing.

On June 14, 2016, the Applicants filed a Settlement Agreement between the Applicants and CUCA ("CUCA Settlement").

On June 16, 2016, the Applicants moved to strike portions of NC WARN witnesses Hughes' and Howard's testimony on the grounds that the testimony was irrelevant and beyond the scope of this docket and moved, *in limine*, to preclude questioning at the hearing of this matter on the subjects raised by NC WARN witnesses Hughes and Howard. NC WARN responded to this motion in a filing on June 22, 2016.

On June 17, 2016, the Commission issued the *Order Allowing Testimony in Response to Settlement Agreements*, which called for comments in response to the filed agreements to be filed by July 1, 2016.

On June 21, 2016, a settlement agreement between the Applicants and EDF ("EDF Settlement") was filed, and the Commission issued an Order on June 23, 2016, allowing comments in response to the EDF Settlement by July 1, 2016.

On June 25, 2016, consistent with the provisions of the EDF Settlement, EDF filed a notice of the withdrawal of the testimony and exhibits of EDF witness Munns.

On June 28, 2016, the Commission granted the Applicants' motion to strike portions of the testimony of NC WARN witnesses Howard and Hughes but reserved ruling on the Applicants' motion *in limine*.<sup>2</sup>

On June 28, 2016, NC WARN filed the testimony of Samuel Gunter in response to the Agreement and Stipulation of Settlement between the Applicants and the Public Staff.

Also on June 28, 2016, Dr. Fireman filed a Petition for Writ of Mandamus and Motion for Temporary Stay with the North Carolina Court of Appeals ("NC COA") regarding the Commission's denial of his petition to intervene in this proceeding. The NC COA issued an order on July 5, 2016, dismissing Dr. Fireman's motion for temporary stay and delaying a ruling on the Petition for Writ of Mandamus until parties responded to his petition. The Applicants and the Public Staff each filed responses in opposition to Dr. Fireman's petition on July 11, 2016. On July 14, 2016, the NC COA issued an order denying Dr. Fireman's petition.

On July 1, 2016, the Applicants filed the Supplemental and Rebuttal Testimony of Bruce P. Barkley regarding the settlement agreements reached with the parties in this proceeding.

On July 6, 2016, the Commission issued its *Order Regarding Procedure of*

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<sup>2</sup> In issuing its ruling granting the Applicants' Motion to Strike, the Commission examined the subject matter of the testimony of witnesses Hughes and Howard and concluded that such testimony was not relevant to the discrete legal issues before the Commission in this proceeding. The Commission noted that such testimony instead involved generic concerns around methane emissions, potential inadequacy of future natural gas supplies, and the possibility that higher natural gas prices will be passed on to ratepayers. None of these matters are at issue under the legal standards applicable to this case. The Commission also noted that there were no proposals in this docket to increase the use of natural gas by DEC or DEP or to pass along increased rates to ratepayers. *Order Granting Motion to Strike and Reserving Decision on Motion in Limine*, Docket Nos. E-2, Sub 1095; E-7, Sub 1100; and G-9, Sub 682 (June 28, 2016).

*Public Hearing*, which established procedures for witness testimony at the July 18, 2016 hearing.

On July 14, 2016, pursuant to the Commission's Order Scheduling Hearing, the Applicants filed the Joint List and Order of Witnesses with Estimated Times for Cross-Examination for the July 18, 2016 evidentiary hearing.

On July 15, 2016, the Applicants filed an Amendment to the Agreement and Stipulation of Settlement between the Applicants and the Public Staff along with the Supplemental Settlement Testimony of Bruce P. Barkley. The Agreement and Stipulation of Settlement between the Applicants and the Public Staff and the Amendment thereto are hereinafter collectively referred to as the "Public Staff Settlement."

Numerous statements of position from members of the public were received by the Commission and the Public Staff and were filed in these dockets.

The matter came on for hearing on July 18, 2016, as scheduled. At the beginning of the hearing, testimony was received from public witnesses Ruth Zalph, John Wagner, Dr. Steven Norris, Beth Henry, Catherine Chandler, Andrew Hernandez, Clint McSherry, Hope Taylor, Dr. Richard Fireman, Dr. Steve English, and Emily Wilkins. Following the testimony of public witnesses, the pre-filed testimony and exhibits of the following party witnesses were received into evidence or admitted into the record:

For the Applicants: Lynn J. Good, Chairman, President and Chief Executive Officer of Duke Energy; Thomas E. Skains, Chairman, President and Chief Executive Officer of Piedmont; Frank Yoho, Senior Vice President and Chief Commercial Officer of Piedmont; Steven K. Young, Executive Vice President and Chief Financial Officer of Duke Energy; James D. Reitzes, a Principal of the Battle Group; and Bruce P. Barkley Vice President –

Regulatory Affairs, Rates and Gas Cost Accounting of Piedmont.

For the Public Staff: James G. Hoard, Director of the Accounting Division of the Public Staff.

For NC WARN: Samuel Gunter, Director of Policy and Advocacy for the North Carolina Housing Coalition.<sup>3</sup>

At the hearing, the Application and exhibits thereto, as well as the settlement agreements between the Applicants and CUCA, EDF, and the Public Staff, including the Amendment thereto filed on July 15, 2016, were entered into the record without objection.

### **RULING ON MOTION IN LIMINE AND CONTINUING OBJECTIONS**

In their motion *in limine*, the Applicants moved to preclude cross-examination from NC WARN's counsel regarding certain issues relating to environmental concerns, gas cost price volatility, methane emissions, and other matters raised in the prefiled testimony of witnesses for NC WARN, which the Commission struck from the record as irrelevant to this proceeding under Rule 402 of the North Carolina Rules of Evidence. The Commission initially reserved ruling on this motion until the hearing. At the hearing, counsel for Applicants renewed this motion and also raised objections to questions on these topics from NC WARN's counsel. The Chairman granted Applicants a continuing objection to these questions but allowed the questions subject to objection. T. Vol. 1, pp. 111, 114-16, 121-22, and 132-33. The Public Staff subsequently joined in the

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<sup>3</sup> Mr. Gunter's testimony is the only testimony offered by a party at the hearing that opposed any aspect of the Public Staff Settlement or the merger itself. In addition, at the hearing, counsel for NC WARN explained that NC WARN witnesses Hughes and Howard were not present and would not attend the hearing because portions of their testimony had been stricken and to bring them to the hearing in light of this fact would be "a waste of time and money." T. Vol. 1, p. 67.



Applicants' objection. T. Vol. 3, p. 95. The Chairman's stated purpose in allowing the questions subject to objection was to provide an opportunity for NC WARN's counsel to address the purported relevance of these questions both during the hearing and afterward before issuing a definitive ruling. Counsel for NC WARN, however, never explained or argued the relevance of his line of questioning during the hearing but indicated that he would address relevance in his post-hearing filing. T. Vol. 3, pp. 117-18.

The Commission has now considered the arguments of the Applicants and NC WARN with regard to these subjects and finds that questions related to methane emissions, global warming, gas reserves, and similar environmental concerns are not relevant to this proceeding because they are fundamentally policy matters beyond the scope of this Commission's jurisdiction (and subject to the jurisdiction of other state and federal agencies) and will not be impacted by the proposed merger in any event. Additionally, NC WARN failed to demonstrate how the issues it raised related to gas cost price volatility and natural gas supply projections are relevant to the merits of the proposed merger. Therefore, consistent with the Commission's ruling on the Applicants' Motion to Strike and pursuant to Rule 402 of the North Carolina Rules of Evidence, the Commission finds that answers to questions regarding these matters are neither probative of nor relevant to the Commission's consideration as to whether the proposed merger is justified by the public convenience and necessity as that determination is made within the scope of the Commission's authority and jurisdiction pursuant to G.S. 62-111(a). Accordingly, the objections to questions from NC WARN on these

subjects are sustained and the answers thereto are hereby stricken from the record in this proceeding and shall play no part in the Commission's consideration of the proposed merger.

### **RULING ON APPLICANTS' REQUEST FOR MERGER APPROVAL**

Based on the testimony and exhibits presented at the hearing of this matter, the record in this matter, and the record as a whole, the Commission makes the following:

### **FINDINGS OF FACT**

#### **Jurisdiction**

1. Duke Energy is a corporation duly organized and existing under the laws of Delaware and is headquartered in Charlotte, North Carolina. DEC and DEP, wholly-owned subsidiaries of Duke Energy, are limited liability companies organized, existing, and operating under the laws of North Carolina.

2. DEC is engaged in the business of generating, transmitting, distributing, and selling electricity to approximately 2.5 million retail customers in a service area that covers more than 24,000 square miles in portions of central and western North Carolina and western South Carolina. DEC also sells electricity in the wholesale market to various municipal, cooperative, and investor-owned electric utilities.

3. DEP is engaged in the business of generating, transmitting, distributing, and selling electricity to approximately 1.5 million retail customers in a service area that covers more than 34,000 square miles in portions of eastern, central, and western North Carolina and eastern South Carolina. DEP also sells

electricity in the wholesale market to various municipal, cooperative and investor-owned electric utilities.

4. DEC and DEP are public utilities under the laws of North Carolina and their respective public utility operations are subject to the jurisdiction of this Commission.

5. Duke Energy also owns two combined electric and natural gas local distribution utilities in Ohio and Kentucky – Duke Energy Ohio, LLC (“DEO”), and Duke Energy Kentucky, LLC (“DEK”) – which collectively provide natural gas transportation, distribution, and sales service to approximately 500,000 customers in those states.

6. Duke Energy is also the sole owner of Forest, a North Carolina corporation formed for the purpose of effectuating a business combination transaction with Piedmont.

7. Piedmont is a corporation duly organized, existing, and operating under the laws of North Carolina.

8. Piedmont is engaged in the business of transporting, distributing, and selling natural gas in North Carolina, South Carolina and Tennessee, serving approximately 1 million retail customers throughout a service territory comprising approximately 39,000 square miles in portions of eastern, central, and western North Carolina, western South Carolina, and the greater Nashville metropolitan area in Tennessee.

9. Piedmont is a public utility under the laws of North Carolina and its public utility operations are subject to the jurisdiction of this Commission.

### Procedural Status

10. The Applicants are lawfully and properly before this Commission pursuant to G.S. 62-111(a) with respect to the relief sought in the Application and are in compliance with the requirements of the M-100, Sub 129 Order with respect to the filing of a market power analysis and a cost-benefit analysis related to the proposed transaction.

11. The Application, testimony, exhibits, affidavits of publication, and public notices submitted by the Applicants are in compliance with the procedural requirements of the General Statutes and the Rules and Regulations of the Commission.

### Nature of Proposed Transaction

12. The Merger Agreement provides that, at closing, Piedmont will merge with Forest and “New” Piedmont will be the surviving corporation. In conjunction with this combination, Piedmont shareholders will receive \$60.00 a share, in cash, for each outstanding share of Piedmont stock they own. Following the closing, Piedmont’s shareholders will no longer own any interest in Piedmont, and Piedmont will be a wholly-owned subsidiary of Duke Energy.

