



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

July 7, 2020

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

Re: Docket No. E-2, Sub 1219

Dear Ms. Campbell:

On July 7, 2020, the Public Staff filed the Public Staff’s Response to Duke Energy Progress’ Second Supplemental Direct Testimony and Exhibits in the above-referenced docket. The caption was incorrectly labeled “Public Staff’s Response to Duke Energy Carolinas’ Second Supplemental Direct Testimony and Exhibits”.

The Public Staff apologizes for this error and for any inconvenience it may have caused the Commission or the parties. A corrected version of the redacted document is attached.

The confidential cover sheet contained the same error in the title of the document. A corrected version of the confidential document will be filed separately.

By copy of this letter, I am forwarding a copy of the redacted version to all parties of record by electronic delivery. The confidential version will be provided to those parties that have entered into a confidentiality agreement.

Sincerely yours,

/s/ Elizabeth D. Culpepper
Staff Attorney
elizabeth.culpepper@psncuc.nc.gov

cc: Parties of Record

Executive Director (919) 733-2435	Communications (919) 733-5610	Economic Research (919) 733-2267	Legal (919) 733-6110	Transportation (919) 733-7766
Accounting (919) 733-4279	Consumer Services (919) 733-9277	Electric (919) 733-2267	Natural Gas (919) 733-4326	Water (919) 733-5610

3. On December 6, 2019, the Commission entered its Order Scheduling Investigation and Hearings, Establishing Intervention and Testimony Due Dates and Discovery Guidelines, and Requiring Public Notice (Procedural Order). Among other things, the Procedural Order set a deadline for the filing of the Company's updates to its actual revenues, expenses, rate base, and cost of capital for the period ending February 29, 2020, for March 13, 2020, and other deadlines for the filing of Public Staff and intervenor testimony and the Company's rebuttal.

4. On March 10, 2020, Governor Roy Cooper issued Executive Order No. 116 declaring a State of Emergency in North Carolina to coordinate response and protective actions to prevent the spread of coronavirus (COVID-19). By subsequent executive orders, the Governor restricted non-essential movement of the State's residents and, ultimately, prohibited mass gatherings of more than 10 persons to limit the spread of COVID-19. In response to these executive orders, on March 24, 2020, the Commission entered an Order Suspending Procedural Schedule and Continuing Hearing.

5. On April 3, 2020, DEP filed a motion requesting that the Commission issue an order addressing several procedural issues, including ordering the partial resumption of the procedural schedule. In its motion, DEP also waived its right to seek to implement its original proposed rates by operation of N.C.G.S. § 62-134(b) in the event that the postponement of the hearing renders it infeasible for the Commission to issue an order prior to expiration of the rate suspension period under N.C.G.S. § 62-134. On April 7, 2020, the Commission ordered the partial resumption of the procedural schedule.

6. All Company, Public Staff, and intervenor testimony has been filed, and the case was in a procedural posture to be heard before the Commission prior to the Company's filing of its Second Supplemental Testimony.

7. On June 2, 2020, DEP and the Public Staff filed an Agreement and Stipulation of Partial Settlement with the Commission (Stipulation), representing that the parties had reached a settlement with respect to some of the revenue requirement issues presented by the Company's application, as reflected in Smith Partial Settlement Exhibit 1. On June 5, 2020, the Public Staff filed Maness Settlement Exhibit 1 similarly reflecting the settled items between the Company and the Public Staff.¹

8. Commission Rule R1-24(c) provides in part as follows:

Stipulations. — The parties to any proceeding or investigation before the Commission may, by stipulation in writing filed with the Commission or entered in the stenographic record at the time of the hearing, agree upon the facts or any portion thereof involved in the controversy, which stipulations shall be binding upon the parties thereto and may be regarded and used by the Commission as evidence at the hearing. (emphasis added)

9. On June 17, 2020, the Commission entered its Order Adopting Procedures for Expert Witness Hearings. In this Order, the Commission consolidated portions of the expert witness hearings for this proceeding and the general rate case for Duke Energy Carolinas, LLC (DEC) in Docket No. E-7, Sub 1214 for remote hearing beginning July 27, 2020. The Order further provided that the expert witness hearing would continue in person beginning August 4, 2020

¹ The differences in the numbers largely relates to the effects of the Company's use of Summer Coincident Peak (SCP) versus the Public Staff's use of Summer Winter Peak and Average (SWPA) to allocate production plant.

to consider the remaining topics in the DEC rate case, followed immediately by the expert witness hearing to consider the remaining topics in the DEP rate case. The Order also set forth deadlines for consenting to the remote hearing, filing the order of witnesses with cross times, and other procedural matters intended to provide for an orderly hearing.

