

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. G-9, SUB 698  
DOCKET NO. G-9, SUB 699  
DOCKET NO. G-9, SUB 701  
DOCKET NO. G-9, SUB 726  
DOCKET NO. G-9, SUB 728  
DOCKET NO. G-9, SUB 735  
DOCKET NO. G-9, SUB 739  
DOCKET NO. G-9, SUB 764  
DOCKET NO. G-9, SUB 799  
DOCKET NO. G-5, SUB 606

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. G-9, SUB 698	)	
	)	
In the Matter of	)	
Application of Piedmont Natural Gas	)	
Company, Inc. for Approval of Appendix F	)	
to its North Carolina Service Regulations	)	ORDER REQUESTING
	)	ADDITIONAL INFORMATION
DOCKET NO. G-5, SUB 606	)	FROM PARTIES, DUKE ENERGY
	)	CAROLINAS, LLC AND DUKE
In the Matter of	)	ENERGY PROGRESS, LLC
Application of Public Service Company of	)	
North Carolina, Inc., for Approval of	)	
Amendment to its Tariff and for Approval	)	
of a Renewable Natural Gas Interconnection	)	
Agreement with Upper Piedmont	)	
Renewables, LLC	)	

BY THE COMMISSION: On June 19, 2018, in Docket No. G-9, Sub 698, the Commission issued an Order Approving Appendix F and Establishing Pilot Program (Appendix F Order). In summary, the Appendix F Order approved a three-year pilot program to implement Appendix F to the Service Regulations of Piedmont Natural Gas Company, Inc. (Piedmont). Appendix F sets guidelines for Piedmont’s receipt of Alternative Gas, also referred to as renewable natural gas (RNG), for redelivery on Piedmont’s distribution system. With regard to participants in the pilot program, the Appendix F Order provides that “Piedmont and/or other Alternative Gas suppliers may apply to the Commission to participate in the pilot program; however, it must be demonstrated to the Commission that such additions will be useful in gathering information and data sought by the Commission.” Appendix F Order, at 5.

On September 24, 2019, in Docket No. G-5, Sub 606, the Commission issued an Order Approving Renewable Gas Regulations and Establishing Pilot Program (Appendix B Order). In summary, the Appendix B Order approved Appendix B to the Rules and Regulations of Public Service Company of North Carolina, Inc. (PSNC), establishing PSNC's renewable natural gas quality standards and a two-year pilot program, subject to further review by the Commission based on information and data to be obtained during the pilot program.

On September 8, 2021, the Commission issued an Order in Docket Nos. G-9, Sub 698 and G-5, Sub 606 that, among other things, extended the Appendix F and Appendix B pilot programs for an additional three years.

The Commission has approved participation in the Appendix F pilot program by nine RNG project developers: C2e Renewables NC, in Docket No. G-9, Sub 699; Optima KV, LLC, in Docket No. G-9, Sub 701; Optima TH, LLC, in Docket No. G-9, Sub 726; GESS International North Carolina, Inc. in Docket No. G-9, Sub 728; Catawba Biogas, LLC in in Docket No. G-9, Sub 735; Foothills Renewables, LLC in Docket No. G-9, Sub 739; Align RNG North Carolina, LLC, d/b/a Align Renewable Natural Gas, in Docket No. G-9, Sub 764; Anson Gas Producers, LLC, in Docket No. G-9, Sub 698; and Montauk AG Renewables, LLC, in Docket No. G-9, Sub 799. In addition, in Docket No. G-5, Sub 606 the Commission approved participation in the Appendix B pilot program by CMS Concord RNG LLC. Further, the Commission has approved all four RNG interconnect agreements with Piedmont that have been submitted to the Commission for approval.

Through several filings in Docket No. G-9, Sub 728 (Sub 728), GESS RNG Biogas USA, LLC (GESS RNG), requested to participate in the Appendix F pilot program. In summary, GESS RNG stated that it plans to construct twelve anaerobic digesters and twelve injector facilities in ten North Carolina counties, with the digesters using primarily swine waste as biomass feedstock, and the injection facilities delivering the RNG to Piedmont's pipeline. GESS RNG further stated that it plans to produce about 550,000 MMBtus of RNG per site per year, or approximately 1,500 MMBtus per day. It stated that it initially had planned to sell about 150,000 MMBtus per year to Duke Energy Carolinas, LLC (DEC), and approximately 400,000 MMBtus of RNG to parties other than DEC, including buyers that might be out-of-state entities to which its RNG and environmental attributes would be sold nominally (directed biogas transactions).