13. Following the closing of the merger, Duke Energy will add one member from Piedmont’s Board of Directors to the Duke Energy Board of Directors, Thomas E. Skains, Piedmont’s current Chairman, President, and Chief Executive Officer.

### Post-Closing Operations and Commitments

14. Following the closing of the merger, Piedmont will be operated as a fully functional and separate natural gas subsidiary of Duke Energy.

15. Following the closing of the merger, Piedmont will be managed predominantly by members of Piedmont's existing executive management team and will be led by Frank Yoho, Piedmont's current Senior Vice President and Chief Commercial Officer.

16. Following the closing of the merger, management of Duke Energy's existing natural gas properties and investments will be consolidated under the leadership of Mr. Yoho.

17. Following the closing of the merger, Piedmont will continue to operate under its existing name, will continue to maintain its headquarters in Charlotte at its existing offices, and will retain most of its current operational employees.

### Benefits, Costs and Risks

18. Known and potential benefits of the merger are both economic and non-economic, quantifiable and non-quantifiable, in nature.

19. Known and potential economic or quantifiable benefits of the merger, agreed to by the Applicants and supported by the record, include:

- (i) the realization of projected merger-related costs savings by Piedmont ratepayers through future general rate case proceedings in an annual amount of approximately \$9.45 million;

(ii) the accelerated sharing with Piedmont customers of \$10 million in merger-related cost savings through a one-time bill credit on or before December 31, 2016, as provided by the Public Staff Settlement;

(iii) the withdrawal of Piedmont's pending Application for Approval of Deferred Accounting Treatment of Certain Distribution Integrity Management Costs ("DIMP Deferral Application"), filed on March 11, 2016, in Docket No. G-9, Sub 686, in which Piedmont estimated that its costs subject to deferral would be as high as \$18.03 million for North Carolina over the next five years, or approximately \$3.6 million per year, as provided by the Public Staff Settlement;

(iv) a continuation of annual community support and charitable contribution initiatives in North Carolina by the Duke Energy Foundation and the Piedmont Natural Gas Foundation for four years from the closing of the merger at annual levels of no less than \$9.65 million, \$6.375 million, and \$1.5 million, for community support and charitable contributions in the North Carolina service territories of DEC, DEP, and Piedmont, respectively, as provided by the Public Staff Settlement;

(v) a contribution of \$7.5 million by DEC, DEP, and Piedmont to the Duke Energy Foundation and the Piedmont Natural Gas Foundation within twelve months following the closing of the merger towards North Carolina workforce development and low income energy assistance, as provided by the Public Staff Settlement;

(vi) the exclusion from recovery from ratepayers of the acquisition premium paid by Duke Energy associated with the merger, as committed to by the Applicants;

(vii) the exclusion from recovery from ratepayers of merger-related direct expenses and severance costs, as provided by the Public Staff Settlement;

(viii) the limitation on recovery of merger-related transition costs to capital costs incurred no later than three years from the close of the merger that result in quantifiable cost savings offsetting the revenue requirement effect of including those costs in rate base, as provided by the Public Staff Settlement;

(ix) the exclusion from recovery from ratepayers of all Piedmont long-term incentive plan (performance shares and restricted stock units/shares) costs that result from the increase in the Piedmont stock price above the \$42.22 per share closing price on October 23, 2015, adjusted for changes in the stock price that would have occurred absent the merger, as provided in the Public Staff Settlement;

(x) a reduction in the interest rate applicable to monies owed to Piedmont by customers for under-recovery of gas costs, as provided in the Public Staff Settlement;

(xi) a guarantee by DEC and DEP that their North Carolina retail ratepayers will receive the benefit of their allocable shares of an additional \$35 million in fuel and fuel-related cost savings under the mechanism

implemented in the 2012 merger of Duke Energy and Progress Energy, Inc., Docket Nos. E-2, Sub 998 and E-7, Sub 986 (“Duke-Progress Merger”), as provided in the CUCA Settlement;

(xii) the absence of any proposed changes in Piedmont’s rates, terms or conditions of service, other than the \$10 million bill credit described above, as a consequence of the merger;

(xiii) a projected reduction in future financing costs for Piedmont;

(xiv) potential reductions in the costs of operating Piedmont, DEC, and DEP;

(xv) enhanced efficiencies in the procurement of natural gas supplies and capacity as a result of integrated planning and the sharing of corporate best practices; and

(xvi) ensured adequate, reliable, and cost-effective gas supply for electric generation by DEC and DEP.

20. Known and potential non-economic or non-quantifiable benefits of the merger identified by the Applicants, and supported by the record, include:

(i) the retention of Piedmont’s corporate headquarters, operational management team, strong corporate presence, and business operations in North Carolina and a reduced risk that the merged companies will be a target for acquisition by out-of-state entities;

(ii) the preservation of this Commission’s full regulatory oversight and jurisdiction over Piedmont’s rates, terms, and conditions of service;



(iii) the consolidation of Duke Energy's natural gas operations and investments with those of Piedmont under the functional leadership of Mr. Yoho;

(iv) a larger, more economically stable, and diversified utility holding company with lower aggregate market risk capable of more effectively competing for capital and developing and expanding natural gas and electric infrastructure within North Carolina;

(v) expanded opportunities for growth in the natural gas sector of the energy economy;

(vi) enhanced customer service through preservation of Piedmont's recognized customer service focused culture and the opportunity to share best practices in this area between Piedmont, DEC, and DEP;

(vii) the provision of more efficient and reliable service by Piedmont, DEC, and DEP resulting from the consolidation of gas and electric operations under a single corporate umbrella;

(viii) enhanced opportunities for procurement of upstream capacity and supply at favorable prices;

(ix) enhanced coordination in the expansion and construction of new electric and natural gas infrastructure within the State;

(x) the implementation of Integrated Volt Var studies by DEC and DEP as provided by the EDF Settlement;

(xi) preservation of consistent management of the State's largest natural gas utility through retention of most of its existing management team; and

(xii) preservation of existing competition between electric and natural gas utilities in the State.

21. The Regulatory Conditions and Code of Conduct attached to the Public Staff Settlement are another benefit of the merger to North Carolina retail customers in that they update, clarify, strengthen, and expand the existing Regulatory Conditions and Code of Conduct approved by the Commission in the Duke-Progress Merger.<sup>4</sup>

22. Known and potential costs and risks of the merger to North Carolina customers include:

(i) the potential impact on DEC, DEP, and Piedmont customer rates of costs incurred to achieve the merger, including the acquisition premium, direct merger costs, severance costs, and transition costs;

(ii) greater regulatory scrutiny that may be required over transactions involving one or more of DEC, DEP, or Piedmont with each other or with non-utility Duke Energy affiliates;

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<sup>4</sup> The Regulatory Conditions were subsequently modified by the Commission's *Order Approving Revisions to Regulatory Conditions Nos. 7.7 and 7.8* issued March 24, 2015, in Docket Nos. E-7, Subs 986 and 986A, and E-2, Subs 998 and 998A, and *Order Approving Transfer of Employees and Amendment to Regulatory Condition [No. 5.3]* issued November 25, 2015, in Docket Nos. E-7, Sub 986 and E-2, Sub 998.

(iii) the potential for discriminatory behavior in intra-company transactions by DEC, DEP, and Piedmont compared to similar transactions with third parties;

(iv) the potential adverse impact on the cost of capital of DEC, DEP, or Piedmont from merger-related credit downgrades;

(v) the potential reduction in competition between natural gas and electricity in markets where Piedmont's service territory overlaps with the service territories of DEC or DEP; and

(vi) the potential for a deterioration in service quality by Piedmont.

#### Potential Adverse Impacts on Rates and Services

23. The proposed merger will not adversely impact rates or services for DEC, DEP, or Piedmont customers.

24. No change in the rates, terms or conditions of service applicable to DEC, DEP, or Piedmont is proposed or will result from the merger.

25. The Public Staff Settlement and the CUCA Settlement ensure that direct quantifiable benefits accrue to DEC, DEP, and Piedmont customers as a result of the merger.

26. The Public Staff Settlement, including the provisions of the stipulated Regulatory Conditions and Code of Conduct, ensures the continued independent operations of DEC, DEP, and Piedmont following the merger and precludes adverse impacts arising from the merger on rates and services provided by these companies.

27. Any future proposed changes to the rates, terms, or conditions of service of DEC, DEP, or Piedmont will be subject to Commission review and approval.

28. No diminution in the Commission's authority, jurisdiction, or right to regulate DEC, DEP, and Piedmont is proposed or will result from the merger.

Protection of Ratepayers from Costs and Risks

29. Ratepayers of DEC, DEP, and Piedmont will be adequately protected, to the extent reasonably possible, from the potential costs and risks of the proposed merger.

30. Neither the acquisition premium nor merger-related direct expenses will be charged to or recovered from customers of DEC, DEP, or Piedmont.

31. Merger-related severance costs will not be charged to or recovered from customers of DEC, DEP, or Piedmont.

32. Merger-related transition costs will not be charged to or recovered from customers of DEC, DEP, or Piedmont except to the extent that: (i) quantifiable benefits result from the incurrence of such costs; (ii) the quantifiable benefits exceed those costs; (iii) such costs are incurred within the first three years of the merger; (iv) such costs relate to qualified capital investments; and (v) such costs are approved for recovery by the Commission.

33. Provisions of the General Statutes and the Public Staff Settlement, including the stipulated Regulatory Conditions and Code of Conduct, will protect ratepayers, to the extent reasonably possible, from merger-related costs and risks by:

(i) requiring the separate and independent functioning of DEC, DEP, and Piedmont;

(ii) requiring Commission approval of affiliate contracts and cost allocations;

(iii) ensuring that affiliated transactions fairly allocate the costs of common goods and services among affiliates, protect ratepayers from overcharges by non-regulated affiliates, and prevent cross-subsidization of non-regulated affiliates by utility affiliates;

(iv) ensuring that costs incurred by DEC, DEP, and Piedmont are properly incurred, accounted for, and directly charged, assigned, or allocated to their respective North Carolina retail operations;

(v) providing for appropriate and effective auditing and reporting requirements with respect to affiliate transactions and cost-of-service for retail ratemaking purposes;

(vi) ensuring that the priority of natural gas service provided by Piedmont to DEC and DEP is consistent with Commission established priorities and not unduly discriminatory with respect to third-party gas-fired electric generators;

(vii) requiring that DEC, DEP, and Piedmont continue to independently acquire and own their own upstream capacity and supply contracts based upon the needs of their respective customers;

(viii) excluding secondary market sales of gas by Piedmont to DEC or DEP from Piedmont's secondary market sharing mechanism;

(ix) requiring continued gas and electric competition in areas where the service areas of Piedmont and DEC or DEP overlap; and

(x) effectively controlling the relationships, activities, and transactions among DEC, DEP, and Piedmont, and their affiliates following the close of the merger;

#### Customer Benefits Offset Costs and Risks of the Transaction

34. Known and potential benefits of the merger to ratepayers and to others are sufficient to offset the potential costs and risks of the merger.

