DOCKET NO. E-2, SUB 1204

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Energy Progress, LLC, Pursuant to G.S. 62-133.2 and Commission Rule R8-55 Regarding Fuel and Fuel-Related Cost Adjustments For Electric Utilities	)))))	PUBLIC STAFF'S BRIEF

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission, by and through its Executive Director, Christopher J. Ayers, and respectfully submits the following brief in the above-captioned fuel proceeding.

I. DUKE ENERGY PROGRESS, LLC (DEP OR THE COMPANY) SHOULD NOT BE PERMITTED TO RECOVER DAMAGES ARISING OUT OF A BREACH OF THE CONTRACT IN THIS OR ANY FUEL PROCEEDING, AS THE PAYMENT OF THESE DAMAGES DO NOT CONSTITUTE A "SALE" UNDER N.C. GEN. STAT. §62-133.2(a1)(9).

Factual Background

The relevant underlying facts regarding this legal issue are undisputed. In 2004, DEP's predecessor, Progress Energy Carolinas, Inc. (PEC), began planning to install FGD equipment at its Roxboro and Mayo coal-fired power plants in order to comply with the stricter air pollution control requirements of N.C. Gen. Stat. § 62-133.6 (also known as the Clean Smokestacks Act or CSA) that was enacted in June, 2002. Both plants had been built many years earlier to meet the baseload demand of DEP's customers. The Roxboro plant consists of four generating units with a total capacity of 2,462 MW (winter rating), and the Mayo

plant has one generating unit with a capacity of 746 MW (winter rating). Both of these plants are located in Person County, North Carolina, approximately 16 road miles apart. DEP's CSA compliance plan called for FGD equipment to be installed and operational at Roxboro Units 2 and 4 in 2007, Roxboro Units 1 and 3 in 2008, and Mayo in 2009.

Also in 2004, in order to mitigate the cost of disposing the gypsum produced in the FGD process, DEP executed a contract with BPB NC, Inc. (BPB) for the future sale of artificial gypsum from the Roxboro and Mayo plants to BPB for the manufacture of gypsum board. In 2005, BPB acquired approximately 121 acres of land from DEP adjacent to the Roxboro plant with the intent of constructing a gypsum board manufacturing facility. Also in 2005, CertainTeed's parent company, Saint-Gobain North America, bought BPB and merged it with the existing CertainTeed operations. CertainTeed delayed construction of the facility due to the housing market decline and economic downturn (Great Recession).

As a result of the Great Recession, in late 2007, CertainTeed contacted DEP in an effort to amend the 2004 agreement and to maintain the supply of artificial gypsum in the future.

In 2008, the parties executed an Amended and Restated Supply Agreement that made refinements to the 2004 contract. CertainTeed began accepting artificial gypsum from DEP on May 1, 2009, but transported it to other

locations because the CertainTeed facility adjacent to the Roxboro plant had not yet been completed. The CertainTeed facility began operation on March 28, 2012.

In August 2012, DEP and CertainTeed executed a Second Amended and Restated Supply Agreement (2012 Agreement).[1] Two key provisions of the 2012 Agreement were that DEP would provide 50,000 tons of gypsum per month to CertainTeed and would maintain a gypsum stockpile of 250,000 tons.

Several events led to the reduced dispatch of the Roxboro and Mayo plants and, as a result, the decreased production of artificial gypsum below the amounts required in the contract with CertainTeed. First, in 2012, Duke Energy Corporation merged with PEC and eventually renamed it DEP, placing DEP and Duke Energy Carolinas, LLC (DEC), under single ownership. One of the primary outcomes of the merger was the creation of the Joint Dispatch Agreement (JDA) that facilitated the transfer of economic energy purchases between DEC and DEP resulting from the maximization of joint least cost dispatch of generation. The JDA allowed DEC to sell cheaper energy to DEP when not needed for DEC's own use; as a result, DEP's Roxboro and Mayo generating plants operated less often than before the merger.

Second, natural gas prices significantly declined after 2009 and have not approached the 2009 prices since. This decline in natural gas prices resulted in utilities dispatching natural gas-fired combined cycle plants (CCs) ahead of coal-fired plants. The decline was attributable in part to the increase in hydraulic

[1] FPWC Harrington Confidential Exhibit 1.

fracturing technology, which greatly increased natural gas supply, and the Great Recession, which resulted in lower demand for all forms of energy. As the recession eased and the economy improved, natural gas prices remained near historic lows, leading to low spot market purchases as well as low prices for forward hedging. Coal prices generally fell over this same time period, but did so more moderately.

