

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-7, SUB 1282

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Energy Carolinas,)	
LLC Pursuant to G.S. § 62-133.2 and)	THE PUBLIC STAFF'S
NCUC Rule R8-55 Relating to Fuel)	BRIEF
and Fuel-Related Charge Adjustments)	
for Electric Utilities)	

NOW COMES the Public Staff of the North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and respectfully requests and moves the North Carolina Utilities Commission (Commission) take evidence and evaluate three specific outages in DEC's next fuel adjustment proceeding (instead of the current docket), with any adjustments to be made in that future docket. In support of same, the Public Staff respectfully relies on the facts and law set forth herein.

I. FUEL RIDERS

On February 28, 2023, Duke Energy Carolinas, LLC (DEC or the Company) filed its application and testimony to adjust the fuel and fuel-related cost component of its electric rate in accordance with the applicable jurisprudence, especially N.C. Gen. Stat. § 62-113.2 and Commission Rule R8-55, and filed a corrected application on March 1, 2023 (hereinafter, all of DEC's initial filings are collectively referred to as the Application). The test period for DEC's Application was calendar year 2022. On May 31, 2023, DEC and the Public Staff filed for

Commission approval an Agreement and Stipulation of Partial Settlement, settling all issues but the appropriateness of consideration of replacement power costs attributable to three test year outages of which the Public Staff had not completed its investigation and developed recommendations by the close of the hearing.

A significant percentage of a customer's bill for electric utility service from DEC is devoted to recovery of DEC's fuel and fuel-related costs. Per the Agreement and Stipulation of Partial Settlement filed May 31, 2023 (Stipulation), §IV, ¶1, the proposed fuel rider alone will increase the typical residential customer bill by approximately 13.31%. Given the significant impact a fuel recovery rider can have on customers' bills, it is no wonder the Legislature required "reasonable and adequate time for investigation" be set aside in all fuel adjustment proceedings. N.C.G.S. § 62-133.2(d).

II. INVESTIGATION PERIOD

In this matter, the Public Staff commenced the investigation contemplated by the Legislature and analyzed the Company's Application; responses to data requests; documents related to the operation and performance of the Company's power plants, including the nuclear facilities; the cost of renewable energy and associated fuel prices; and the Company's coal, natural gas, nuclear, and reagent procurement practices and contracts; evaluated outages; and participated in numerous meetings with the Company. Tr. vol. 2, 262, 266-67.

The Public Staff had only 49 business days between DEC's filing of its Application and the deadline to complete its investigation and file testimony. The

unprecedented billion-dollar-under-recovery of fuel costs, combined with extraordinary workload pressures¹ and struggles with numerous discovery issues²

¹ The July 11 Filing reported that the Public Staff was faced with an unprecedented workload. Along with the typical matters that arise, the Energy Division of the Public Staff, including witness Lawrence, was tasked with investigating rate cases brought by DEC (Docket No. E-7, Sub 1276, filed January 19, 2023) and its affiliate, Duke Energy Progress, LLC (DEP), (Docket No. E-2, Sub 1300, filed October 6, 2022). The timing of both rate cases was totally under Duke's control and at its discretion. Witness Lawrence and other members of the Public Staff's Energy Division filed testimony in the DEP rate case on March 27, 2023, and on July 19, 2023, in the DEC rate case. A typical general rate case involves a significant amount of time for investigation; each of these rate cases required even more time and investigation than usual since both companies' rate cases were filed pursuant to North Carolina's new multiyear and performance-based ratemaking law, S.L. 2021-165, which requires investigation of a traditional rate case as well as forecasted capital additions over the next three years. The multi-week DEP rate case expert witness hearing commenced on May 4, 2023 (Docket No. E-2, Sub 1300, Tr. Vol. 7, 1). The Director of the Public Staff's Energy Division testified that DEP's rate case, alone, had caused the Energy Division to accrue more than 1,000 hours of overtime (Docket No. E-2, Sub 1300, Tr. vol. 17, 29). In the middle of this crushing workload, DEC filed its application in this matter on February 28, 2023 (and a corrected one on March 1, 2023) for recovery of its fuel and fuel-related charges.

² The July 11 Filing also discussed various discovery issues that arose. In light of the extraordinary demands on the Energy Division's time and the tight deadlines, it was particularly critical that information be provided in a timely manner. Witness Lawrence testified that outages "take three or four data requests to really understand the issue, to really feel like we have an ability to make a recommendation to the Commission on those cases. And typically, there's a 10-day window for responses. So we can be just waiting for 30 to 40-days in a case." Tr. vol. 2, 328-29. Witness Lawrence explained "[w]e can really quickly start to be pushing up against deadlines to be able to prepare and provide testimony." *Id.* at 329. Therefore, the Public Staff and DEC have had, for years, a standing data request to expedite the providing of information. *Id.* Information is provided semi-annually by DEC to the Public Staff under the standing data request. *Id.* at 334.