#### Monopoly Market Power, Anti-Competition and Self-Dealing Concerns

35. The proposed merger will not lead to the concentration or creation of significant additional market power in either Duke Energy, DEC, DEP, or Piedmont, will not result in an anti-competitive impact on markets subject to the Commission's jurisdiction (or otherwise), and will not create the potential for self-dealing by and among DEC, DEP and Piedmont.

#### Public Convenience and Necessity

36. The proposed merger, as modified, limited and restricted by the Public Staff Settlement, the CUCA Settlement, and the EDF Settlement, is justified by the public convenience and necessity and should be approved.

### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-11 (Jurisdiction and Procedural Status)**

The evidence supporting these findings of fact is set forth in the Application, the Merger Agreement, the Market Power Analysis, the Cost-Benefit Analysis, the testimony of Applicants witnesses Good and Skains, and the Commission's

records in this and other proceedings. These findings are essentially informational, procedural, and jurisdictional in nature and are not contested by any party.

According to the Application and Merger Agreement, as well as the testimony of witnesses Good and Skains, Duke Energy and Piedmont intend to engage in a transaction pursuant to which Duke Energy will become the owner of Piedmont through the purchase of all the outstanding stock of Piedmont from Piedmont's existing shareholders. T. Vol. 1, pp. 74-75 and 91. There is no dispute that such a transaction requires the approval of this Commission under G.S. 62-111(a) and the Application seeks such approval.

In addition, the M-100, Sub 129 Order requires the Applicants to file both a market power analysis and a cost-benefit analysis in conjunction with an application for Commission approval of the proposed merger. The market power analysis must include a Herfindahl-Hirschman Index ("HHI") evaluation of the proposed merger and the cost-benefit analysis must set forth a "comprehensive list of all material areas of expected benefit, detriment, cost and savings over a specified period (e.g., three to five years) following consummation of the merger . . . ." M-100, Sub 129 Order, p. 7. The purpose of these required filings is to assist the Commission in making the public convenience and necessity determination required under G.S. 62-111(a).

Consistent with the requirements of the M-100, Sub 129 Order, the Application included both a Cost-Benefit Analysis and a Market Power Analysis as Exhibits B and C to the Application. The Market Power Analysis was prepared by the Brattle Group and contains, among other things, an HHI analysis of the relative

market power of Duke Energy both before and after the proposed merger as required by the M-100, Sub 129 Order. The Cost-Benefit Analysis enumerates identified costs and benefits associated with the proposed merger transaction. In its Order Scheduling Hearing, the Commission found and concluded that “the application satisfies the requirements of the November 2, 2000, Order in Docket No. M-100, Sub 129.” Order Scheduling Hearing, p. 2. No party challenged Applicants’ satisfaction of the M-100, Sub 129 Order requirements.

Finally, a review of the record in this proceeding indicates that the Applicants have complied with all procedural and notice requirements established by the Commission in the Order Scheduling Hearing.

The Commission, therefore, finds and concludes that Duke Energy and Piedmont are lawfully before the Commission with respect to the relief sought in the Application and are in compliance with the merger filing requirements established in Docket No. M-100, Sub 129, with respect to the market power and cost-benefit analyses submitted with the Application.

**EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12-17  
(Nature of Proposed Transaction,  
Post-Closing Operations and Commitments)**

The evidence supporting these findings of fact is set forth in the Application, the Merger Agreement, and the testimony of Applicants witnesses Good, Skains, and Yoho, and is uncontested.

Through the Application and supporting testimony, the Applicants described the process for accomplishing the merger and the holding company structure that will exist upon closing.



The Application describes the proposed merger transaction as follows:

- a. Forest and Piedmont will merge, with Piedmont being the surviving entity (this surviving entity is referred to herein as New Piedmont);
- b. The articles of incorporation and bylaws of New Piedmont will be in the form of the articles of incorporation and bylaws of Forest prior to the Transaction;
- c. Immediately following the Transaction closing, the directors of New Piedmont will be those persons that were the directors of Forest immediately prior to the Transaction closing. Subsequent to the Transaction closing, changes to the directors of New Piedmont may be made based upon integration efforts and Duke Energy's entity management conventions;
- d. Immediately following the Transaction closing, the officers of New Piedmont will be those persons that were the officers of Piedmont immediately prior to the Transaction closing. Subsequent to the Transaction closing, changes to the officers of New Piedmont may be made based upon integration efforts and Duke Energy's entity management conventions; and
- e. New Piedmont will be a direct, wholly-owned subsidiary of Duke Energy.

Application at para. 4.

The Application further indicates that

upon consummation of the Transaction: (i) each issued and outstanding share of common stock of Piedmont will be converted into and will thereafter represent solely the right to receive an amount in cash; and (ii) each issued and outstanding share of capital stock of Forest will be converted into and become one validly issued, fully paid, and non-assessable share of common stock of New Piedmont. Thus, as a result of the Transaction: (i) Duke Energy (which presently owns all the stock of Forest) will own all the stock of New Piedmont; and (ii) the ownership of stock in Duke Energy will not be impacted.

Application at para. 5. Finally, the Application indicates that "[u]nder the terms of the Merger Agreement, each share of Piedmont's common stock will be converted

into the right to receive \$60.00 in cash, without interest and less any applicable taxes.” Application at para. 6.

This structure is confirmed by the provisions of the Merger Agreement itself, which is attached to the Application as Exhibit A. This structure is also described in the testimony of Applicants witnesses Good and Skains, and those descriptions are consistent with the Application and Merger Agreement. T. Vol. 1, pp. 74-75 and 91.

The Application provides, in paragraph 21, that “[t]he Transaction will not have a net adverse impact on the rates and services of DEC, DEP, and Piedmont.”

The Merger Agreement provides, in Section 1.7(c), that Duke Energy “will take all necessary action so that, as soon as practicable after the Effective Time, Parent will expand the size of its board of directors by one seat and appoint a mutually agreeable current member of the Company’s Board as a director to serve on Parent’s board of directors.”

The Application provides that “Duke Energy has agreed, following the Transaction, to expand the size of its board of directors by one seat and has designated Mr. Thomas E. Skains . . . to serve as a director on Duke Energy’s Board of Directors.” Application at para. 7.

In addition, Applicants witnesses Good and Skains confirmed Mr. Skains’ selection to sit on the Duke Energy Board of Directors following the closing of the merger. T. Vol. 1, pp. 80 and 97.

The Application provides, in paragraph 8, that “[a]t the closing of the Transaction, Piedmont will become New Piedmont, a wholly-owned subsidiary of

Duke Energy that will continue to exist as a separate legal entity. New Piedmont will retain its existing headquarters in Charlotte.” Similarly, in paragraph 14, the Application states that “New Piedmont will retain its name and operate as a business unit of Duke Energy and continue to maintain its current headquarters office in Charlotte.” In paragraph 16, the Application states that “Mr. Yoho will lead Duke Energy’s natural gas operations in the Carolinas, Tennessee, Ohio, and Kentucky and report to Ms. Good. He will be assisted in these efforts by members of Piedmont’s existing operational leadership team . . . .” In paragraph 23, the Application provides that “Duke Energy and Piedmont do not anticipate a significant number of involuntary workforce reductions associated with the combination.”

The Merger Agreement provides additional evidence on these matters. In Section 1.7(d), the Merger Agreement provides that upon closing, Duke Energy “intends to offer to retain the existing executive operating management team of the Company to manage Parent’s and the Company’s combined natural gas operations and . . . expects the head of such combined operations to report directly to the Chief Executive Officer of Parent and serve on Parent’s Senior Management Committee.” In Section 1.7(g) the Merger Agreement provides that upon closing Duke Energy “intends to cause [Piedmont] . . . to maintain the Company brand and continue to operate their business thereunder.”

Applicants witness Good testified that “Piedmont will retain its current name, corporate form and headquarters” and that “[f]or the most part, Piedmont’s overall operational management team and operational philosophy will be unchanged,

which will allow for the continuation and enhancement of the already excellent service that Piedmont provides to North Carolina customers.” T. Vol. 1, pp. 75 and 79. Ms. Good further testified that “[u]pon closing of the Merger, Frank Yoho . . . will manage Duke Energy’s natural gas operations . . . [and] will report directly to me.” T. Vol. 1, pp. 79-80. Finally, Ms. Good testified that the “Carolinas and Tennessee gas LDC operations will continue to be run under the Piedmont Natural Gas brand, and the operations team will be based at Piedmont’s current headquarters in Charlotte, North Carolina.” T. Vol. 1, p. 80.

Applicants witness Skains testified that his “belief is that Duke Energy intends to operate Piedmont as a separate natural gas subsidiary and combine Duke Energy’s existing LDC operations and additional interstate joint venture investments . . . under the leadership of Frank Yoho . . . who has been named by Ms. Good as head of Duke Energy/Piedmont’s combined gas operations upon the close of the Merger.” T. Vol. 1, p. 94. According to Mr. Skains, this “will preserve and expand the Piedmont name and ‘brand’ and allow the Company to maintain and expand its high-performance/customer service focused culture in providing natural gas service to both existing and new customers.” T. Vol. 1, p. 94.

Applicants witness Yoho testified that as of the effective date of the merger he “will assume responsibility for Piedmont’s operations, as well as Duke Energy’s gas LDC operations and the consolidated gas pipeline investments. . . . [and that he] will report directly to Lynn Good . . . .” T. Vol. 2, p. 58. Witness Yoho further testified that “the intent of the parties is that Piedmont will continue as a fully functional operating natural gas subsidiary of Duke Energy following closing . . .

[and that] Piedmont will maintain its core management team and strong local presence to ensure the continued provision of safe, reliable and efficient natural gas service in and throughout the service areas in which we currently operate.” T. Vol. 2, p. 59. Finally, Mr. Yoho testified that “after the Merger, Piedmont will continue to provide safe and reliable natural gas service to the public with the same high level of customer service and operational excellence that we currently provide. This service will also continue to be fully regulated by this Commission and the other state public service commissions under whose jurisdiction we operate.” T. Vol. 2, p. 61.

Ms. Good’s testimony, as well as the testimony of Mr. Skains and Mr. Yoho, described the proposed merger as “strategic” in nature and not based on “synergies.” T. Vol. 1, pp. 75-76, 96, and 162, and Vol. 2, pp. 60-61. As a result, as testified to by Mr. Yoho, job displacement should be limited. T. Vol. 2, p. 66.

Based on the foregoing evidence, the Commission finds that the rates and service of DEC, DEP, and Piedmont will remain subject to the same degree of regulatory oversight and control by the Commission as they were before the close of the merger. Additionally, the proposed integration plan will allow Piedmont to continue operating as a fully functional and separate natural gas entity following the close of the merger. The proposed management plan ensures that Piedmont’s operations will continue to be managed by individuals with extensive experience in the natural gas distribution industry and the operations of Piedmont. Based on these findings, the Commission concludes that the Post-Closing Operations and

Commitments of Applicants are consistent with the public convenience and necessity.

**EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 18-22  
(Benefits, Costs and Risks)**

The evidence for these findings of fact is set forth in the Application, the Cost-Benefit Analysis, the Public Staff Settlement, the CUCA Settlement, the EDF Settlement, the testimony of Applicants witnesses Good, Skains, Young, Yoho, and Barkley, and the testimony of Public Staff witness Hoard.

In the Application, the Applicants identified a number of projected benefits from the merger. These include the retention of Mr. Yoho to lead Piedmont and Duke Energy's combined natural gas operations and investments assisted by the majority of Piedmont's existing operational management team (Application at pp. 6 and 9), financial and strategic benefits associated with the incorporation of Piedmont's utility operations into a larger and more diverse energy company with enhanced access to capital and greater potential for further growth in the natural gas industry (Application at pp. 8-9), enhanced opportunities for the combined companies to procure gas supplies and capacity at favorable prices, to participate in gas infrastructure expansion projects, and to ensure an adequate, reliable and cost-effective supply of natural gas for DEC and DEP (Application at pp. 10-11) – which the Commission has previously recognized as a benefit in mergers between electric utilities and gas local distribution companies. See *Order Approving Merger and Issuance of Securities*, issued July 13, 1999, in Docket Nos. E-2, Sub 740 and G-21, Sub 377. The Application also projects benefits resulting from increased reliability and efficiency in the provision of both electric and natural gas service by

the combined companies, no proposed increase in rates or changes to services provided by DEC, DEP and Piedmont resulting from the merger, and the opportunity for cost-savings for Piedmont customers resulting from the merger integration process (Application at p. 11). Finally, the Application indicates that effective regulation of DEC, DEP, and Piedmont will not be diminished as a result of the merger and that Piedmont (and DEC and DEP) will continue to maintain a strong corporate presence in North Carolina (Application at pp. 12-13).

In the Cost-Benefit Analysis, Duke Energy and Piedmont also identified a number of benefits attendant to the proposed merger of these two companies. These benefits include (i) a reduction in annual public company operating costs associated with the merger of at least \$9.45 million (Cost-Benefit Analysis at p. 5); (ii) increased financial strength of the combined company resulting in greater ability of Piedmont to access capital on reasonable terms (Cost-Benefit Analysis at p. 3); (iii) a reduction in market risk associated with a larger and more diversified utility holding company structure (Cost-Benefit Analysis at p. 3); (iv) enhanced system efficiency and reliability for DEC and DEP resulting from the consolidation of Piedmont into the Duke Energy corporate structure (Cost-Benefit Analysis at p. 3); (v) potential enhancement of gas supply and capacity procurement activities by the combined utilities (Cost-Benefit Analysis at p. 4); (vi) preservation of Piedmont's corporate presence in North Carolina (Cost-Benefit Analysis at p. 5); (vii) enhanced ability to facilitate infrastructure expansion for both gas and electric customers (Cost-Benefit Analysis at p. 6); and (viii) maintenance of existing service by DEC, DEP, and Piedmont at existing rates, terms and conditions of service

(Cost-Benefit Analysis at p. 6). Benefits identified by the Cost-Benefit Analysis also include the waiver by Applicants of any right to seek recovery of the acquisition premium or transaction fees associated with the proposed merger. Cost-Benefit Analysis at p. 7.

In the Public Staff Settlement, DEC, DEP, and Piedmont agreed to provide certain quantifiable benefits to both ratepayers and to the citizens of the state of North Carolina generally. These benefits include (i) a commitment to credit Piedmont customer bills with a total of \$10 million on or before December 31, 2016, as a form of accelerated sharing of merger-related cost savings; (ii) a four year commitment to continue annual community support and charitable contribution initiatives in North Carolina by the Applicants, through the Duke Energy Foundation and the Piedmont Natural Gas Foundation, in the aggregate amount of no less than \$17.525 million a year; and (iii) a commitment to fund North Carolina workforce development and low income energy assistance within twelve months following the merger in the amount of \$7.5 million, also through the Duke Energy Foundation and the Piedmont Natural Gas Foundation.

The Public Staff Settlement requires Piedmont to withdraw its DIMP Deferral Application wherein it seeks Commission authorization to defer Distribution Integrity Management Program Operations and Maintenance costs projected to total \$18.03 million over the next five years. It also precludes Piedmont's recovery from ratepayers of direct merger-related expenses and severance costs. The Public Staff Settlement further provides for recoverability of merger-related transition costs only in circumstances involving capital costs



associated with achieving merger savings, which are incurred no later than three years from the close of the merger and result in quantifiable cost savings that offset the revenue requirement effect of including the costs in rate base.

The Public Staff Settlement also holds customers harmless from the effects of all Piedmont long-term incentive plan (performance shares and restricted stock units/shares) costs that result from the increase in the Piedmont stock price above the \$42.22 per share closing price on October 23, 2015, adjusted for estimated changes in the stock price that would have occurred absent the merger.

The Public Staff Settlement provides that, beginning with the month in which the merger closes, Piedmont will use the net-of-tax overall rate of return from its last general rate case as the applicable interest rate on all amounts over-collected or under-collected from customers reflected in its Sales Customers Only, All Customers, and Hedging Deferred Gas Cost Accounts. The methods and procedures used by Piedmont for the accrual of interest on the Deferred Gas Cost Accounts will remain unchanged.

Further, the stipulated Regulatory Conditions and Code of Conduct attached to the Public Staff Settlement also provide numerous protections and restrictions governing the ongoing operations of DEC, DEP, and Piedmont. These safeguards, among others, include a number of provisions designed to (i) preserve the Commission's jurisdiction over the regulated utilities (Regulatory Conditions, Section III); (ii) ensure appropriate accounting and allocation of costs between DEC, DEP, and Piedmont (Regulatory Conditions, Section V); (iii) establish intra-company financing requirements and separate accounting for each utility

(Regulatory Conditions, Sections VII and VIII); (iv) ensure ongoing review of the operation of DEC, DEP, and Piedmont under a holding company structure (Regulatory Conditions, Section VIII); (v) ensure continuing levels of service quality for the respective customers of DEC, DEP, and Piedmont (Regulatory Conditions, Section XI); (vi) preserve the integrity of utility specific acquisitions of upstream supply and capacity (Regulatory Conditions, Section XV); (vii) provide for the independence of utility operations and restrict intra-company information sharing (Code of Conduct, Section III.A); (viii) provide for non-discrimination in the interaction of utilities with third-parties (Code of Conduct, Section III.B); (ix) establish requirements for the exchange of goods and services between Duke Energy affiliates (Code of Conduct, Section III.D); (x) provide for Commission approval of inter-company contracts (Code of Conduct, Section III.E); (xi) ensure appropriate prioritization of gas service to DEC and DEP consistent with Commission policy (Code of Conduct, Section III.B.10); and (xii) provide for the continuing separate operation and commercial competition between electric and natural gas utilities owned by Duke Energy (Code of Conduct, Section III.H). These commitments by the Applicants are significant in terms of providing ongoing protection to ratepayers from possible costs and risks of the proposed merger.

Finally, the Public Staff Settlement provides:

The terms of this Stipulation, including the Regulatory Conditions and Code of Conduct, will ensure that the proposed Merger will have no adverse impact on the rates charged and the service provided by DEC, DEP, and Piedmont to North Carolina jurisdictional ratepayers; that DEC's, DEP's, and Piedmont's North Carolina jurisdictional ratepayers are protected and insulated to the maximum extent possible from all known and potential costs and risks associated with the Merger; and that the benefits of the Merger to DEC's, DEP's, and

Piedmont's North Carolina jurisdictional ratepayers are sufficient to offset those potential costs and risks.

Public Staff Settlement, para. 12.

The CUCA Settlement guarantees DEC's and DEP's North Carolina retail customers will receive the benefit of their allocable shares of an additional \$35 million in fuel and fuel-related cost savings under the mechanism approved in the Duke-Progress Merger. The EDF Settlement provides for Integrated Volt Var studies to be conducted by DEC and DEP.

The testimony of the Applicants witnesses also identified a number of benefits of the proposed merger transaction. Applicants witness Good testified to the following anticipated benefits of the proposed merger: (i) creation of a strong natural gas platform within Duke Energy to promote additional investment in the natural gas industry; (ii) diversification of Duke Energy's business and customer base; (iii) the addition of experienced and well-regarded management over natural gas assets and investments of the combined companies; (iv) enhanced ability to plan for and construct additional natural gas and electric infrastructure projects; (v) maintenance of Piedmont as a fully functional natural gas utility headquartered within the state of North Carolina; (vi) increased reliability and efficiency of service to DEC and DEP's gas-fired generation facilities; (vii) customer benefits resulting from the sharing of best-practices with respect to the provision of customer service; and (viii) the addition of Thomas Skains to the Duke Energy board of directors. T. Vol. 1, pp. 75-81.

Applicants witness Skains testified that he perceived the following benefits from the merger: (i) continued operation of Piedmont as a separate natural gas

utility under the leadership of Mr. Yoho, who will have responsibility for Duke Energy/Piedmont's combined natural gas operations and investments; (ii) expansion of the Piedmont name and brand and its high performance/customer service focused culture; (iii) increased opportunities for Duke Energy and Piedmont to participate and invest in the growing natural gas industry; and (iv) enhanced opportunities for both Duke Energy and Piedmont to improve customer service through the sharing of best practices in that area. T. Vol. 1, pp. 94-95.

Applicants witness Yoho testified that he saw benefits from the proposed merger that included: (i) seamless operations from the perspective of Piedmont customers as a result of no change in rates, terms, or conditions of service; (ii) continued focus on the maintenance of Piedmont's customer service obligations; (iii) preservation of Piedmont as a fully functional utility subsidiary of Duke Energy with limited job displacement and without operational disruption from the merger; (iv) preservation of full regulatory jurisdiction by the Commission over Piedmont following the merger; (v) reductions in costs to Piedmont ratepayers as a result of the merger and integration process; and (vi) the protection of ratepayers from costs of the merger through absorption by Duke Energy and Piedmont shareholders of the acquisition premium and transaction costs associated with the merger. T. Vol. 2, pp. 59-63.

Applicants witness Young testified to merger benefits as well, including: (i) the maintenance of investment grade credit ratings and the beneficial impact thereof on access to capital and financing costs; (ii) enhanced creditworthiness as a result of the combination of the companies and the impacts thereof on balance

sheets, earnings and cash-flow; (iii) economies of scale, diversification and operational excellence; and (iv) expanded investor base, improved financing flexibility, and improved access to capital markets in volatile periods. T. Vol. 2, pp. 14-21.

Applicants witness Barkley also testified regarding benefits of the settlements with the Public Staff, CUCA, and EDF and supported those settlements. Mr. Hoard's testimony focused on the context and contents of those settlements and the Applicants' support for those settlements. T. Vol. 2, pp. 140-44 and 149-51.

Finally, Public Staff witness Hoard testified in some detail as to the benefits provided by the Public Staff Settlement discussed above. Mr. Hoard also described the proposed new Regulatory Conditions and Code of Conduct provisions that address matters related to the affiliate relationship of Piedmont's local distribution gas company operations with the electric utility operations of Duke Energy. T. Vol. 3 pp. 73-89. These provisions are previously discussed in detail.

