



**NORTH CAROLINA  
PUBLIC STAFF  
UTILITIES COMMISSION**

March 27, 2019

M. Lynn Jarvis, Chief Clerk  
North Carolina Utilities Commission  
Mail Service Center 4325  
Raleigh, North Carolina 27699-4300

Re: Docket No. E-7, SUB 1181; Docket No. SP-12478, SUB 0; and Docket  
No. SP-12479, SUB 0 – Public Staff’s Proposed Order

Dear Ms. Jarvis:

In connection with the above-referenced dockets, I transmit herewith for filing on behalf of the Public Staff the attached Proposed Order.

By copy of this letter, I am serving to all parties of record.

Sincerely,

Electronically Signed  
/s/ Tim Dodge  
Staff Attorney  
[tim.dodge@psncuc.nc.gov](mailto:tim.dodge@psncuc.nc.gov)

Attachment

cc: Parties of Record

<b>Executive Director</b> (919) 733-2435	<b>Communications</b> (919) 733-2810	<b>Economic Research</b> (919) 733-2902	<b>Legal</b> (919) 733-6110	<b>Transportation</b> (919) 733-7766
<b>Accounting</b> (919) 733-4279	<b>Consumer Services</b> (919) 733-9277	<b>Electric</b> (919) 733-2267	<b>Natural Gas</b> (919) 733-4326	<b>Water</b> (919) 733-5610

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**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-7, SUB 1181  
DOCKET NO. SP-12478, SUB 0  
DOCKET NO. SP-12479, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Transfer of Certificates of Public Convenience and )  
Necessity and Ownership Interests in Generating )  
Facilities from Duke Energy Carolinas, LLC, to )  
Northbrook Carolina Hydro II, LLC, and Northbrook )  
Tuxedo, LLC )

PROPOSED ORDER  
OF THE  
PUBLIC STAFF

HEARD: Tuesday, February 5, 2019, at 10:00 a.m., Commission Hearing Room  
2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Chairman Edward S. Finley, Jr., Presiding; Commissioners ToNola D.  
Brown-Bland, Jerry C. Dockham, James G. Patterson, Lyons Gray, Daniel  
G. Clodfelter, and Charlotte A. Mitchell.

APPEARANCES:

For Duke Energy Carolinas, LLC:

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Dwight Allen  
Allen Law Offices, PLLC  
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For Northbrook Tuxedo LLC and Northbrook Carolina Hydro II, LLC:

Katherine Ross  
Parker Poe  
P.O. Box 389 Raleigh, North Carolina 27602

For the Using and Consuming Public:

Tim R. Dodge and David T. Drooz  
Public Staff – North Carolina Utilities Commission  
4326 Mail Service Center, Raleigh, North Carolina 27699

BY THE COMMISSION: On July 5, 2018, Duke Energy Carolinas, LLC (DEC), along with Northbrook Carolina Hydro II, LLC, and Northbrook Tuxedo, LLC (collectively, Northbrook), filed a Joint Notice of Transfer, Request for Approval of Certificates of Public Convenience and Necessity, Request for Accounting Order, and Request for Declaratory Ruling (Joint Notice and Request) in the above-captioned dockets. The Joint Notice and Request seeks several regulatory approvals for the proposed sale of the following five small hydroelectric generating facilities from DEC to Northbrook: Bryson, Franklin, Mission, Tuxedo, and Gaston Shoals (collectively, the Facilities).

On July 25, 2018, the Commission issued its Order Requesting Comments. Comments were filed by the Public Staff on September 4, 2018, and reply comments were filed by DEC on September 18, 2018.

On November 29, 2018, the Commission issued an order requiring the parties to file testimony that should address certain questions posed by the Commission, and scheduling this matter for hearing on February 5, 2019.

On December 21, 2018, DEC and Northbrook duly filed testimony and exhibits of their witnesses. On January 18, 2019, the Public Staff filed testimony of its witnesses. No other party has intervened in the docket.

On January 18, 2019, the Public Staff filed a motion requesting that the Commission's order on the Joint Notice and Request include a provision to the effect that the reasonableness of the loss on sale, including the reasonableness of capital expenditures made by DEC on the plants from 2015-2017, could be reviewed in DEC's next general rate case. On January 28, 2019, DEC filed a response to the Public Staff's motion requesting that the motion be denied.