However, DEC did not provide certain important information that the Public Staff believes fell within the scope of that standing data request. For example, DEC did not initially produce a document entitled "outage report" in response to the standing agreement to provide outage reports, nor was any indication provided that such document existed, or would be produced at a later date. Tr. vol. 2, 323. Also, Witness Lawrence testified: "I received the document to this data request which I did not expect to even exist in mid-April ..." Tr. vol. 2, 328. DEC did not consider a fossil fuel root cause analysis to be an "outage report" and therefore did not provide it early in the investigation. Tr. vol. 2, 120. Thus, the Public Staff's investigation was significantly hindered by not receiving critical information under the standing agreement for a month and a half after the filing of the rider; "I would have expected to also have information on those, including outage reports and root cause analysis (such as that received for the Belews Creek Outage) with that standing data request." Tr. vol. 2, Public Staff Flanagan Cross Ex. 1, pg. 7 of 9 (April 17, 2023, email). Witness Lawrence stated he "was honestly a little surprised" when the root cause analysis was ultimately produced (tr. vol. 2, 318) because such a document "is completely one that I would have expected to be provided" (tr. vol. 2, 323) under the standing agreement. This is especially true since root cause analyses or root cause evaluations are routinely produced for nuclear outages. Tr. vol. 2, 322.

In another example, the Public Staff requested a meeting on March 27, 2023, to discuss "Steam Facility Outages." Such calls are "immensely helpful." Tr. vol. 2, 329. As witness Lawrence

faced by the Public Staff during its investigation were outlined in the Public Staff's Motion and Response to DEC's Motion filed July 11, 2023 (July 11 Filing), which is hereby incorporated in its entirety by reference. Through great effort, the Public Staff was able to complete all its lines of investigation in this matter by May 9, 2023, save for its review of three DEC outages.

III. OUTAGES

As discussed above, the Public Staff investigated DEC's outages which likely caused DEC to utilize more expensive electric generation sources, including the purchase of power from third parties. Given that DEC is only permitted recovery of "reasonable costs" which were "prudently incurred" (N.C.G.S. § 62-133.2(d)), it is critical that fuel rider investigations examine outages.

During the test year under review, DEC had over 420 outages. Tr. vol. 2, 322. The Public Staff expends significant time and effort to review outages and complete extensive investigations (tr. vol. 2, 321), although not all 420 outages required extensive investigation. Because generating unit outages could lead to additional fuel costs for replacement power, and because of the potential financial hardship the proposed fuel rider in particular, will have on DEC's customers, the

testified: "[I]n an hour and a half phone call we can narrow down our investigation and it takes away a hundred questions or more we have to ask." *Id.* at 330. In response to the March 27 request, a meeting was scheduled for April 14, 2023 – some 2½ weeks after the request was made. However, this already-delayed meeting was unilaterally cancelled by DEC with less than 48 hours' notice to the Public Staff. Against the backdrop of the tsunami of work, the multi-week delays, and the looming deadline to file testimony, it is little wonder that the Public Staff personnel were unable to find a mutually agreeable time to accommodate DEC's unilateral request to reschedule the meeting. Ex. vol. 2, Public Staff Flanagan Cross Ex. 1.

Finally, the Public Staff continued to receive important information even after filing its Direct Testimony. Witness Lawrence testified that discovery propounded on DEC's rebuttal testimony allowed him to "learn information through that response." Tr. vol. 2, 313.

Public Staff would have been derelict in its duties not to fully investigate outages for prudence and reasonableness of the costs of replacement power that resulted.

For the reasons outlined in its July 11 Filing, the Public Staff was unable to complete its investigations into three (of the more than 420) DEC outages by the May 9, 2023, deadline to file testimony. The three outages are: (1) the Belews Creek Steam Station Unit 2 outage beginning on April 22, 2022, and ending on May 8, 2022 (the April 22 Outage); (2) the Belews Creek Steam Station Unit 2 outage beginning on August 31, 2022, and ending on October 29, 2022 (the August 31 Outage); and (3) the W.S. Lee Combined Cycle Plant outage from December 11, 2022, to January 13, 2023 (the December 11 Outage) (collectively, the Three Outages).

With the exception of the Three Outages, the Public Staff and DEC were able to reach a settlement which was reduced to writing in the Stipulation. Nothing in this filing should be read as a repudiation of the Stipulation. In fact, the parties specifically provided that the Commission should determine the appropriate “timing of filing of the results of the Public Staff’s investigation” into the Three Outages, as follows:

The Stipulating Parties have not reached a compromise on either the outages at the Company’s Belews Creek Plant and the W. S. Lee Steam Station or the timing of filing of the results of the Public Staff’s investigation into same (“Unresolved Issues”) and agree that such issues should be litigated and determined by the Commission.