The Commission has carefully reviewed and considered all of the evidence set forth above describing the known and potential benefits of the proposed merger and finds it to be credible. Many of these benefits have been enhanced and guaranteed as a result of the settlements filed in this proceeding. The Commission finds these settlements to represent a reasoned and balanced resolution of the matters that might otherwise be in dispute between the parties to this docket, particularly in the absence of any testimony save that of NC WARN witness Gunter challenging any of the benefits provided by the settlements. As discussed later in

this Order, Mr. Gunter asserted that the Applicants' commitment to fund low income energy assistance is insufficient.

The Commission notes that many of the quantifiable benefits and concessions by the Applicants are described in terms of minimum commitments and there is reason to believe that actual benefits in several categories may be higher. The most significant example of this is in the area of merger-related cost savings. The Applicants projected in the Cost-Benefit Analysis that such savings would be approximately \$9.45 million a year; however, this amount represents only the immediately quantifiable cost savings resulting from the merger and contains no additional savings projections from the integration process now being conducted by the Applicants. To the extent that this integration process results in additional merger-related cost savings, Piedmont's customers will benefit as those savings are incorporated into updated rates for Piedmont in future general rate case proceedings. In the meantime, Piedmont has agreed to an immediate sharing of \$10 million in merger-related cost savings with its ratepayers through a one-time bill credit to be made prior to December 31, 2016.

The Commission, therefore, finds and concludes that the proposed merger will result in a significant number of known and potential benefits, both quantifiable and non-quantifiable, as set forth in the Application, Cost-Benefit Analysis, and settlement agreements between the Applicants and the Public Staff, CUCA and EDF, and described in the testimony of various witnesses.

**EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 23-28  
(Potential Adverse Impacts on Rates and Services)**

The evidence supporting these findings of fact is contained in prior proceedings regarding approval of utility merger applications under G.S. 62-111(a), the Application, the Public Staff Settlement, the stipulated Regulatory Conditions and Code of Conduct, the testimony of Applicants witness Yoho and Public Staff witness Hoard, and the Commission's supervisory authority under Chapter 62 of the General Statutes over the rates, terms and conditions of service provided to the public by DEC, DEP and Piedmont.

The legal standard applicable to this proceeding is set forth in G.S. 62-111(a) and requires our finding that the proposed merger is "justified by the public convenience and necessity." Upon such finding, that statute instructs that approval of the proposed merger "shall be given." In prior merger proceedings the Commission has established a three-part test for determining whether a proposed utility merger is justified by the public convenience and necessity. That test is (1) whether the merger would have an adverse impact on the rates and services provided by merging utilities; (2) whether ratepayers would be protected as much as possible from potential costs and risks of the merger; and (3) whether the merger would result in sufficient benefits to offset potential costs and risks. See *Order Approving Merger Subject to Regulatory Conditions and Code of Conduct* ("Duke-Progress Merger Order"), issued June 29, 2012, in Docket Nos. E-2, Sub 998 and E-7, Sub 986, *aff'd*, *In re Duke Energy Corp.*, 232 N.C. App. 573, 755 S.E.2d 382 (2014). These questions are related to one another and together establish a reasoned framework upon which utility mergers may be evaluated. In

making these assessments, the Commission has also examined factors such as whether service quality will be maintained or improved, the extent to which costs can be lowered and rates can be maintained or reduced, and whether effective regulation of the merging utilities will be maintained. See *Order Approving Merger and Issuance of Securities*, issued April 22, 1997, in Docket No. E-7, Sub 596.

Regarding the first question of the three-part test, the Commission concludes, for the reasons explained below, that the merger will not have an adverse impact on the rates and services provided by DEC, DEP, or Piedmont.

At the outset, the Commission notes the absence of any proposal to change rates, terms, or conditions of service for any customer of DEC, DEP, or Piedmont in conjunction with or as a direct result of the proposed merger. This is confirmed in the testimony of Applicants witness Yoho that “the Merger will not cause an increase to customer rates because Piedmont will not be seeking rate relief for the Merger transaction costs,” and that “there will be no adverse rate or operational consequence to our customers as a result of this Merger.” T. Vol. 2, p. 60. It is also confirmed by paragraph 21 of the Application, which provides that the merger “will not have a net adverse impact on the rates and services of DEC, DEP, and Piedmont.” Finally, the Cost-Benefit Analysis filed with the Application indicates that ratepayers will not be charged for merger costs such as the acquisition premium and transaction fees, which, instead, will be absorbed by Duke Energy and Piedmont. Cost-Benefit Analysis p. 7.

The evidence presented in this proceeding also supports the conclusion that there will be beneficial impacts on the rates and services of DEC, DEP, and



Piedmont as a result of the merger. For example, as discussed above, in the Public Staff Settlement, DEC, DEP, and Piedmont agree to provide certain quantifiable benefits to ratepayers, including a commitment to credit Piedmont customer bills with a total of \$10 million on or before December 31, 2016. Regulatory Condition 8.2 agreed to in the Public Staff Settlement also holds DEC's, DEP's, and Piedmont's customers harmless, through DEC's, DEP's, and Piedmont's next general rate cases, against any potential increase in costs associated with a debt downgrade attributable to the merger. Finally, the Public Staff Settlement provides that "terms of this Stipulation, including the Regulatory Conditions and Code of Conduct, will ensure that the proposed merger will have no adverse impact on the rates charged and the service provided by DEC, DEP, and Piedmont to North Carolina jurisdictional ratepayers."

Public Staff witness Hoard testified that customer rates and services will not be adversely impacted by the proposed merger in light of the Public Staff Settlement and the other commitments of the Applicants in this proceeding. His testimony recites the standard for approval of utility mergers under G.S. 62-111 and Commission precedent, describes, in some detail, the provisions of the Public Staff Settlement that are designed to prevent any adverse consequences to customers, and ultimately recommends approval of the merger subject to the restrictions and requirements of the Public Staff Settlement and the stipulated Regulatory Conditions and Code of Conduct. T. Vol. 3, pp. 73-89.

As is discussed earlier in this Order, the stipulated Regulatory Conditions and Code of Conduct also provide significant ratepayer protections against

potential future cost impacts of the merger by ensuring that DEC, DEP, and Piedmont continue to operate independently and competitively except where greater efficiencies can be gained without negatively impacting customers.

The CUCA Settlement also provides benefits to DEC's and DEP's North Carolina retail customers through the guarantee of their allocable share of \$35 million in additional fuel and fuel-related cost savings.

The Application asserts, in paragraph 27, that "DEC, DEP, and New Piedmont will remain subject to full regulation by the Commission. The Merger in no way diminishes the authority of the Commission to regulate service quality and rates of any of these companies. Therefore, effective state regulatory oversight of all three utilities will continue." The stipulated Regulatory Conditions and Code of Conduct also contain provisions designed to ensure that the Commission's regulatory jurisdiction over DEC, DEP, and Piedmont is not diminished as a result of the merger.

Significantly, the evidence on these matters presented by the Applicants and set forth in the various documents and testimony discussed above, is uncontested.

The net impact of these commitments by the Applicants is to preclude the possibility that rates or services to customers could be adversely impacted by the proposed merger. No other party submitted evidence suggesting that the proposed merger will result in adverse consequences to the rates and services of DEC, DEP, and Piedmont.<sup>5</sup>

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<sup>5</sup> A number of concerns regarding the proposed merger were expressed in public witness testimony at the hearing of this matter and in statements of position filed in this proceeding. In

In this regard, the Commission notes that the provisions of Chapter 62 of the General Statutes provide the Commission with broad supervisory authority over DEC, DEP and Piedmont, including the authority to establish (and modify if necessary) the rates, terms, and conditions of service for these entities. As such, and given the absence of any proposal by any of these companies to actually change rates or services in these dockets (other than the proposal to credit Piedmont ratepayers with a one-time \$10 million bill credit – which is an immediate benefit to those ratepayers), the Commission finds no evidence that the merger will increase rates, diminish services, or that the Commission’s jurisdiction over DEC, DEP, or Piedmont as regulated public utilities will be adversely impacted in any way. Additionally, any currently unknown risks to customers arising out of the proposed merger are sufficiently mitigated through the terms contained in the Public Staff Settlement (including the stipulated Regulatory Conditions and Code of Conduct) and the Commission’s continuing exercise of jurisdiction over Piedmont, DEC and DEP.

Based on the foregoing, the Commission finds and concludes that the proposed merger poses no risk of any real or potential adverse impact on the rates and services provided by DEC, DEP, and Piedmont to their customers.

**EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 29-33  
(Protection of Ratepayers from Costs and Risks)**

The evidence supporting these findings of fact is contained in the inherent supervisory authority of this Commission over public utilities, the Application, the

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addition, they were implied in cross-examination questions asked by NC WARN counsel. However, none of these concerns are directly or materially relevant to the issues presented by the Application in this proceeding.

Cost-Benefit Analysis, the Public Staff Settlement (including the stipulated Regulatory Conditions and Code of Conduct), and the testimony of Public Staff Hoard and Applicants witness Barkley.

Regarding the second question of the three-part test, the Commission concludes, for the reasons explained below that the ratepayers of DEC, DEP, and Piedmont will be protected to the maximum extent possible from potential costs and risks of the merger.

Under G.S. 62-30, the Commission has general power and authority to supervise and control public utilities. G.S. 62-32 grants the Commission supervisory power over public utility rates and service, including the power to compel reasonable service and set reasonable rates. As noted above, paragraph 27 of the Application provides that “DEC, DEP, and New Piedmont will remain subject to full regulation by the Commission. The Merger in no way diminishes the authority of the Commission to regulate service quality and rates of any of these companies. Therefore, effective state regulatory oversight of all three utilities will continue.” This continuing and undiminished regulatory oversight will serve to protect ratepayers from any adverse consequences of the merger.

Separate and apart from the Commission’s inherent and continuing supervisory function, there is substantial evidence in this proceeding that ratepayers are and will be protected as much as possible from potential costs and risks of the merger.

First, the Application and the Cost-Benefit Analysis appended thereto as Exhibit B commit the Applicants not to seek recovery of several categories of

merger-related costs of which they would otherwise be entitled to seek recovery. Specifically, the Applicants have expressly waived, in both the Application and Cost-Benefit Analysis, any right to seek recovery of the acquisition premium associated with the merger as well as any transaction fees associated with the merger. See Cost-Benefit Analysis at p. 7. This commitment is not insignificant inasmuch as the acquisition premium in this merger is approximately \$3.4 billion and the transaction fees identified in the Cost-Benefit Analysis, which consist of payments to investment bankers, accountants, lawyers, and consultants, are estimated at \$125 million. These commitments by the Applicants act to insulate ratepayers from the major costs of the merger transaction itself.