On January 30, 2019, DEC, Northbrook, and the Public Staff (Movants) filed a Joint Motion to Cancel Hearing and to Excuse Witnesses and to Enter Additional Evidence into the Record.

On February 1, 2019, the Commission allowed Northbrook witness Ahlrichs and DEC witness Tewari to be excused, stated that the late-filed exhibits attached to the Joint Motion (Late-Filed Exhibits) would be accepted at hearing, and required certain DEC and Public Staff witnesses to appear at the hearing.

Based on the Joint Notice and Request of DEC and Northbrook, the filed comments and reply comments of the parties to this proceeding, the testimony and exhibits admitted into evidence, and the record as a whole, the Commission makes the following:

### **FINDINGS OF FACT**

1. The operation of hydroelectric facilities to generate electricity for sale to the public is a public utility activity subject to the jurisdiction of the Commission. It is appropriate for the Commission to issue an order on the requests of DEC and Northbrook.
2. The sale and transfer of the Facilities from DEC to Northbrook will serve the public interest and convenience. It is appropriate for the certificates of public convenience

and necessity (CPCNs) issued or deemed to be issued to DEC for the Facilities located in North Carolina to be transferred to Northbrook upon closing of the sale of the Facilities.

3. It is reasonable for DEC to defer the estimated \$27 million North Carolina retail amount of the loss on the sale of the Facilities to a regulatory asset.

4. It is appropriate to allow the reasonableness of the amount of the loss on sale to be reviewed in DEC's next general rate case.

5. It is reasonable for the amortization of the regulatory asset to begin upon the closing of the sale.

6. It is reasonable for the amortization expense to be the same as the currently approved depreciation expense for the Facilities, subject to review in DEC's next general rate case.

7. It is appropriate for the Facilities to qualify as New Renewable Energy Facilities for renewable energy portfolio standard (REPS) compliance purposes once they are owned by Northbrook. Upon the closing of the sale, it will be appropriate for the Commission to accept the registration statements for the Facilities filed by Northbrook, and to cancel DEC's registration statements.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1**

Finding of Fact No. 1 is supported by the Joint Notice and Request. It is not disputed by any party.

The hydroelectric facilities that are the subject of the Joint Notice and Request are used to generate electricity, and that electricity is sold to the public, including North Carolina customers. The operation of these facilities therefore constitutes a public utility activity under N.C. Gen. Stat. § 62-3(23).

The Joint Notice and Request seeks (i) approval of the planned sale of the assets comprising the DEC hydroelectric facilities at Bryson, Franklin, Mission, Tuxedo, and Gaston Shoals to Northbrook, (ii) approval for the transfer of DEC's CPCNs for the Bryson, Franklin, and Mission facilities to Northbrook Carolina Hydro II, LLC, and transfer of the CPCN for Tuxedo to Northbrook Tuxedo, LLC, upon closing of the sale transaction, (iii) permission for DEC to defer the estimated loss on the sale of the Facilities to a regulatory asset, (iv) a declaration that the Facilities will be New Renewable Energy Facilities once Northbrook takes ownership, so that renewable energy certificates (RECs) purchased by DEC from Northbrook will qualify for DEC's compliance with Renewable Energy and Energy Efficiency Portfolio Standard (REPS), and (v) acceptance of the Northbrook registration statements for the Facilities upon closing of the sale. The Commission's authority to issue an order addressing these requests is based on its powers under Chapter 62, as well as its practice in proceedings that seek to transfer CPCNs from a public utility to a third party. See, e.g., the December 3, 1996, Order Approving Transfer of Certificates in Docket No. SP-122, Sub 0.

## **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2**

Finding of Fact No. 2 is supported by the Joint Notice and Request, the Comments and Reply Comments, and the testimony and exhibits of the witnesses in this proceeding. In particular, the Joint Notice asserted that sale of the Facilities would be more economical than continued ownership by DEC, and would result in net savings to customers over time. The Comments of the Public Staff recommended approval of the transfer of the CPCNs.

Northbrook witness Ahlrichs testified that Northbrook has the managerial, financial, technical capabilities to own and operate the Facilities. His testimony was uncontradicted. DEC witness Tewari testified to DEC's due diligence in conducting a bid and negotiation process to find a buyer that would strike the proper balance between maximizing sale price and establishing the capability of the new owner to operate the Facilities reliably. DEC witness Lewis testified on DEC's analysis that showed selling the Facilities and buying the power back from the new owner for five years would produce a Present Value Revenue Requirement (PVRR) substantially more favorable to customers than continued ownership by DEC. Public Staff witnesses Metz and Maness testified that their sensitivity testing showed the DEC PVRR analysis to be positive in most scenarios. The Public Staff supports the sale of the Facilities based on its review of the PVRR analysis, showing expected benefits to customers.

