



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

September 28, 2020

Ms. Kimberley A. Campbell, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

Re: Public Staff Late-Filed Exhibit No. 1
Docket No. E-7, Sub 1213 – Application for Approval of Proposed Prepaid Advantage Program; Docket No. E-7, Sub 1214 – Application for General Rate Case; and E-7, Sub 1187 – Petition of Duke Energy Carolinas, LLC for an Accounting Order to Defer Incremental Storm Damage Expenses Incurred as a Result of Hurricanes Florence and Michael and Winter Storm Diego

Dear Ms. Campbell:

Per the Commission's request during the evidentiary hearing on September 14, 2020, I have attached a late-filed exhibit on behalf of the Public Staff for filing in the above-captioned dockets. Public Staff Late-Filed Exhibit No. 1 provides further clarity regarding the standard for culpability discussed in the testimony of Public Staff witnesses Charles Junis and Michael C. Maness.

By copy of this letter, we are forwarding copies to all parties of record.

Sincerely,

s/ Nadia L. Luhr
Staff Attorney
nadia.luhr@psncuc.nc.gov

Attachment

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Public Staff Late-Filed Exhibit No. 1
Docket Nos. E-7, Sub 1213, E-7, Sub 1214, and E-7, Sub 1187

On Monday, September 14, 2020, during the Duke Energy Carolinas, LLC (DEC) evidentiary hearing in the above-captioned dockets, the panel of Public Staff witnesses Charles Junis and Michael C. Maness was asked by Commissioner Floyd B. McKissick, Jr. for further clarity regarding the standard for culpability. In addition to the pre-filed testimony of Mr. Junis, filed in the subject dockets on February 18, 2020 (see Tr. Vol. 20, pp. 405-407 and 462-467), the Summary of Testimony of Charles Junis (see Tr. Vol. 20, pp. 475-478), and the answers given in response to the questions of Commissioner McKissick by witnesses Junis and Maness (see Tr. Vol. 22, pp. 38-45), the Public Staff offers the following:

In general, the Public Staff understands culpability to mean some degree of responsibility or fault for action or inaction. The determination of culpability is fact- and case-specific, and is not amenable to a bright-line test. In the present case, DEC failed its duty to comply with longstanding environmental laws and regulations, including the 2L groundwater quality rules and N.C. General Statute § 143-215.1, which applies to surface water discharges. As a result of this failure to comply with legal and regulatory requirements, DEC is now facing costly remediation and closure requirements, the costs of which it is seeking to recover in the current rate case through deferral and amortization. The Company is culpable for its extensive environmental violations even where a traditional imprudence analysis cannot be applied.

The traditional standard of imprudence is a form of culpability that applies in cases where there were unreasonable Company decisions, actions, or inactions (including management decisions), better and feasible alternative decisions and actions were available at the time the unreasonable decisions or actions were taken or continued, and the costs attributable to the unreasonable decisions, actions, or inactions are reasonably quantifiable. The Public Staff conducted a reasonableness and prudence review for several discrete CCR-related costs in this rate case. Such a review, however, was precluded for a large portion of the deferred CCR-related costs due primarily to the virtual impossibility of conducting a comprehensive review of Company records over the 1970s to early 2000s timeframe. A prudence review was also difficult in circumstances where the Company's actions or omissions appeared to be imprudent, for example, failure to conduct comprehensive groundwater monitoring at its coal ash sites at a much earlier date, but where the quantification of costs directly resulting from such acts or omissions would be speculative. Likewise, the overlap of the Coal Ash Management Act and the federal Coal Combustion Residuals Rule with the preexisting 2L rules prevented the Public Staff from linking specific remediation actions and associated costs to specific violations, as required for imprudence. Lastly, even where the Company's management was arguably prudent in light of the knowledge they had at the time, the Company bears some degree of responsibility for its extensive environmental violations.

The Public Staff's recommended equitable sharing of 50%-50% between shareholders and ratepayers is based in part on the Company's culpability for its

failure to comply with environmental laws and regulations for the protection of groundwater and surface water, and this culpability adds to the sharing that is reasonable and appropriate in light of the Commission's history of cost sharing between shareholders and ratepayers for certain unusual costs of large magnitude, including the costs of abandoned nuclear construction and manufactured gas plant remediation. The direct testimony of Mr. Maness discusses in detail the reasons for the Public Staff's equitable sharing recommendation that are not tied to culpability.

N.C. Gen. Stat. § 62-133(d) states, "The Commission shall consider all other material facts of record that will enable it to determine what are reasonable and just rates." The Public Staff believes culpability is a relevant factor in determining what are "reasonable and just rates" for the recovery of CCR-related costs, and it would be unjust to require ratepayers to bear the entirety of the deferred coal ash costs where those costs include corrective actions to remedy the Company's environmental violations. Additionally, as noted in the testimony of Public Staff witness Maness, the Public Staff believes that even in the absence of culpability, some level of sharing of CCR costs would be appropriate and reasonable in this proceeding.