Second, in the Public Staff Settlement, the Applicants have contractually precluded the possibility that they may seek recovery of either merger-related direct expenses or severance costs from ratepayers. As defined in paragraph 5 of the Public Staff Settlement, direct merger costs are “change-in-control payments made to terminated executives, regulatory process costs, and transaction costs, such as investment banker and legal fees for transaction structuring, financial market analysis, and fairness opinions based on formal agreements with investment bankers.” The Public Staff Settlement, in paragraph 6, also limits recovery of merger-related transition costs to capital/rate base related integration expenses to the extent they are incurred no later than three years after the merger and result in quantifiable cost savings that offset the revenue requirement impact of including them in rate base. In paragraph 7 of the Public Staff Settlement, the Applicants have agreed to exclude from cost-recovery the impact of the merger

premium on Piedmont employee incentive plan and benefit plan costs. These provisions provide significant additional protections for DEC, DEP, and Piedmont ratepayers from the costs and quantifiable risks associated with the merger.

Third, as provided by the Public Staff Settlement and as discussed above, the stipulated Regulatory Conditions and Code of Conduct also safeguard customers from potential adverse impacts on rates and services as a result of the merger.

The Commission notes that several provisions of the General Statutes also serve to protect customers from potential negative consequences of the proposed merger. These include: (i) G.S. 62-130 – Commission supervision over rates; (ii) G.S. 62-138 – requirement to obtain Commission approval over service contracts; (iii) G.S. 62-139 – prohibition of service at other than Commission approved rates; (vi) G.S. 62-140 – prohibition of discrimination; and (v) 62-153 – requirement to file affiliated contracts and to obtain approval for affiliated service contracts. Each of these statutory provisions either prohibits or mandates utility conduct for the purpose of assuring that rates charged to customers for utility services are just and reasonable.

Finally, the testimony of Public Staff witness Hoard and Applicants witness Barkley supports the conclusion that ratepayers are protected from potentially adverse impacts on rates and costs associated with the merger. Public Staff witness Hoard's testimony discusses each aspect of the Public Staff Settlement as well as changes to the Regulatory Conditions and Code of Conduct and concludes that the merger should be approved subject to the protections afforded customers

provided by the Public Staff Settlement. T. Vol. 3, pp. 73-89. In his testimony, Applicants witness Barkley describes the Public Staff Settlement and indicates both his agreement with Mr. Hoard's description of the settlement as well as the Applicants' support for the settlement. T. Vol. 2, pp. 142-43.

Based on the foregoing, the Commission finds and concludes that potential risks of the merger to ratepayers have been effectively mitigated by the commitments of the Applicants in the Application and Cost-Benefit Analysis, as well as the testimony of Applicants witnesses and the Public Staff Settlement, including the stipulated Regulatory Conditions and Code of Conduct. Further, even if such risks were not effectively mitigated by these commitments, the Commission retains full power and authority to address any potential impact from the merger on the ratepayers of DEC, DEP, and Piedmont going forward.

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 34  
(Customer Benefits Offset Costs and Risks of the Transaction)**

The evidence supporting this finding of fact is contained in the Application, the Cost-Benefit Analysis, the Public Staff Settlement, the CUCA Settlement, the EDF Settlement, and the testimony of Applicants witnesses Good, Young, Skains, Yoho, and Barkley, the testimony of Public Staff witness Hoard, and the testimony of NC WARN witness Gunter.

Regarding the third question of the three-part test, the Commission concludes, for the reasons explained below, that the merger will result in sufficient benefits to offset potential costs and risks resulting from the merger.

The Application recites several asserted benefits from the proposed merger. These include: (i) financial benefits resulting from a larger more diversified

company; (ii) direct and immediate operational benefits to customers; (iii) enhanced ability of Duke Energy and Piedmont to participate in the growing natural gas sector of the US economy; (iv) future integration benefits; (v) maintenance of a strong corporate presence in North Carolina; and (vi) maintenance of effective regulation by the Commission.

In the Cost-Benefit Analysis, which was sponsored by Applicants witnesses Yoho and Young, the Applicants provide a more detailed listing of discrete benefits from the proposed merger, including: (i) a \$9.45 million reduction in the annual operating expenses of Piedmont related to elimination of certain corporate governance and public company costs; (ii) increased financial strength of the combined company which will enhance the ability to compete for capital at lower cost; (iii) reduced market risk through the diversification of customer base; (iv) enhanced system reliability and efficiencies from consolidation of interconnecting facilities under a single corporate structure; (v) potentially enhanced gas supply and upstream capacity procurement opportunities; (vi) future integration related reductions in operating costs; (vii) maintenance of Piedmont's corporate headquarters in North Carolina; (viii) enhanced ability of the combined company to facilitate infrastructure expansion; and (ix) maintenance of existing rates, terms, and conditions of service.

Applicants witness Good testified to a number of benefits to Duke Energy and its electricity customers from the acquisition of Piedmont. These ranged from enhanced reliability of service to DEC and DEP electric customers to the opportunities for strategic growth presented by the acquisition of a premier natural



gas local distribution company operating in supportive regulatory environments and with strong growth potential. T. Vol. 1, pp. 75-79. Ms. Good also identified the opportunity to share best practices between the companies as a benefit to customers and specifically noted Piedmont's excellent customer service record in this regard. T. Vol. 1, p. 79.

Applicants witness Skains testified regarding benefits to Piedmont and its customers arising from the proposed merger. These included the preservation and potential expansion of the Piedmont brand as a consequence of Duke Energy's stated intent to allow Piedmont to operate as a separate gas subsidiary, and the opportunity for Piedmont to expand its high-performance/customer service focused culture. T. Vol. 1, p. 94. Mr. Skains also indicated his belief that the proposed merger would enhance both growth opportunities for Piedmont and Duke Energy's ability to effectively participate in the growing natural gas sector of the energy economy in the United States. T. Vol. 1, p. 95.

Applicants witness Young testified to his belief that the proposed merger would have benefits for the companies and customers. Mr. Young specifically identified the following discrete benefits from the transaction: (i) solid investment grade credit ratings for Duke Energy and Piedmont; (ii) enhanced ability to access capital at reasonable rates resulting from a larger corporate entity and access to expanded financing mechanisms (including the Duke Energy money pool); (iii) maintenance of a healthy balance sheet for the combined company; and (iv) stabilization of the companies' long term growth objectives. T. Vol. 2, pp. 13-14. Mr. Young also explained the possible downgrade of Piedmont's credit rating from

“A” to “A-” by Standard & Poor’s. T. Vol. 2, p. 16. In this regard, he explained that it is common practice for S&P to adjust a new subsidiary’s credit rating to match that of its corporate parent. T. Vol. 2, pp. 16-17. Furthermore, to the extent that such a credit rating downgrade occurs, Mr. Young testified that Regulatory Condition 8.2, agreed to as part of the Public Staff Settlement, will protect customers from any negative rate consequences of such a downgrade resulting from the merger. T. Vol. 2, p. 48.

Applicants witness Yoho testified regarding his belief that the merger will be “seamless” to customers as a result of Duke Energy’s express intent to allow the company to continue to be managed by existing Piedmont operational managers. T. Vol. 2, p. 59. He also testified that the ongoing integration process underway between the companies should result in operational cost savings going forward and enhanced service quality through the sharing of best practices between DEC/DEP and Piedmont. T. Vol. 2, pp. 60-61. Mr. Yoho also testified regarding his belief that the benefits described in the Cost-Benefit Analysis attached to the Application would be realized by the companies and their respective customers. T. Vol. 2, p. 62.

In the Public Staff Settlement, Applicants and the Public Staff agreed to a number of benefits to be provided to customers of Piedmont, DEC, and DEP upon closing of the merger. These benefits include: (i) adoption of revised Regulatory Conditions and a Code of Conduct which ensure that the ongoing operations of DEC, DEP, and Piedmont will be independent, transparent, non-discriminatory, and consistent with the interests of the Commission, the Public Staff and

customers; (ii) accelerated sharing of merger-related cost savings with Piedmont customers in the amount of \$10 million delivered through a one-time bill credit on or before December 31, 2016; (iii) a four-year commitment to continue annual community support and charitable contribution initiatives in North Carolina by the Applicants, through the Duke Energy Foundation and the Piedmont Natural Gas Foundation, in the aggregate amount of no less than \$17.525 million a year; (iv) a contribution to North Carolina workforce development and low income energy assistance within twelve months of the close of the merger in the amount of \$7.5 million; (v) exclusion of merger-related direct expenses and severance costs from recovery through customer rates; (vi) restricted recovery rights for transition related capital costs that permit recovery only where such costs are exceeded by benefits; (vii) exclusion of the effect of the merger premium on Piedmont's stock price for purposes of calculating Piedmont long-term incentive plan costs; (viii) a reduction in the interest rate applicable to Piedmont under-collected gas costs; and (ix) a requirement to refile non-service related affiliate contracts for re-approval by the Commission.

Paragraph 12 of the Public Staff Settlement concludes that these terms will assure that the proposed merger is justified by the public convenience and necessity and meets the standard for approval by the Commission under G.S. 62-111(a). This conclusion is echoed in the testimony of Public Staff witness Hoard and Applicants witness Barkley. T. Vol. 2, pp. 142-43, 146, and Vol. 3, p. 89.

The settlement agreements between the Applicants and CUCA and EDF also provide benefits to customers. The CUCA Settlement provides a guarantee by DEC and DEP that their North Carolina retail customers will receive their allocable shares of an additional \$35 million in fuel savings under the mechanism approved in the Duke-Progress Merger. The EDF Settlement provides for the conduct of studies of the effectiveness of Integrated Volt Var technology on certain operations of these utilities. These studies will contribute to the potential for both DEC and DEP to utilize such technology to reduce peak demand on their respective systems, which could potentially reduce both costs to customers and emissions associated with peak demand generation and delay or avoid construction of future generation facilities. Applicants witness Barkley summarized these settlements and the Applicants' support thereof in his testimony. T. Vol. 2, pp. 143-44.

The sole evidence suggesting that the merger will provide insufficient benefits to offset the potential costs and risks of the proposed merger was presented in the limited testimony of NC WARN witness Gunter, Director of Policy and Advocacy for the North Carolina Housing Coalition. Mr. Gunter asserted that the Applicants' commitment to contribute \$7.5 million to North Carolina workforce development and low income energy assistance within twelve months of the close of the merger as set forth in the Public Staff Settlement is "not nearly sufficient to meet the needs of families who might be harmed by the proposed merger" and is "inadequate." T. Vol. 2, p. 185. Mr. Gunter recommended that the Applicants be required to provide "an increased financial commitment to families that would be

most vulnerable to cost increases, and that the money be distributed with the advice of an outside non-profit that works directly with low-income families in North Carolina. The amount of the contribution should be established with the goal of providing lower bills for the most vulnerable households.” T. Vol. 2, p. 186.

