BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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In the Matter of: Piedmont Natural Gas Company, Inc. For Approval of Appendix F o its North Carolina Service Regulations DOCKET NO. G-5, SUB 606 In the Matter of: Application of Public Service Company of North Carolina, Inc. for Approval of an Amendment to its Tariff and for Approval Of a Renewable Natural Gas Interconnection Agreement with Upper Piedmont Renewables, LLC.	))))))))))))))))	**N.C. PORK COUNCIL'S COMMENTS IN RESPONSE TO COMMISSION'S QUESTIONS**

<u>COMMENTS</u>

Pursuant to the April 21, 2022, Order issued by North Carolina Utilities Commission ("Commission") in the above referenced dockets, the North Carolina Pork Council ("Pork Council" or "Council") hereby provides these comments on the subject matter and questions presented in that Order. The Council does not have direct information on all of the questions the Commission directed to Duke Energy, Piedmont Natural Gas Company, Inc. ("Piedmont"), the

Public Service Company of North Carolina, Inc. ("PSNC"), GESS RNG Biogas USA, LLC, and the Public Staff, and is limiting this response to Question 6. The Council, however, has a very strong interest in the subject matter of the Commissions' questions as renewable natural gas ("RNG") and "directed biogas" have become important components of the efforts to meet the swine waste set-aside in the North Carolina's Renewable Energy and Energy Efficiency Portfolio Standard, N.C. Gen. Stat. § 62-133.8 (e).

COMMENTS

In its April 21, 2022, Order, the Commission raised a series of jurisdictional questions related to Section 1(c) of the Natural Gas Act ("NGA"), the "Hinshaw exemption." 15 U.S.C. § 717 (c). In question 6, the Commissions asks if there is any precedent where "RNG directed biogas injected into a Hinshaw pipeline has caused the pipeline to lose its Hinshaw exemption, or in which RNG directed biogas injected into a Hinshaw pipeline has not resulted in the pipeline's loss of its Hinshaw exemption?" *See e.g.,* Docket No. G-9, Sub 698, *Order Requesting Additional Information from Parties, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC,* Appendix A. The answer, as most directly addressed by Piedmont, PSNC and the Public Staff in their respective responses, turns out to be no, but the question nevertheless implicates issues on the scope of the exemption and the nature of "directed biogas."

1. **<u>The FERC Jurisdiction/the Hinshaw Exemption.</u>** Section 1(c) of the NGA, 15 U.S.C. § 717 (c), exempts from Federal Energy Regulatory Commission ("FERC") jurisdiction any intrastate pipeline that receives natural gas in interstate commerce at the boundary of or within a state, provided that natural gas is consumed in the state and pipeline is subject to state commission regulation. "[T]he provisions of the NGA [do] not apply to any person engaged in or legally authorized to engage in the transportation or the sale of natural gas received by such person from another person within or at the boundary of a state if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities [are] subject to regulation by a state commission". *See, Altamont Gas Transmission Co. v. F.E.R.C.*, 92 F.3d 1239 (D.C. Cir. 1996). The exemption applies to discrete, independent parts of a company's activities and facilities, and single entity or company can engage in both exempt activities and FERC-regulated activities. *See, City of Fort Morgan v. FERC,* 181 F.3d 1155 (10th Cir. 1999) (where a company's interstate and intrastate activities or facilities are not a *single integrated system* but rather are separate, the Hinshaw exemption applies to the separate intrastate facilities and activities). As such, the activities of a local distribution company ("LDC") and the facilities for carrying out those activities are not subject to FERC's jurisdiction where natural gas from out-of-state is received by the LDC at the boundary or within the state in which it operates, provided the gas is consumed in the state. *See, e.g.*, Docket Nos. E-7, Sub 1086 & 1087 ("directed biogas" RNG produced from swine manure in Missouri, placed on an interstate pipeline and nominated for delivered and use at Duke Energy facilities in North Carolina).[1]

Moreover, at least in Piedmont's case, "[t]here are no physical connections between Piedmont and any interstate pipeline that would permit Piedmont to deliver gas into . . . pipelines for transportation outside the borders of North Carolina." *See,* Docket No. G-9, Sub 728, *Statement of Position filed by Piedmont Natural Gas Company, Inc.* at 6 (September 6,

[1] Although the factual basis may not exist in the record, the transactions at the heart of Docket Nos. E-7, Sub 1086 & Sub 1087 may be an example of precedent where RNG directed biogas was injected into a Hinshaw pipeline and did not result in the loss of the exemption.