Stipulation, § II (titled “Unresolved Issues”). At the hearing in this matter, the Public Staff discussed the appropriate timing of the filing of the results of its investigation into the Three Outages.³

Following the hearing, the Public Staff completed its investigation into the April 22 Outage and filed supplemental testimony with its conclusions in this docket on June 30, 2023. However, upon a motion by DEC, the Commission struck from the record the June 30 filing but stated “that the determination of whether to defer the consideration of certain outages during the test period at issue in this proceeding to the 2024 fuel adjustment remains open and the parties may address that issue in the post-hearing filings due in this proceeding on July 21, 2023.” Commission Order, July 13, 2023, page 9.

³ The issue was discussed several times and the record of this proceeding is incorporated herein by reference. Without limiting same, the Public Staff cites to Volume 2, page 326 of the hearing transcript, which provides in part as follows:

- Q. [by the Presiding Commissioner]: And just to make sure that I'm clear about how it's going to work from a procedural standpoint. So the evidentiary hearing will presumably be finished today and you will be providing a supplemental report or supplemental testimony. Are you asking that your recommendation to be deferred until the next fuel proceeding or to be incorporated so that your recommendations in regard to the April 22nd, 2022 outage and the August 2022 outage. What will you be asking the Commission to do? To consider it in this fuel proceeding or in the next?
- A. [by witness Lawrence]: Well, I believe I would be, of course, open to whatever the Commission preferred that approach be.

IV. CONSIDERATION OF THE THREE OUTAGES IN THE 2024 FUEL PROCEEDING

For the separate and independent reasons set forth below, the Public Staff respectfully requests the Commission take evidence and evaluate the Three Outages in DEC's next fuel rider.

First, the statute that allows DEC to recover its fuel and fuel-related expenses – that is, the statute at the heart of this proceeding – contemplates situations will arise where the Commission does not issue an order within 180 days. In such cases, the utility may place its requested fuel adjustments into effect but must refund any excess charges once the Commission makes its determination. In full, subsection (e) provides:

If the Commission has not issued an order pursuant to this section within 180 days of a utility's submission of annual data under subsection (c) of this section, the utility may place the requested cost of fuel and fuel-related costs adjustment into effect. If the change in rate is finally determined to be excessive, the utility shall make refund of any excess plus interest to its customers in a manner ordered by the Commission.

N.C.G.S. § 62-133.2(e). This subsection is echoed in Commission Rule R8-55(n).

Essentially, the Legislature created a "safety valve" that both allows the utility to collect its under-recovered fuel expenses but also allows the Commission additional time to make a determination as to whether the fuel rider rates are excessive. In light of the unprecedented workload and historic under-recovery,⁴

⁴ To put this in perspective, the cumulative under-recoveries for all of DEC's past 17 fuel riders were less than the under-recovery for this single proceeding. Ex. vol. 2, 343.

now is precisely the appropriate time for the Commission to employ the Legislature's safety valve. Further, the additional time will allow for resolution of the discovery issues referenced above.

Accordingly, the Public Staff respectfully requests the Commission make no evaluation and issue no order on the substance of the Three Outages; but instead rule that the Commission will take evidence, evaluate, and make a determination regarding the Three Outages in the 2024 fuel proceeding under N.C.G.S. § 62-133.2(e).

Second, while proceedings have to be conducted annually, and the utility must submit annual test year data, N.C.G.S. § 62-133.2 contains no language barring consideration of earlier events when determining the applicable increment or decrement to rates. In light of the unprecedented workload and historic under-recovery, consideration of the Three Outages in the next fuel rider is warranted. As well, the facts make consideration of the Three Outages next year especially appropriate, equitable, and reasonable in this case.

The December 11 Outage was caused by a fire that resulted from a failed turning gear (tr. vol. 2, 274) and was so substantial that it spanned two test years. It is appropriate, just, and reasonable to consider the entire December 11 Outage in the next fuel rider because (1) it ended in the test year for next year's fuel proceeding; (2) it will be more efficient and economical to consider the entire outage in one proceeding; and (3) it will allow time for an investigation, which is particularly warranted given that the outage ended the month before the

Application was filed. Further, the December 11 Outage continued through the 2022 Christmas Eve rolling outages across North Carolina and therefore is subject to the investigation in docket number M-100, Sub 163. Crucially, the outages at this time were the first in the utility's history.