In response to Mr. Gunter’s testimony, the Applicants’ presented the rebuttal testimony of Applicants witness Barkley. Mr. Barkley noted his disagreement with the apparent assumption of Mr. Gunter that low-income families will be harmed by the proposed merger and then indicated his belief that the merger will have both economic and non-economic benefits for all of Duke Energy’s and Piedmont’s customers. T. Vol. 2, p. 145. Mr. Barkley also stated that the provisions relating to low income energy assistance and workforce development, as well as the other economic and non-economic benefits of the Public Staff Settlement, were negotiated with and agreed to by the Public Staff – the agency charged with representing the interests of the using and consuming public, including low income ratepayers. T. Vol. 2, p. 145. Mr. Barkley finally pointed out that the alternate proposal of Mr. Gunter to increase payments to low-income customers is both indeterminate and more properly addressed in separate proceedings before the Commission involving energy efficiency measures. T. Vol. 2, p. 146.

The Commission has carefully reviewed the evidence presented regarding economic and non-economic benefits to customers asserted by the Applicants and agreed to and set forth in the various settlement agreements in this proceeding. Based upon that evidence, and the lack of any countervailing evidence, the

Commission finds and concludes that Applicants have satisfied the burden imposed by the third question in the Commission's three--part merger approval analysis and that benefits from the proposed merger are sufficient to offset the costs and risks of the merger. With respect to Mr. Gunter's concerns, we do not find this testimony persuasive. First, there is no evidence in this proceeding that costs to Piedmont (or DEC or DEP) customers will increase as a result of the merger. To the contrary, the uncontested evidence before the Commission supports the opposite conclusion – that customers will receive substantial benefits from the proposed merger and that such benefits will be both economic and non-economic in nature. While the Commission is sympathetic to the burdens and challenges faced by low-income customers, the record evidence reveals substantial benefits to those customers from the merger which Mr. Gunter appears not to have recognized. Indeed, the Public Staff has independently concluded that under the terms of the Public Staff Settlement "the benefits of the merger to DEC's, DEP's and Piedmont's customers are sufficient to offset . . . [the] potential costs and risks" of the merger.

Based on the foregoing, the Application and the Cost-Benefit Analysis, the testimony of witness for Applicants and the Public Staff, and the settlement agreements, the Commission finds and concludes that the merger will result in sufficient benefits to offset any potential costs and risks resulting from the merger.

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 35  
(Monopoly Market Power, Anti-Competition and Self-Dealing Concerns)**

The evidence supporting this finding of fact is contained in the Market Power Analysis, the testimony of Applicants witnesses Reitzes and Barkley, the testimony

of Public Staff witness Hoard, and the Public Staff Settlement, including the stipulated Regulatory Conditions and Code of Conduct.

In the M-100, Sub 129 Order, the Commission required natural gas and electric utilities proposing to engage in a merger to file a market power analysis with their merger approval petitions. The purpose of this requirement was to allow the Commission to evaluate the impact of the proposed merger on competitive and regulated markets and to assess whether any potential anticompetitive effects might flow from the proposed merger transaction.

Some of the public witness testimony and consumer statements of position filed in this proceeding reflect concerns about the possibility of enhanced “monopoly” market power resulting from the proposed merger and the potential for self-dealing or anticompetitive behavior by the merged companies.

The Commission has carefully reviewed the record in this proceeding related to these issues and finds no substantial evidence that would support the conclusion that the proposed merger will result in materially increased market or monopoly power, particularly when viewed in the light of the restrictions and requirements set forth in the stipulated Regulatory Conditions and Code of Conduct.

In this regard, the Commission has reviewed the HHI study performed by the Brattle Group, which indicates only a slightly increased concentration in market power of the combined Duke Energy entities as a result of the merger. Market Power Analysis, Technical Appendix B, Table 4. Further, the Market Power Analysis found that “Duke and Piedmont lack both the ability and the incentive to

raise prices or restrict output as a result of the Transaction, due to economic and regulatory conditions in the electric and gas markets in North Carolina. . . [and] that the Transaction raises no basis for competitive concerns” with regard to the three areas studied, which were “(i) ‘inter-fuel’ competition between gas and electricity as alternative sources of energy; (ii) ownership of gas transmission rights by each of the merging parties and any potential effect of the Transaction on the price of released gas transportation capacity and/or delivered gas in North Carolina; and (iii) the potential effects of the Transaction on third-party generation.” Market Power Analysis at p. 1. These findings are supported, as the Brattle Group notes, by the Federal Trade Commission’s early termination of its 30-day preliminary antitrust review of this merger. Market Power Analysis at p. 1. Significantly, the Market Power Analysis constitutes the only substantive evidence in the record of this proceeding on the issue of market or monopoly power, and the Commission finds the analysis contained in the Market Power Analysis credible and convincing.

With respect to the slightly different and more speculative concern voiced by some public witnesses (or consumer statements of position) to the effect that the merger will result in a “mega-monopoly,” the Commission notes that each of DEC, DEP, and Piedmont is currently a monopoly provider of utility services operating within its exclusive service area. This model for the provision of electric and natural gas service by public utilities is the long-standing norm both in North Carolina and nationally and is premised on the notion that the capital intensive nature of providing public utility services makes a regulated monopoly the



preferred form of service rather than competing providers operating in a free market with a risk of duplicative costs and higher rates. In this case, the status of DEC, DEP, and Piedmont as separate and distinct regulated monopoly providers of utility services will not change as a result of the merger. The most that can be said is that the family of Duke Energy subsidiary utilities will increase in size as a result of the merger, but there is no evidence that this will translate into enhanced power to charge higher rates or force customers to accept lower standards of service – both of which are entirely within the jurisdictional authority of this Commission to regulate. In short, the manner in which DEC, DEP, and Piedmont provide service to the public – at least insofar as it relates to the exercise of “monopoly” service rights and regulation by this Commission – will not change as a result of the merger.

With respect to the possibility of self-dealing or anti-competitive conduct by and among DEC, DEP, and Piedmont after the merger, that risk is effectively mitigated by the stipulated Regulatory Conditions and Code of Conduct attached to the Public Staff Settlement and by the ongoing authority of this Commission over the rates, terms, and conditions of service offered by each of these utilities. In this regard, the Commission notes that the stipulated Regulatory Conditions and Code of Conduct are updated versions of documents approved in prior merger proceedings involving Duke Energy, DEC, and DEP, and, for the most part, simply add Piedmont to the commitments made by the merging entities and adjust the provisions thereof to account for the addition of a natural gas distribution company to the Duke Energy family of regulated utilities. The Commission’s experience with

these conditions and code of conduct provisions is that they have functioned effectively to protect ratepayers in prior Duke Energy merger transactions, and the Commission is confident they will operate just as effectively in this instance.

The Regulatory Conditions and Code of Conduct, as set forth in the Public Staff Settlement and as explained by Public Staff witness Hoard in his testimony, address several areas in which self-dealing or anticompetitive behavior by DEC, DEP, and Piedmont could arise. First, the affiliated transaction rules set forth in the stipulated Regulatory Conditions and Code of Conduct are designed to “(1) fairly allocate the cost of common goods and services among affiliates, (2) protect the ratepayers of utilities from overcharges by non-regulated affiliates, and (3) prevent cross-subsidization of non-regulated affiliates by utility affiliates.” T. Vol. 3, pp. 83-84. In addition, provisions have been added to the stipulated Regulatory Conditions and Code of Conduct to address priority of natural gas services to electric generation facilities in order to protect natural gas customers, separation of gas and electric operations, potential discrimination against gas-fired non-utility generators, the provision of services/sales of natural gas to DEC and DEP by Piedmont, and the preservation of competition between Piedmont as a natural gas provider and DEC/DEP as electric providers. T. Vol. 3, pp. 85-89. According to Mr. Hoard, the Public Staff believes that these provisions appropriately address concerns raised by the proposed merger. T. Vol. 3, p. 89.

At the hearing of this matter, counsel for FPWC asked several witnesses about the potential for future discrimination against FPWC by Piedmont in the provision of natural gas transportation services which could impact its ability to

compete in the wholesale generation market.<sup>6</sup> As the Commission understands it, FPWC is currently served under an interruptible transportation service special contract arrangement which was agreed to by FPWC and North Carolina Natural Gas (predecessor to Piedmont) and has no current issues with service under that contract. It is also the Commission's understanding that FPWC's Butler Warner generation facilities are currently dispatched by DEP under a tolling agreement that extends until at least 2019. Market Power Analysis, Table 10. FPWC's concern appears to be that at some future point in time, as a consequence of the merger, Piedmont could be incentivized to unduly discriminate against FPWC in the provision of natural gas transportation service.

The Commission has fully considered this potential risk of the merger but notes that FPWC does not assert, and the evidence does not support, current discriminatory treatment by Piedmont as to FPWC. Further, the following mitigating factors would provide protection to FPWC if it were to find itself competing with DEC or DEP in the wholesale generation market at some point in the future. First, as has been noted previously, the Commission has full jurisdiction and supervisory authority over the rates, terms, and conditions of service provided by Piedmont, including any service provided to FPWC. As such, any proposed rate for natural gas sales or transportation service to be provided to FPWC would be subject to the direct scrutiny and review of the Commission and the Public Staff. Second, under the provisions of G.S. 62-140(a):

No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public

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<sup>6</sup> FPWC presented no witness, however.

utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service.

N.C. Gen. Stat. § 62-140(a) (2015). Third, under Section III.B.1. of the stipulated Code of Conduct attached to the Public Staff Settlement, Piedmont and its employees are prohibited from unduly discriminating against non-affiliated entities in the provision of utility services. Each of these factors mitigates against the likelihood that FPWC's concerns will be manifested.

At the hearing and in its prior Motion to Compel, FPWC raised the issue of whether its facilities would be considered to be "similarly situated"<sup>7</sup> with those of DEC or DEP. T. Vol. 3, p. 16. This issue was addressed at the hearing by reference to Section III.D.3.(e) of the stipulated Code of Conduct, which does not use the term "similarly situated" and provides as follows:

All Piedmont deliveries to DEC and DEP pursuant to intrastate negotiated sales or transportation arrangements and combinations of sales and transportation transactions shall be at the same price and terms that are made available to other Shippers having comparable characteristics, such as nature of service (firm or interruptible, sales or transportation), pressure requirements, nature of load (process/heating/electric generation), size of load, profile of load (daily, monthly, seasonal, annual), location on Piedmont's system, and costs to serve and rates. Piedmont shall maintain records in sufficient detail to demonstrate compliance with this requirement.

FPWC, however, raised the further issue of whether it would be considered a "Shipper," which the Code of Conduct defines as "[a] Non-affiliated Gas Market, a

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<sup>7</sup> Section III.D3(e) of the proposed Code of Conduct filed as Exhibit D to the Application provides:

For gas supply transactions, transportation transactions, or both, between DEC and Piedmont or DEP and Piedmont, Piedmont shall provide service to DEC or DEP at the same price and terms that are made available to other similarly situated shippers.

municipal gas customer, or an end user of gas. FPWC then raised the issue of whether the Butler Warner facilities would be considered to have characteristics comparable to those of DEC and DEP. T. Vol. 3, pp. 13-33, and 42.