When DEP and CertainTeed executed the 2012 Agreement, DEP had only two operational CC units, both at the Smith Energy Complex. However, DEC had placed its Buck CC in operation in 2011, and its Dan River CC became operational in late 2012. Both of these plants became available to supply DEP when appropriate under the terms of the JDA. Furthermore, DEP completed its H. F. Lee CC in late 2012 and its Sutton CC in 2013.

The effect of low natural gas prices and the large increase in natural gas-fired CC capacity resulted in the Roxboro and Mayo power plants being dispatched less. The reduced dispatch resulted in less coal burned, resulting in the inability of DEP to provide the quantities of artificial gypsum that CertainTeed contracted for and anticipated when it built the gypsum board manufacturing facility next to the Roxboro plant.

On March 9, 2017, DEP sent CertainTeed a letter stating that the artificial gypsum stockpile would fall below the minimum 250,000 tons required in the 2012 Agreement. In addition, DEP did not deliver the 50,000 tons per month under the

2012 Agreement for the months of May 2017, June 2017, and September 2017 through January 2018.

DEP took the position that the 2012 Agreement allowed DEP to deliver flexible amounts of artificial gypsum to CertainTeed, but CertainTeed's understanding was that the 2012 Agreement required DEP to deliver a firm minimum amount of gypsum of 50,000 tons per month and to maintain a stockpile of 250,000 tons. On June 30, 2017, CertainTeed filed a lawsuit against DEP in North Carolina Superior Court; the case was designated as a mandatory complex business case.[2]

In an Opinion and Final Judgment entered on August 28, 2018, the Court sided with CertainTeed's interpretation as to the amount of gypsum DEP was required to deliver and the size of the stockpile DEP was required to maintain under the 2012 Agreement. The Court's judgment, among other things, ordered DEP to:

1) Pay $1,084,216.75 to CertainTeed, which includes interest, representing the cost of the gypsum CertainTeed purchased at prices above the contract price provided in the 2012 Agreement between May 2017 and January 2018 (Judgment Payment).[3]

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[2] CertainTeed Gypsum NC, Inc., v. Duke Energy Progress, LLC, 2017CVS395, located at ncbc.nccourts.org/public. Opinion & Final Judgment dated August 28, 2018 entered into evidence as FPWC Harrington Exhibit 3.

[3] FPWC Harrington Exhibit 3, pp. 73-75.

2) Deliver 119,768.03 tons of gypsum within 30 days at the agreed-to contract price.

3) Provide a Replenishment Plan to CertainTeed within 90 days, consistent with the amount of gypsum required under the 2012 Agreement.

After the judgment was entered, DEP and CertainTeed reached a settlement, in which the parties agreed that DEP would discontinue supply under the 2012 Agreement and pay liquidated damages. (Tr. Vol. 2, pp. 61-65.)

DEP seeks to recover the Judgment Payment and the liquidated damages from ratepayers through the fuel adjustment clause. The Company contends that 1) the liquidated damages should be included because the liquidated damages provision in the 2012 Agreement was an essential commercial term of a larger transaction that was reasonably and prudently entered into by the Company for the benefit of customers; 2) the Commission should look at the flow of revenue and costs under the 2012 Agreement in assessing whether a loss occurred that is recoverable under the fuel clause, and 3) the Commission has allowed the recovery of similar liquidated damages through the fuel clause in past cases. For the reasons set forth below, these arguments ignore the plain meaning of the statute and are without merit.

Argument

A. The language in N.C. Gen. Stat. § 62-133.2(a1)(9) is clear and unambiguous and must be implemented according to its plain meaning.

The Commission should deny DEP's request for recovery of the Judgment Payment and the liquidated damages through subdivision (a1)(9) of the fuel clause. Rather, these costs should be considered in the context of the Company's next general rate case, which was filed on October 30, 2019 in Docket No. E-2, Sub 1219.

Whether or not these payments are recoverable through the fuel clause is an issue of statutory construction for the Commission. The parties agree that the applicable statute under which the Company seeks recovery of these costs is N.C. Gen. Stat. § 62-133.2(a1)(9), which reads as follows:

> Cost of fuel and fuel-related costs shall be adjusted for any net gains or losses resulting from any sales by the electric public utility of by-products produced in the generation process to the extent the costs of the inputs leading to that by-product are costs of fuel or fuel-related costs.