Additionally, the events giving rise to the April 22 Outage more likely than not arose from a failure of the utility to follow protocols in 2018. Tr. vol. 2, 270. Although the effects of the April 22 Outage were most acutely felt in the test year, its cause was extant for years. Just as a cause may span multiple years, complex investigations should also be allowed to span more than one fuel rider. Similarly, the August 31 Outage occurred when "piping failed catastrophically" (tr. vol. 2, 272) and given its complexity, allowing more than 49 business days for an investigation is warranted.

Accordingly, the Public Staff respectfully requests the Commission order that the investigation into the Three Outages will be evaluated in DEC's next fuel filing, with any adjustment to be made in that docket.

Third, in other dockets, the Public Staff and utilities have agreed to hold over investigation. In fact, it occurred in this very case. In the fuel filing DEC made last year (Docket No. E-7, Sub 1263), the Public Staff "discovered an error with the calculations used for the determination of the rate Clemson University was to be billed for the sale of steam from the Clemson CHP facility." Tr. vol. 2, 276. Rather than address it last year, DEC "agreed to hold the issue open ... and make the adjustment in this case." *Id.*

In a case with similar facts – where the Public Staff had not completed its investigations into outages at Dominion electric generation facilities – the utility and Public Staff agreed to hold open investigations, with adjustments to be made in the following year. See, *Application of Virginia Electric and Power Company, d/b/a Dominion North Carolina Power Pursuant to G.S. 62-133.2 and Commission Rule R8-55 Regarding Fuel and Fuel-Related Costs Adjustments for Electric Utilities*, filed August 5, 2016, Docket No. E-22, Sub 534. At page 3 of the Order,⁵ issued December 22, 2016, the Commission ordered as follows:

The Public Staff completed its review of test year plant performance except for the following outages: 1) Surry Unit 1, July 11-22, 2015; 2) Surry Unit 1, October 13 - November 18, 2015; 3) Surry Unit 2, July 13-22, 2015; and Surry Unit 2, December 4-11, 2015. Should any adjustment be appropriate due to these outages, such adjustments will be made in the experience modification factor (EMF) in the 2017 fuel adjustment proceeding.

Holding matters over to the next fuel year is particularly appropriate, reasonable, and just in this case in light of the unprecedented workload, historic under-recovery, and issues with discovery. Accordingly, the Public Staff respectfully requests the Commission order that the investigation into the Three Outages will be evaluated in DEC's next fuel filing, with any adjustment to be made in that docket.

⁵ starw1.ncuc.gov/NCUC/ViewFile.aspx?Id=2c60a706-46fb-49d6-a472-1afec7bcc51b

Fourth, the Three Outages should be considered in DEC's next fuel filing to ensure that rates are "just and reasonable" as required by N.C.G.S. § 62-133.2(d), which provides in relevant part as follows:

To the extent that the Commission determines that an increment or decrement to the rates of the utility due to changes in the cost of fuel and fuel-related costs over or under base fuel costs established in the preceding general rate case is just and reasonable, the Commission shall order that the increment or decrement become effective for all sales of electricity and remain in effect until changed in a subsequent general rate case or annual proceeding under this section.

This section echoes the obligation that "[t]he Commission shall consider all other material facts of record that will enable it to determine what are reasonable and just rates." N.C.G.S. § 62-133(d).

The Three Outages involve a catastrophic failure, a fire, and a multi-year protocol violation. The generation unavailable because of the December 11 Outage was particularly missed during the blackouts that plagued North Carolina last winter. In light of the workload, discovery issues, and historical under-recovery, the 49 business days allotted precluded a complete investigation into the Three Outages, especially when information was not provided promptly. It would be unjust for the calendar and pancaked proceedings to allow the Company to avoid a thorough investigation of these issues, especially when there are ever-increasing upward pressures on customer bills.

Accordingly, the Public Staff respectfully requests the Commission order that the investigation into the Three Outages will be evaluated in DEC's next fuel filing, with any adjustment to be made in that future docket.

Fifth, if fuel adjustment proceeding investigations must be complete by a certain date, regardless, then utilities would have an incentive to employ dilatory tactics and delay matters. To be clear, the Public Staff does not believe such occurred in this docket. Instead, the Public Staff notes that as a policy matter, employing inflexible deadlines could reward inappropriate behavior or ignore the realities of a situation.

WHEREFORE, the Public Staff respectfully requests that the Commission order that the Three Outages be considered in DEC's next fuel filing with adjustments (if any) to be made to rates therein, and for such other and further relief as may be just and proper.

Respectfully submitted this 24th day of July, 2023.

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CERTIFICATE OF SERVICE

I certify that I have caused to be served a copy of the foregoing on all the parties of record on the date set forth below in the manner set forth below on the person(s) set forth below and in accordance with the applicable jurisprudence, especially Commission Rule R1-39.

Served on July 24, 2023, via email electronic delivery by agreement of the receiving party, upon those persons identified at the following addresses:

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