The Commission finds the question of whether any entity or facility would be a Shipper with characteristics comparable to those of DEC and DEP to be premature. Any future dispute in this regard would be subject to an examination of the factors set forth in the Stipulated Code of Conduct in the Public Staff's review of a proposed service contract and to the Commission's ultimate scrutiny.

Based on the factors recited above, and absent evidence of a current dispute between Piedmont and FPWC with respect to natural gas service now being provided by Piedmont, the Commission finds FPWC's concerns to be premature and unripe for consideration by the Commission. The Commission notes that the Public Staff, FPWC and any other customer or potential customer of Piedmont may commence a future proceeding to address concerns over rates or services provided by Piedmont, including any concerns regarding the possibility of undue discrimination in the provision of natural gas services, if and when those concerns materialize in a specific context in the future.

Based on the foregoing evidence, the Commission concludes that the proposed merger will not result in materially increased market or monopoly power to the detriment of customers. The Commission's conclusion is further supported by the restrictions and requirements set forth in the stipulated Regulatory Conditions and Code of Conduct designed to deter and prohibit self-dealing and

anti-competitive behavior as well as the Commission's continuing regulatory jurisdiction over Piedmont, DEC and DEP.

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 36  
(Public Convenience and Necessity)**

The evidence for this finding of fact is contained throughout the record in this docket and is identified in many of the preceding findings of fact and discussed in the evidence and conclusions for those findings of fact. This evidence, virtually all of which is uncontested, supports the conclusion that the proposed merger between Duke Energy and Piedmont is justified by the public convenience and necessity.

The evidence in this proceeding, as reflected in the findings set forth above, establishes that there are a significant number of actual and potential benefits that will accrue to the State of North Carolina, to DEC, DEP, and Piedmont, and most importantly, to the ratepayers of DEC, DEP, and Piedmont as a result of the proposed merger of Piedmont with Duke Energy. These benefits more than offset any potential risks or costs attendant to the proposed merger, which are amply mitigated in any event by the Applicants' commitments concerning absorption of merger costs and acquisition premiums and by the restrictions imposed on the Applicants' conduct by the Public Staff Settlement, the stipulated Regulatory Conditions and Code of Conduct, and by this Commission's continuing jurisdiction and authority over the rates, terms and conditions of service provided by DEC, DEP, and Piedmont. In addition, the Commission also concludes that service quality for Piedmont will be maintained and that service quality for DEC and DEP may be improved as a result of the merger, that costs are likely to be lowered for

DEC, DEP, and Piedmont which may ultimately reduce rates for customers, and that effective regulation will be maintained for each of these North Carolina public utilities.

Accordingly, the Commission concludes that the Applicants' commitments in the Public Staff Settlement (including the stipulated Regulatory Conditions) the CUCA Settlement, and the EDF Settlement, and the potential for future merger cost savings for ratepayers are sufficient to ensure that: (1) the merger will have no adverse impact on the rates and service of DEC's, DEP's, and Piedmont's North Carolina ratepayers; (2) DEC's, DEP's, and Piedmont's ratepayers are protected as much as reasonably possible from potential costs and risks resulting from the merger; and (3) there are sufficient benefits from the merger to offset the potential costs and risks.

Therefore, based on all of the evidence presented in this proceeding, the Commission finds that approval of the proposed merger between Duke Energy and Piedmont is justified by the public convenience and necessity and should be granted, subject to all of the terms, conditions, and provisions of this Order, provided that Duke Energy and Piedmont file a statement in these dockets notifying the Commission that they accept and agree to all the terms, conditions and provisions of this Order, as well as the Commission-approved Regulatory Conditions and Code of Conduct.

IT IS, THEREFORE, ORDERED as follows:

1. That the application of Duke Energy and Piedmont pursuant to G.S. 62-111(a) to engage in a business combination transaction shall be, and is hereby, approved subject to compliance with the provisions of the Public Staff Settlement, the CUCA Settlement, the EDF Settlement, this Order and the Regulatory Conditions and Code of Conduct attached hereto and incorporated herein.

2. That, subject to the merger being consummated and the Regulatory Conditions and Code of Conduct approved herein becoming effective, the Regulatory Conditions and Code of Conduct approved by the Commission in the Duke-Progress Merger Order shall be nullified.

3. That upon closing of the merger, Piedmont shall withdraw its DIMP Deferral Application.

4. That Piedmont shall credit \$10 million to its North Carolina customers through a one-time bill credit to be completed by December 31, 2016. The bill credit shall be allocated to the rate schedules using the apportionment percentages set forth in Piedmont's Integrity Management Rider (Appendix E of Piedmont's North Carolina Service Regulations). Within 30 days after the bill credit is completed, Piedmont shall file a report with the Commission detailing the amount of the bill credit. In the event of a Piedmont general rate case with rates effective no more than two years from the merger close, Piedmont shall retain the right to reflect an adjustment in the general rate case that would increase its revenue requirement for a portion of the \$10 million in savings that Piedmont credited to its North Carolina customers. Should Piedmont exercise its right to reflect such an adjustment, the Public Staff shall retain the right to incorporate the effect of



additional merger-related savings in its proposed revenue requirement calculation.

5. That, beginning January 1, 2017, DEC, DEP, and Piedmont shall fund The Duke Energy Foundation and Piedmont Natural Gas Foundation for four years from the close of the merger at annual levels of no less than \$9.65 million, \$6.375 million, and \$1.5 million, for community support and charitable contributions in the North Carolina service territories of DEC, DEP and Piedmont, respectively.

6. That, in support of The Duke Energy Foundation's and Piedmont Natural Gas Foundation's North Carolina workforce development and low income energy assistance in the North Carolina service territories of DEC, DEP, and Piedmont as may be agreed upon with the Public Staff, within twelve months of the close of the merger, DEC, DEP, and Piedmont shall contribute a total of \$7.5 million to The Duke Energy Foundation and Piedmont Natural Gas Foundation. The \$7.5 million shall be allocated among the North Carolina service territories of DEC, DEP, and Piedmont in proportion to the number of North Carolina jurisdictional customers served by each.

7. That merger and merger-related costs shall be treated as follows:
- (a) Direct expenses associated with costs to achieve the merger, including change-in-control payments made to terminated executives, regulatory process costs, and transaction costs, such as investment banker and legal fees for transaction structuring, financial market analysis, and fairness opinions based on formal agreements with investment bankers, shall be excluded from the regulated expenses of Piedmont, DEC,

and DEP for North Carolina Utilities Commission financial reporting and ratemaking purposes. Piedmont, DEC, and DEP shall file a summary report of their final accounting for merger-related direct expenses within 60 days after the close of the merger, and supplemental reports within 60 days after each quarter, as necessary.

- (b) DEC, DEP, and Piedmont may request recovery through depreciation or amortization, and inclusion in rate base, as appropriate and in accordance with normal ratemaking practices, their respective shares of capital costs associated with achieving merger savings, such as system integration costs and the adoption of best practices, including information technology, provided that such costs are incurred no later than three years from the close of the merger and result in quantifiable cost savings that offset the revenue requirement effect of including the costs in rate base. Only the net depreciated costs of such system integration projects at the time the request is made may be included, and no request for deferrals of these costs may be made.
- (c) DEC's, DEP's, and Piedmont's merger-related severance costs shall be excluded from DEC's, DEP's, and Piedmont's cost of service for ratemaking purposes.
- (d) Piedmont, DEC, and DEP shall exclude from their regulated

expense and plant accounts the effects of all Piedmont long-term incentive plan (performance shares and restricted stock units/shares) costs that result from the increase in the Piedmont stock price above the \$42.22 per share closing price on October 23, 2015, adjusted for changes in the stock price that would have occurred absent the merger. The adjusted stock prices shall be based upon percentage changes in the average stock price experienced by a peer group of twelve natural gas utilities.

8. That effective upon the close of the merger, Piedmont shall begin utilizing a revised NCUC GS-1 Earnings Surveillance Report format that is similar to the format of the ES-1 Earnings Surveillance Report that is submitted to the Commission by the electric utilities.

9. That beginning with the month in which the merger closes, Piedmont shall use the net-of-tax overall rate of return from its last general rate case as the applicable interest rate on all amounts over-collected or under-collected from customers reflected in its Sales Customers Only, All Customers, and Hedging Deferred Gas Cost Accounts. The methods and procedures used by Piedmont for the accrual of interest on the Deferred Gas Cost Accounts shall remain unchanged.

10. That within 180 days after the close of the merger, Piedmont shall begin to implement procedures to ensure that project unitization and plant retirements are finalized within 180 days of project completion. Piedmont shall file semi-annual status reports with the Commission detailing its progress in

implementing these practices, with the first report due twelve months from the close of the merger.

11. That no later than 30 days prior to close of the merger, and in accordance with and as provided by G.S. 62-153 and the related Regulatory Conditions, DEC, DEP, and Piedmont shall file amendments to DEC's and DEP's existing Affiliate Agreements (Amended Affiliate Agreements) on file with the Commission for use by DEC, DEP, and Piedmont upon close of the merger and, if applicable, the lists of services proposed to be taken by DEC, DEP, and Piedmont pursuant to such Amended Affiliate Agreements. Specifically, DEC, DEP, and Piedmont shall file to amend the following affiliate service agreements: the Service Company/Operating Companies Service Agreement, the Operating Companies Service Agreement, the Tax Sharing Agreement, the Utility Money Pool Agreement, the Intercompany Asset Transfer Agreement, and the Operating Companies/Nonutility Companies Service Agreement. If no order approving or accepting the Amended Affiliate Agreements under G.S. 62-153 is issued by the Commission prior to the close of the merger, DEC, DEP, and Piedmont shall operate under the Amended Affiliate Agreements as filed until the Commission issues such an order. DEC's, DEP's, and Piedmont's interim operations under the Amended Affiliate Agreements shall be subject to any fully adjudicated Commission order on the matter. The foregoing provisions shall not apply to existing, Commission approved, natural gas construction, transportation and redelivery agreements between Piedmont and DEC or DEP pursuant to which Piedmont is obligated to provide natural gas redelivery service to DEC and DEP

at their various generating facilities in North Carolina.

12. That DEC's and DEP's North Carolina retail ratepayers shall be guaranteed receipt of their allocable shares of an additional \$35 million in fuel and fuel-related cost savings under the mechanism implemented in the Duke-Progress Merger.

13. That DEC and DEP shall conduct Integrated Volt Var studies as provided by the EDF Settlement.

14. That the Applicants are authorized to take such other and further actions as are reasonable and necessary to consummate the merger transaction set forth in the Merger Agreement subject to the terms hereof.

15. That the Applicants are precluded from recovering from their respective ratepayers any portion of the goodwill or acquisition premium associated with the acquisition of Piedmont by Duke Energy.

16. That Applicants shall file a written notice in this docket within ten (10) days of the consummation of the merger approved herein.

17. That these dockets shall remain open pending the filing of such notice.

ISSUED BY ORDER OF THE COMMISSION.

This the \_\_\_\_ day of \_\_\_\_\_, 2016.

NORTH CAROLINA UTILITIES COMMISSION

\_\_\_\_\_, Deputy Clerk