It is well established that statutory interpretation properly begins with an examination of the plain words of the statute, and if the language of the statute is clear and unambiguous, the Commission must conclude that the Legislature intended the statute to be implemented according to the plain meaning of its

terms. Three Guys Real Estate v. Harnett County, 345 N.C. 468, 472, 480 S.E.2d 681, 683 (1997). When the language of a statute is clear and unambiguous, it must be given its plain and definite meaning, without imposing provisions and limitations not contained therein. Union Carbide Corp. v. Offerman, 351 N.C. 310, 526 S.E. 2d 167 (2000).

Subdivision (a1)(9) provides that fuel costs should be "adjusted for any net gains or losses resulting from any sales by the electric public utility of by-products produced in the generation process." (emphasis added) Merriam-Webster defines "resulting" as proceeding or arising as a consequence, effect, or conclusion[4] and a "sale" as the transfer of ownership of and title to property from one person to another for a price.[5] Taking the plain meaning of these two terms together, the Judgment Payment and the liquidated damages did not proceed out of a transfer of ownership of, and title to, gypsum from DEP to CertainTeed. The payment of the Judgment Payment and the liquidated damages did not result from the sale of a byproduct. No gypsum was exchanged for the payments, as one would otherwise expect in a "sale." Rather, the Company made the Judgment Payment and liquidated damages payments because the Company failed to sell gypsum to CertainTeed. The payments are the antithesis of a sale and are not covered under the plain language of subdivision (a1)(9).

The only case in which the Commission has interpreted subdivision (a1)(9) is the Company's most recently concluded general rate case in Docket No. E-2,

[4] https://www.merriam-webster.com/dictionary/resulting.
[5] https://www.merriam-webster.com/dictionary/sale.

Sub 1142. In its Order dated February 23, 2018 in that case, the Commission found that the beneficial reuse of coal combustion residuals, in and of itself and absent an actual sale, did not constitute the sale of a by-product under subdivision (a1)(9), and that the transaction between DEP and a third party (Charah) did not represent the sale of a by-product. Order Accepting Stipulation, Deciding Contested Issues and Granting Partial Rate Increase, Docket No. E-2, Sub 1142 at pp. 215-16. The Commission stated that "the record in this case does not support a finding that the costs associated with the Master Contract resulted from a 'sale' of CCRs." Id. at 215. The Commission's analysis focused on the value and sale of an asset (CCRs) and determined there was no sale of CCRs that availed the Company of cost recovery under subdivision (a1)(9). Id. The Commission correctly declined to take an expansive view of subdivision (a1)(9) absent the transfer of an asset with value.

In the current case, there was no transfer of an asset with value; thus, there was no sale by which a gain or loss could be recovered pursuant to subdivision (a1)(9). Subdivision (a1)(9) is different from other provisions of the fuel statute in that it permits recovery of gains or losses on "sales," not recovery of "costs" as provided in other subdivisions of the fuel statute. While the liquidated damages constitute a cost that DEP has incurred because it entered into a settlement to discontinue its obligation to supply gypsum under the 2012 Agreement, those costs do not serve as a substitute for a sale-associated loss that cannot be experienced when there is, in fact, no sale. The Commission should continue to limit the application of subdivision (a1)(9) to actual sales involving a gain or loss

by disallowing cost recovery of the Judgment Payment and liquidated damages through the fuel clause in this case.

B. The Company's functional arguments do not override the plain meaning of subdivision (a1)(9).

Irrespective of the plain language of the statute, the Company makes a series of arguments contending the Commission should take a more expansive view of subdivision (a1)(9). Company witnesses Coppola and Halm assert that the Public Staff's statutory interpretation places "form over function." In making this argument, witnesses Coppola and Halm do not contend the words are ambiguous and thus subject to the Commission's legal interpretation. (Tr. Vol. 2, p. 151.) Instead, the witnesses argue the plain language should be disregarded because of policy considerations; namely, the possibility that the plain language of the statute may not result in contractual arrangements in the best interest of customers. Id. However, such a reading of the statute would ignore the legislative intent expressed by the Legislature by expanding the costs that can be recovered pursuant to subdivision (a1)(9). In construing the scope of a statute, the Commission must ascertain and adhere to the intent of the Legislature, and in attempting to ascertain legislative intent, must resort first to the words of the statute. In re Estate of Kirkman, 302 N.C. 164, 273 S.E. 2d 712 (1981). Given the unambiguous words of the statute, the Commission should follow the basic principles of statutory interpretation to ascribe the plain meaning of the words in subdivision (a1)(9).