Based on the foregoing, the Commission concludes that the proposed sale of the Facilities would serve the public interest and convenience because customers are expected to benefit from lower costs in the long term, and the new owner is competent to operate the Facilities. Once the sale transaction is closed, the CPCNs issued by this Commission for the Facilities located in North Carolina (i.e., all the Facilities except Gaston Shoals), or deemed to have been issued, should be transferred from DEC to the applicable Northbrook entities in keeping with Commission practice.

### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 – 6**

Findings of Fact Nos. 3 - 6 are based on information in the Joint Notice and Request, the Comments of the Public Staff, DEC's Reply Comments, the testimony of DEC witnesses Williams and Lewis, and the testimony of Public Staff witnesses Metz and

Maness. As discussed below, the Commission has also given careful consideration to the Motion of the Public Staff and DEC's Response in Opposition to Public Staff's Motion.

The parties addressed various aspects of the regulatory treatment for DEC's expected loss on the sale of the Facilities. The Joint Notice and Request indicated there would be a loss of approximately \$27 million allocated to the North Carolina retail jurisdiction. The loss arises from the difference in DEC's net book value of \$42 million for the Facilities, plus an estimated \$0.2 million in plant material and operating supplies, \$1.0 million of legal and transaction-related costs, and \$1.6 million of transmission-related work for the sale, minus a sale price of \$4.75 million. Subsequent testimony of DEC witness Williams indicates that the legal and transaction-related costs have increased to \$1.4 million, but the requested deferral remains \$27 million.

DEC asked the Commission to establish a regulatory asset for the loss on sale; otherwise, DEC would have to write off the loss, and DEC would terminate the transaction rather than take a \$27 million loss. The Public Staff supported deferral of the loss to a regulatory asset. The Public Staff further recommended that amortization of the regulatory asset begin in the month in which ownership of the Facilities is transferred, and that the amortization period be set at 20 years (subject to reevaluation in DEC's next general rate case), which is comparable to the timeframe over which the Facilities would be depreciated if they remained with DEC. DEC stated in reply comments and in the testimony of witness Williams that the amortization expense should be set at the level of its currently approved depreciation, until the amortization period could be reconsidered in the next general rate case. The Public Staff stated in its testimony that it considers the Company's proposal reasonable.

The Commission concludes that the estimated \$27 million loss should be deferred to a regulatory asset if and when the sale is closed, that amortization of the regulatory asset should begin in the month the sale is closed, and that the amortization expense should be comparable to the currently approved depreciation expense (i.e., amortization based on a 20-year remaining useful life) for the Facilities, with a different amortization rate being open for consideration in DEC's next general rate case.

The remaining issue with regard to the estimated loss on sale is whether the net book value component of the loss may be reviewed in DEC's next general rate case. This issue is the subject of the Public Staff's motion, DEC's response to that motion, and the related testimony of Public Staff witnesses Metz and Maness, and DEC witnesses Williams and Lewis. Specifically, DEC spent about \$17.3 million for rehabilitation and other work on the Facilities in 2015-2017, and the Public Staff has raised a question as to whether it was prudent to invest that much shortly before deciding it was not economical to continue to own the Facilities. DEC correctly notes that almost all of the \$17.3 million was included in rate base in its last general rate case, Docket No. E-7, Sub 1146. The Public Staff argues that it did not review that specific project for prudence in the last DEC general rate case, that it should have the opportunity to conduct such a review in DEC's next general rate case, and that N.C. Gen. Stat. § 62-80 provides the legal authority for the Commission to allow such review.

The Commission concludes that it has discretion under N.C. Gen. Stat. § 62-80 to allow review of the reasonableness of the \$17.3 million investment in the Facilities from 2015 – 2017. The statute expressly states the Commission "may at any time" alter or

amend a prior order. The word “may” makes this a discretionary authority. The words “at any time” mean what they say – there is no time limit prescribed by law.