10. On July 2, 2020, on the same day the Company filed the order of witnesses with cross times, and just 24 days before the consolidated hearing is finally set to begin, the Company filed its Second Supplemental Testimony seeking to further update revenues, rate base, and selected expenses through May 31, 2020, well beyond the February 29, 2020 update date set forth in the Company's original application and the Commission's Procedural Order. In its filing, the Company recognized the existence of the settlement between it and the Public Staff, but claims the items it seeks to update are "new". The Company further claims that the update is necessary to provide a reasonable opportunity for the Company to earn the return on equity the Commission orders in this case.

11. The Company's last minute update is objectionable on several grounds. First, several of the items sought to be updated by the Company have been settled between the parties in the Stipulation, and the amounts agreed to therein should be binding on the Company. If the Company is allowed to proceed with updating settled amounts after the filing of a settlement, what would be the benefit of a settlement, and why would anyone (including the Public Staff) enter into one with the Company or any utility?²

² If the Company is allowed to breach the Stipulation, the Public Staff asserts that the Stipulation should be voided in its entirety.

12. Second, the update is not necessary to maintain the Company's financial position. The Company has represented to its investors that it will be able to maintain its financial position during the COVID-19 pandemic.³

13. Third, if the Company were to be allowed to further update its case (having already updated from the end of 2018 to February 29, 2020), the update should include all revenues and expenses. DEP has not updated all adjustments to the same period, thus not presenting an actual and fair picture. In an Order on Motions for Clarification dated July 2, 2018, in Docket E-7, Sub 1146, DEC's previous general rate case, the Commission held that selective company updates are inappropriate.

14. Fourth, given the uncertainty of the effects of the COVID-19 pandemic on the revenues and expenses of the Company, the Commission should be skeptical as to whether the amounts provided in the update are representative of amounts going forward.⁴ Should the Commission set revenues, for example, in

³ In a recent earnings call, Duke Energy's CEO laid out a number of "levers" it had to mitigate the impact of COVID-19, and expressed confidence that it could reduce O&M and other expenses by \$350-\$450 million in 2020. Thus, Duke Energy affirmed its targets of delivery within its original earnings per share guidance range. Further, the CEO noted that "depending on how this economic downturn plays out, we would continue to go more aggressively not only at cost categories we've identified, but really within a broader context of transformation. And this is where we'd be more aggressive around corporate center, around outsourcing, real estate footprint, digital tools, early plant retirements, just a variety of things. And that work is already underway." <https://www.duke-energy.com/media/pdfs/our-company/investors/news-and-events/2020/1qresults/2020-qtr01-earnings-call-transcript.pdf?la=en> Duke Energy also recently announced an increase in its quarterly cash dividend. <https://news.duke-energy.com/releases/duke-energy-announces-dividend-payments-to-shareholders>

⁴ Indeed, in response to Public Staff Data Request No. 3-1(b) in the DEP fuel case, Docket No. E-2, Sub 1250, DEP indicates that **[BEGIN CONFIDENTIAL]** 


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an amount that is too low relative to what is normal, the Company may well overearn its authorized return once revenues return to a normal level.

15. Should the Commission allow the Company to update, the Public Staff will need sufficient time (at least 60 days)⁵ to audit and provide further supplemental testimony to the Commission, as allowed under Commission Rule R1-17(c). New procedural deadlines would need to be established for filings and for the parties to revisit and file witness lists and cross times, as settled issues would then need to be litigated. Obviously, this would require either another postponement of hearing, or leaving the record open in order for the Public Staff to file testimony and the Company to file any rebuttal and for further hearings. Either way, the result would be a further delay in a final decision in this case.

WHEREFORE, the Public Staff respectfully requests the Commission to determine (1) whether the Company's further update of its case violates the Stipulation with the Public Staff, and (2) if the Company updates, whether the Commission's current procedural schedule will stand, allowing the parties to continue to proceed to prepare for hearing, or should be revised, and (3) for such other and further relief as the Commission may deem just and proper.

⁵ The Public Staff and intervenors would need time to send data requests; the Company would require a sufficient amount of time to respond; and follow up data requests may be necessary. Then, time should be included to draft and file testimony.

This the 7th day of July, 2020.

PUBLIC STAFF
Christopher J. Ayers
Executive Director

Dianna W. Downey
Acting Chief Counsel

Electronically submitted
/s/ Elizabeth D. Culpepper

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CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing Response on all parties of record in accordance with Commission Rule R1-39, by United States mail, postage prepaid, first class; by hand delivery; or by electronic delivery upon agreement of the receiving party.

This the 7th day of July, 2020.

Electronically submitted
/s/ Elizabeth D. Culpepper