Similarly, DEP's argument that the liquidated damages[6] should be recoverable through the fuel clause because the liquidated damages provision is an "essential term" of the contract[7] misses the point and again ignores the plain language of the statute. Whether or not a counterparty would require different terms of a contract in exchange for the omission of a liquidated damages clause[8] is speculative and presents no basis for disregarding the plain language of the statute. Likewise, whether a contract appropriately balances risk and obligations relates to the reasonableness of the contract terms, not the appropriate statutory basis (if any) for recovering costs incurred under that contract and is not a basis for disregarding the plain language of the statute.

Further, the Company's argument that the Commission should "look at the flow of revenues and costs[9]" fails for two reasons. First, as set forth above, this argument ignores the plain words of the statute. Second, the Company contradicted this position when its own witnesses acknowledged during cross-examination that not all of the costs under the 2012 Agreement are recoverable under subdivision (a1)(9). **[BEGIN CONFIDENTIAL]** [redacted]

[6] The Company did not make this argument as it relates to the Judgment Payment, as that payment arose out of the finding by the court in the CertainTeed judgment that the Company breached the contract.

[7] See Tr. Vol. 2, p. 13.

[8] Interestingly, under the Interim Supply Agreement (attached to the Settlement Agreement entered into evidence as FPWC Harrington Confidential Exhibit 4), **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

[9] See Tr. Vol. 2, p. 149.

[END CONFIDENTIAL] Thus, the Company is selective in the costs it seeks to recover through the fuel clause related to the 2012 Agreement, and adopting its position in this case would result in an arbitrary application of the statute.

Finally, witnesses Coppola and Halm argue that because the Commission has allowed the recovery of liquidated damages through the fuel clause in past cases, the Commission should allow recovery of the liquidated damages in this case. First, none of the cases cited by the Company witnesses involved the interpretation of subdivision (a1)(9). Additionally, the Commission's ratemaking decisions are made pursuant to its delegated legislative authority, and as such, do not constitute res judicata or stare decisis. State ex rel. Utilities Comm'n v. Carolina Utility Customers Ass'n, Inc., 348 N.C. 452, 500 S.E. 2d 693 (1998); State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E. 2d 862 (1978).[10] Whatever the Commission decided in past fuel cases regarding the inclusion of liquidated damages in those cases, this Commission has the authority to determine whether, in this case and specifically regarding subdivision(a1)(9), it is appropriate for the Company to recover through the fuel clause almost $90 million paid due to the Company's breach of contract.

[10] The Commission has recognized that this principle applies to fuel charge adjustments. Order Approving Fuel Charge Adjustment dated August 20, 2018 in Docket No. E-7, Sub 1163.

C. A prudence review of the Judgment Payment and the liquidated damages is necessary

Public Staff witness Jay Lucas testified that while the Public Staff has concerns regarding the reasonableness and prudence of the Company's payment of the Judgment Payment and the liquidated damages, the Public Staff is only recommending that these costs not be considered appropriate for inclusion in a fuel proceeding because it is more appropriate to consider these costs in a general rate case. (Tr. Vol. 2, p. 69.) In rebuttal, Company witnesses Halm and Coppola asserted that DEP had responded to extensive discovery on the history of the CertainTeed transaction sufficient to assess the reasonableness and prudence of the Company's actions. (Id. at 149.) Thus, it appears that the Company's position is "heads we win, tails you lose:" Should the Public Staff successfully persuade the Commission that the CertainTeed payments are not recoverable through the fuel clause, the Company will have an opportunity to recover the payments in its newly filed general rate case, but if the Company were to prevail, the Public Staff would not have an opportunity to review and present evidence as to the reasonableness and prudence of the payments. Regardless of the amount of discovery produced in this case, the Commission must first determine whether the payments are appropriately recovered through the fuel clause.[11] If the Commission determines that they are, then the Public Staff would respectfully request that it be given an opportunity to review the reasonableness

[11] Witnesses Coppola and Halm acknowledged this during cross-examination. (Tr. Vol. 2, p. 174.)

and prudence of the payments and present its conclusion to the Commission in a future proceeding.