In its response to the Public Staff’s motion, DEC argues that N.C. Gen. Stat. § 62-80 does not allow subsequent review of the decision in Docket No. E-7, Sub 1146, to include the hydroelectric facility rehabilitation costs in rate base because the time for appeal has passed. In support of this argument, DEC cites two cases. *Utilities Commission v. Edmisten*, 291 N.C. 575, 581-82, 232 S.E.2d 177 (1977), states in part: “We think it clear that, at least until the order became final by expiration of the time allowed for appeal, G.S. 62-80 authorized the Commission, upon its own motion or upon the motion of any party, to reconsider its previously issued order. . . .” This holding does not support DEC’s argument – the Court only considered the situation where a motion pursuant to N.C. Gen. Stat. § 62-80 was made before the time for appeal expired. The Court held that such motions were permissible “at least” up to that point. The Court did not hold that a motion pursuant to N.C. Gen. Stat. § 62-80 was improper after that point.

DEC also quotes *State ex rel. Utilities Com'n v. Carolina Water Service*, 335 N.C. 493, 498, 439 S.E.2d 127, 129-30 (1994) for the holding that “While the Commission can choose to rescind, alter, or amend a final decision on its own accord, it is not required to rehear an issue brought by a party after the order has been final for thirty days.” This holding recognizes that the word “may” in the statute makes the Commission’s decision discretionary; hence the Commission “is not required to rehear an issue.” Nothing in this ruling supports DEC’s argument that a rehearing is prohibited by law if a motion under N.C. Gen. Stat. § 62-80 is made after the time for appeal has expired.

DEC also argues that even if the Public Staff's motion is not time-barred, it is improper because the Public Staff has not produced additional evidence or change of conditions to justify altering or amending the decision to include in rate base the 2015 – 2017 rehabilitation costs of the hydroelectric facilities. The Commission agrees that it would not alter or amend a prior order without substantial evidence. However, that argument misreads the Public Staff motion. The Public Staff is not seeking in its motion to alter or amend the order in Docket No. E-7, Sub 1146. Rather, it seeks to have the opportunity in the next DEC general rate case to present such evidence if available.

The statute contemplates a three-step process. The first step is to provide for a hearing on evidence or change of conditions that might justify altering a prior order: "upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard." The second step is to hold the hearing at which relevant evidence and arguments may be presented by interested parties. The third step is for the Commission to weigh the evidence and arguments, and make a decision whether to alter or amend the prior order. The Public Staff's motion in the instant case seeks to have the Commission take the first step, and that step does not require the filing of evidence. The evidence, if any, would be presented at step two; there is no requirement in N.C. Gen. Stat. § 62-80 for the Public Staff to make its case at this time.

Indeed, the purpose of the present proceeding (Docket Nos. E-7, Sub 1181; SP-12478, Sub 0; and SP-12479, Sub 0) is to address the request for transfer of CPCNs, deferral of the loss to a regulatory asset, and qualification of the RECs for use by DEC in REPS compliance. The purpose of the present proceeding is manifestly not to decide on cost recovery of the loss on sale. DEC is asking the Commission to rule that the

reasonableness of a large component of its loss on sale has already been decided and will not be reconsidered even if another party were to offer compelling evidence of unreasonableness in the next cost recovery proceeding. The Public Staff is asking that the Commission reserve judgment on that issue until the next cost recovery proceeding. The Public Staff's position reflects the normal practice of the Commission when ruling on deferral requests: when the Commission grants requests to defer costs to a regulatory asset, it routinely makes that decision on the condition that the reasonableness of the costs will be determined in a subsequent rate case. The Public Staff's position is also consistent with the statement in the Joint Notice and Request that an accounting order allowing deferral of the loss would not preclude reasonableness review in a subsequent rate case.

In balancing the competing arguments, the Commission agrees with DEC that there is great value to maintaining the stability of Commission decision-making. This means a prior decision should not be altered or amended pursuant to N.C. Gen. Stat. § 62-80 unless there are exceptional and compelling circumstances. A reconsideration, especially after the time for appeal has expired, is not to be undertaken lightly.

However, the high value placed on maintaining the stability and certainty of Commission decisions is not absolute. The existence of N.C. Gen. Stat. § 62-80 demonstrates legislative intent to allow past decisions to be amended or altered where appropriate.

There are good reasons for the Commission to allow hearing in DEC's next general rate case on whether to alter or amend the decision from Docket No. E-7, Sub 1146, to allow in rates an amount that includes the 2015 – 2017 capital investments in the

Facilities. The first reason is that the Joint Notice and Request states: “An accounting order granting the relief that DEC seeks will not preclude the Commission or parties from addressing the reasonableness of the costs deferred arising from the Transaction in the next general rate case.”