2018) (redelivery outside of North Carolina is not "physically possible.").[2] Thus, given the Hinshaw exemption and the present structural limitations of Piedmont's distribution system, FERC has no jurisdiction over gas coming onto Piedmont's system and consumed within North Carolina regardless of where the gas was produced, outside of North Carolina and transferred to Piedmont at the boundary of within the State of North Carolina, or produced in North Carolina, injected into Piedmont's system and delivered for use by an in-state consumer. This latter scenario is illustrative of most transactions involving RNG produced in North Carolina from swine manure. The RNG is produced locally at the farm by anerobic digestion. It is cleaned to pipeline standards, placed onto the pipeline at the designated injection point and nominated for use at an in-state electric power generating facility. As described below, most of these transactions also are "directed biogas" transactions.

2. <u>Directed Biogas.</u> Directed biogas is not a product *per se,* but rather a type of transaction where RNG from a biomass, like swine waste, is injected into a pipeline at one location and nominated for use at another location. The gas ultimately used at the designated location is in the amount nominated but in almost all cases, is not the RNG that was injected into the pipeline to cover that nomination. Since RNG meeting the gas quality standards imposed for gaining access to the pipeline is virtually indistinguishable from gas already in the pipeline, the balancing of the deliveries is all that is necessary to effectuate the transaction physically. As stated by the Commission in its order on directed biogas "[c]ustomers receive gas that may or may not contain any component of the original biogas [but] by purchasing the directed biogas and nominating it for delivery to the [final location], an [end user] is displacing, or offsetting,

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[2] The discussion herein refers to Piedmont's operations to illustrate points as it is the only local distribution company currently receiving directed biogas and the jurisdictional scope of its operations have been described in various related dockets. PSNC has asserted that like Piedmont it is a Hinshaw pipeline, although it is not clear that like Piedmont, it does not have "physical connections" to an interstate pipeline that would permit PSNC to deliver gas for transportation outside the borders of North Carolina.

conventional natural gas that would have otherwise been injected into the pipeline." *See,* Docket No. Sp-100, Sub 29, *Order on Request for Declaratory Ruling* at 4 (March 21, 2012) (hereinafter the "*Bloom Order"*). The Commission found that using directed biogas, by definition a renewable natural gas, to displace or offset conventional natural gas is a laudable objective and "[a]s long as appropriate attestations are made and records kept regarding the source and amounts of biogas injected into the pipeline and used . . ., the directed biogas would be a renewable energy resource and the resulting electric generation would be eligible to earn RECs that may be used for REPS compliance." *See, Bloom Order* at 4.

3. **The Issue.** In and of itself, a "directed biogas" transaction does not implicate interstate commerce or FERC's jurisdiction. As discussed above, most directed biogas transaction involving swine manure have been local and confined to intrastate movement. The biogas is produced at North Carolina farms, collected from on-farm anerobic digesters, upgraded to pipeline quality, injected into the local distribution pipeline and consumed locally at an in-state electric power plant. The transaction is "notional" only in the sense that the precise molecules of the biogas injected on to the pipeline are most likely not the molecules pulled off the pipeline at the end-users' location.

There remains the potential, however, for directed biogas transactions to involve out-of-state entities. Where the transaction involves an out-of-state producer but the recipient pipeline and ultimate user are in North Carolina, FERC's jurisdiction would not be triggered as that transaction would fall within the Hinshaw exemption. *See, infra* at 2-3. If the producer is in North Carolina and the recipient or end-user were an out-of-state entity, the results are potentially different. As explained by Piedmont in Docket No. G-9, Sub 728, *Comments of Piedmont Natural Gas Company* at 8 (June 29, 2021) although gas cannot move physically off

Piedmont's pipeline, it could be sold "notionally" via a mechanism known as "*displacement*" to "[s]ome party off of Piedmont's system, potentially including a customer in another state." *Id.* Displacement, like directed biogas, is a mechanism where gas in one location is nominally "traded" for gas in another location. The delivery by displacement does not require a physical connection and in theory at least, a party placing directed biogas produced in North Carolina on Piedmont's system could nominate it for use out-of-state. That transaction "could potentially result in the loss of [the] Hinshaw exemption . . . for [Piedmont's] intrastate transmission facilities." *Id.* at 9 (citations and footnotes omitted).[3]

As we understand it there is no precedent that resolves the question of whether a transaction that is entirely notional in nature could cause the loss of the Hinshaw exemption. Nevertheless, to protect its Hinshaw exemption, Piedmont has contractually restricted access to its pipelines so that delivery, whether actual or notional, of gas entering the pipelines will be to an in-state end user. It is our understanding that PSNC has done the same. Thus, the potential and somewhat unique transaction at issue, is for now, moot.

The Counsel appreciates the opportunity to submit these comments and does so respectfully on this the 24th day of May 2022.

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[3] It should be noted that the scenario Piedmont describes is not exclusive to RNG or directed biogas. It would arise whenever natural gas that enters Piedmont's system is notionally sold and delivered via displacement to someone in another state.

CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing Comments by first class mail deposited in the U.S. mail, postage pre-paid or by email transmission with the party's consent.

Respectfully submitted this the 24th day of May 2022.

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