Subsequently, DEC and Duke Energy Progress, LLC (DEP, collectively Duke utilities), filed a letter in Sub 728 informing the Commission that in November 2019 DEC terminated two DEC contracts with GESS RNG's predecessor, GESS International North Carolina, Inc. (GESS NC), due to GESS NC's alleged failure to meet contract assurances.

Shortly after the letter was filed by the Duke utilities, Piedmont filed a letter in Sub 728 contending that Appendix F requires that all RNG delivered to Piedmont be nominated for use by and allocated to a Piedmont customer. Piedmont subsequently filed comments in which it further contended that GESS RNG's proposed directed biogas transactions could subject Piedmont to the jurisdiction of the Federal Energy Regulatory

Commission (FERC), by causing Piedmont to lose its Hinshaw exemption under the Natural Gas Act (NGA), 15 U.S.C. § 717(c) [Section 1(c) of NGA]. In support of its contention Piedmont cited several provisions of the NGA, and FERC's decisions in *National Fuel Gas Supply Corporation and Empire State Pipeline*, 70 FERC ¶ 61,162, 1995 FERC LEXIS 227 (1995), and *Boston Gas Company*, 57 FERC ¶ 61,054, 91 FERC LEXIS 2442 (1991).

### Discussion and Conclusion

Pursuant to Section 1(c) of the NGA, a local distribution company (LDC), is exempt from FERC's jurisdiction over interstate transportation of natural gas if the LDC: (1) receives natural gas at or within the boundary of a state, (2) all the gas is consumed within that state, and (3) the LDC is regulated by a state commission. This exemption is referred to as the "Hinshaw exemption" and pipelines operating under the exemption are known as "Hinshaw pipelines." In addition, an LDC that would not otherwise qualify for a Hinshaw exemption can petition FERC under 18 C.F.R. § 284.224 for a blanket certificate authorizing the LDC to engage in the sale or transportation of natural gas in interstate commerce without becoming subject to FERC's jurisdiction.

Based on the foregoing and the record, the Commission concludes that the question of whether Piedmont's participation in GESS RNG's directed biogas transactions could cause Piedmont to lose its Hinshaw exemption is a jurisdictional issue that has been brought up in these proceedings on which the Commission would like more information. As a result, the Commission requests that Piedmont, PSNC, the Public Staff, GESS RNG, DEP and DEC answer the Commission Questions attached hereto as Appendix A. The Commission shall allow other parties to these dockets to answer the Commission Questions if applicable and they desire to do so and directs the Chief Clerk to serve a copy of this Order on all parties to these dockets, and on Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC.

IT IS, THEREFORE, ORDERED as follows:

1. That on or before May 24, 2022, Piedmont, PSNC, the Public Staff, GESS RNG, DEP and DEC shall file in Docket Nos. G-9, Sub 698 and G-5, Sub 606 verified answers to the Commission Questions attached hereto as Appendix A;
2. That on or before May 24, 2022, all other parties to these dockets may file verified answers to the Commission Questions, if applicable to them, attached hereto as Appendix A; and

3. That the Chief Clerk shall serve a copy of this Order on all parties to those dockets included in the caption of this Order, and on Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of April, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Erica N. Green". The signature is written in a cursive style with a large, stylized "E" and "G".

Erica N. Green, Chief Clerk

## Commission Questions

1. Explain how an LDC secures a Hinshaw exemption, including whether such exemption is evidenced by a FERC order or other documentation.
2. Confirm that Piedmont and PSNC are Hinshaw pipelines, or if they are not, explain why not.
3. Explain whether Piedmont or PSNC previously has had to defend its jurisdictional status as a Hinshaw pipeline for any reason and, if so, provide the details.
4. Explain whether Piedmont or PSNC has considered applying for or has applied for a blanket certificate pursuant to 18 C.F.R. § 284.224 in the interest of mitigating a risk of loss of its Hinshaw exemption, and, if so, provide the details.
5. Explain whether the jurisdictional status of the LDCs was discussed during the Appendix F and B stakeholder process in which the RNG quality standards were developed and, if not, why not.
6. Is there FERC case law or other precedent in which 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? If so, provide the details of such precedent.