In a footnote in his testimony, witness Lucas raised concerns with the assumptions underlying a hindsight analysis produced by the Company early in discovery asserting that customers benefitted by $50 million as a result of DEP's payment of liquidated damages. (See Confidential Tr. Vol. 2, p. 68.) In rebuttal, witnesses Halm and Coppola presented yet another hindsight analysis (not conducted by either witness and produced after the discovery deadline) purportedly showing a $134 million net benefit to customers by paying the liquidated damages. Acknowledging that the Commission precedent prohibits the use of hindsight analysis, the Company nonetheless believes its hindsight analysis provides "greater context" for the Company's decision to pay liquidated damages in this case. (Tr. Vol. 2, pp. 157-159.) The Company having opened the door to providing this "greater context," the Public Staff presented an affidavit filed in the CertainTeed lawsuit provided by Gisele Rankin, a 34-year veteran attorney of the Public Staff (now retired) and N.C. State Bar recognized specialist in utility law. In that affidavit, Ms. Rankin testified that DEP should have considered the forecasted price of natural gas, the changes following from the joint dispatch of resources, and the effects of both of these on the production of gypsum at Roxboro and Mayo at the time it entered into the 2012 Agreement. She also stated that DEP made a "bad bargain."[12] To the extent that the Commission finds that hindsight analysis provides useful context, Ms. Rankin's affidavit certainly

[12] Coppola Halm Public Staff Cross Examination Exhibit 1.

provides a view contrary to the one presented by the Company. If the Commission decides that the Judgment Payment and the liquidated damages are recoverable under the fuel clause, the Commission should take Ms. Rankin's expert assessment into account in determining whether to allow the recovery of the payments at this time, especially when the Public Staff has not yet presented a prudence assessment to the Commission.

Regarding both analyses presented by the Company, it does not follow from the fact that customers may have benefitted by the relationship with CertainTeed that incurrence of the Judgment Payment and liquidated damages was reasonable and prudent. In any prudence review, the Commission has the authority to disallow any unreasonable and imprudently incurred costs, irrespective of whether customers otherwise benefitted from a transaction.

II. THE COMMISSION SHOULD REQUIRE THE COMPANY TO EVALUATE ITS COMMODITY PRICING METHDOLOGY.

In his testimony, Public Staff witness Metz discussed his concerns regarding the Company's natural gas commodity pricing methodology. His concerns were similar to those expressed by Public Staff witness Lucas in DEC's recent fuel proceeding in Docket No. E-7, Sub 1190. As the Company has shifted to a fuel commodity with greater price variances (compared to nuclear and coal), despite overall decreasing costs in order to more economically serve its rate payers, these same customers are exposed to greater risk of fuel cost under- and over-recoveries. Natural gas consumption, most notable by baseload combined

cycle (CC) plants, coupled with recent winter weather events of the last few years, have caused exposure to higher than anticipated natural gas fuel commodity prices. (Tr. Vol. 2, p. 123.)

In the DEC fuel proceeding, the Public Staff proposed, the Company agreed, and the Commission determined that given DEC's increased reliance on natural gas and the resulting risk of under-recoveries if natural gas prices are not forecasted as accurately as possible, the Company should evaluate historic price fluctuations and whether its current method of forecasting and hedging programs should be adjusted to mitigate the risk of significant under-recovery of fuel costs, and report the results of this evaluation in the next fuel proceeding. DEP should be required to undertake the same evaluation and report the results to the Commission in its next fuel proceeding.

III. THE COMPANY'S RECORDS RETENTION IN THE CASE OF THE ROBINSON TRANSMISSION UPGRADE PROJECT (TUP) MERITS FURTHER REVIEW AND GUIDANCE BY THE COMMISSION.

Public Staff witness Metz testified that part of the scope of the Fall 2018 outage at Robinson was to install a transmission upgrade project (TUP). The TUP was a multiyear design, procurement, installation, and commissioning project that began in 2011, with a proposed in-service date of Spring 2017.[13] The multi-year coordinated TUP included installing a new 230 kV start-up transformer, replacing

[13] Initial communications with the Company revealed the initial in-service date of 2014 and not 2017. This was later clarified in discovery, and the overall project was completed in stages, spanning multiple outages and years.

an existing 115 kV start-up transformer, switchyard modifications, replacing older electro-mechanical relays with digital relays, building infrastructure, installing new electrical switchgear, replacing reactor coolant pump breakers, installing uninterrupted power supplies and battery systems, and numerous other electrical systems. The overall scope of this project was expansive and required a significant level of engineering and oversight. After investigation, he was unable to conclude whether the additional 28 outage days of replacement power costs incurred during the Fall 2018 outage at Robinson were imprudently incurred. However, he doubted whether the Company's management of the project should have resulted in it being shifted from the Spring 2017 refueling outage to the Fall 2018 refueling outage. (Tr. Vol. 2, pp. 117-118.)

In this case, Mr. Metz was faced with a dilemma in presenting his recommendation to the Commission. On the one hand, he could not conclude with a reasonable certainty that the TUP was prudently managed up to the events that caused the outage to shift from 2017 to 2018, as described in his testimony. At the same time, he could not conclude that it is reasonable to disallow recovery of the replacement power costs for an outage that was impacted by severe weather events. (Id. at 118-119).

There were several factors that prevented Mr. Metz from reaching a conclusion as to whether the TUP was prudently managed. First, the Company's lack of document access and retention restricted the Public Staff's ability to review

and evaluate the prudency of project management. The TUP started pre-merger[14] and during the project life cycle, the merger led to the introduction of new policies and procedures regarding project management. The Company was able to produce applicable guidelines and procedures that should have been followed, but the documentation to ensure that these items were, in fact, appropriately implemented and completed could not be produced consistently. (Id. at 119.)

The scope of this project would have required an immense amount of contractor coordination, not only with individual vendors, but also coordination of internal review cycles due to interdependencies among multiple working groups and project milestones. This level of communication would have required several revisions to project milestones, as well as numerous amounts of communication and records. As part of discovery, the Public Staff asked the Company for "all" communications between the Company and vendors as well as any internal communications regarding the project. The Company was capable of providing only limited communications. As of August 1, 2019, only approximately five responsive documents had been provided. (Id. at 119-120.)

In rebuttal, DEP witness Henderson detailed the amount of discovery produced by the Company and asserted that the Public Staff had been provided with sufficient documentation to assess the prudence of project management and the causes of the extended outage that is relevant to this case.

[14] For purposes of this discussion, "merger" refers to the merger of Duke Energy Corporation and Progress Energy, Inc. in 2012.

The Public Staff does not dispute that the Company worked in good faith to respond to Public Staff discovery, made technical experts and senior management available for discussion, and had open dialogue as the Public Staff and DEP worked through the discovery process. However, the Public Staff is concerned about the Company's apparent lack of records retention in this case. As the Commission relies on the Public Staff to conduct detailed technical and prudency investigations and audits of the utilities, the Public Staff believes the Commission expects the utilities to retain adequate and sufficient documentation for audit purposes. This concern has broader implications that could impact future investigations and proceedings. The Company is seeking cost recovery for the associated capital expenditures specific to the TUP in the Company's general rate case filed October 30, 2019 in Docket No. E-2, Sub 1204.[15] In the general rate case, the reasonableness and prudence of the project and project spend will be evaluated. The Public Staff will ask questions in the general rate case similar to those asked in this case, but the responses will be reviewed under a different lens (capital versus replacement power).

Having access to documentation is vitally important to the Public Staff's ability to audit and provide recommendations to the Commission. Commission Rule R8-28 establishes the records retention requirements of utilities. The rule requires that unless otherwise specified by the Commission, records must be retained in accordance with the National Association of Regulatory Utility Commissioners' (NARUC) publication "Regulations to Govern the Preservation of

[15] Specifically, see the Direct Testimony of Kelvin Henderson at page 9 in that docket.

Records of Electric, Gas and Water Utilities."[16] Notably, the NARUC regulations provide that notwithstanding any minimum requirements in the regulations, utilities must retain appropriate records to support cost recovery. More likely than not, there are other Company projects that will require similar scrutiny, including legacy projects that occurred before, during, and just after the merger time period and transition, or other projects that span multiple years. Therefore, the Public Staff requests that the Commission (1) review the Company's records retention protocol to determine if it is consistent with the Commission's Rules and (2) provide guidance on how to proceed if necessary records are unavailable to allow sufficient review of projects or other items for which the Company seeks cost recovery.

CONCLUSION

For the reasons set forth above, the Public Staff respectfully requests that the Commission deny the Company's request to recover the CertainTeed Judgment Payment and liquidated damages through the fuel clause; require the Company to evaluate its commodity pricing methodology; and review the Company's record retention protocol and provide guidance as to how the Public Staff should proceed if necessary documents are unavailable to allow for a sufficient audit of projects or costs.

[16] http://www.psc.state.wv.us/scripts/webdocket/ViewDocument.cfm?CaseActivityID=236040&NotType=%27%27WebDocket%27%27.

Respectfully submitted this the 4th day of November, 2019.

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CERTIFICATE OF SERVICE

I certify that a copy of this Brief has been served on all parties of record or their attorneys, or both, by United States mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 4th day of November, 2019.

Electronically submitted
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