DEC has asked that it be authorized in an accounting order to defer the estimated \$27 million North Carolina retail loss on sale. That loss has two main components: the net book value (including the \$17.3 million invested for rehabilitation purposes from 2015 – 2017) and the sales price. The loss that is deferred to a regulatory asset is also calculated by adding certain miscellaneous other costs incurred by DEC in connection with the sale, such as legal and transaction costs of \$1.4 million, and the amount of the system loss that should be allocated to North Carolina.

DEC argues that “costs deferred arising from the Transaction” only means the legal and related costs to achieve the transaction. Whatever DEC’s subjective meaning might have been, the Commission finds and concludes that the most reasonable interpretation of those words in the Joint Notice and Request is that the “costs deferred” means the entire amount of the costs deferred – the full \$27 million loss on sale. If DEC had intended only some subset of its deferred costs to be subject to later review for reasonableness, it should have identified the costs by describing which ones were subject to later review. DEC did not say in the Joint Notice and Request that only the “legal and transaction-related costs” would be subject to review in a subsequent rate case (and “subsequent” means after Docket No. E-7, Sub 1146, because there was not even a binding bid for the Facilities at the time intervenors filed testimony in the Sub 1146 rate case).

The wording of the Joint Notice and Request put parties on notice that they could review of the reasonableness of the expected loss on sale in the rate case after Docket No. E-7, Sub 1146. The reasonableness of the loss is a function of the net book value – including the \$17.3 million in rehabilitation costs – as well as the sales price. In light of its own Joint Notice and Request, DEC should be estopped from later taking the contrary position that reasonableness of a major (\$17.3 million) cost component of the loss cannot be reviewed in any rate case after the sale of the Facilities.

DEC argued in its filings and at hearing that the Public Staff had ample opportunity to investigate the reasonableness of the Facilities' 2015 – 2017 rehabilitation costs between August 23, 2017, when DEC first notified the Public Staff of the proposed sale, and January 23, 2017, when the Public Staff's testimony was due in the Sub 1146 rate case. The evidence shows the Public Staff was first presented with DEC's plan to sell the Facilities on August 23, 2017, in a PowerPoint slide presentation that is among the Late-Filed Exhibits. These slides indicate a marked increase in the net book value of the Facilities in the 2014 – 2017 period, although the dollar amount of recent capital expenditures is not shown. The slides indicate that sale of the Facilities would be in the customers' best economic interest, even though the sale price was expected to be less than the net book value. Again, there was no quantification for these statements in the slides. Even if DEC had orally communicated the net book value to the Public Staff, the amount of loss would have remained quite uncertain due to the early state of the bid process.

DEC also made presentations regarding the proposed sale to the Public Staff, accompanied by PowerPoint slides, on February 6, 2018, and May 9, 2018. The slides

for these presentations are in the Late-Filed Exhibits. The Commission notes that the Public Staff's testimony in DEC's general rate case was filed on January 23, 2018. This date is significant because the February and May 2018 presentations about the proposed sale provided information that the Public Staff no longer had the opportunity to investigate and testify about in the general rate case.

Moreover, the presentation on February 6, 2018, which occurred after the Public Staff had filed its rate case testimony, mentioned a "preliminary" PVRR analysis with "initial results" and "non-binding offers." This wording shows the loss on sale was uncertain and unresolved in amount when the Public Staff's rate case investigation had concluded. The DEC presentation slides predicted receipt of binding bids by mid-March to early April of 2018. The DEC rate case evidentiary hearing was held March 5 – 22, 2018. DEC's slides from its May 9, 2018, presentation to the Public Staff estimate a loss on sale of the Facilities of \$38.25 million system-wide, and \$25.6 million for North Carolina retail. Terms of the sale had changed since the February presentation, and the contract with Northbrook was still not executed until May 15, 2018.

It is clear that the amount of loss on sale was not known in time for the Public Staff to address it as an issue in the Sub 1146 rate case. This leaves, however, the question of whether the Public Staff should nonetheless have investigated the prudence of the 2015 – 2017 Facilities costs during the rate case. As DEC points out, the Public Staff could have investigated in the rate case the reasonableness of the 2015 – 2017 expenditures on the Facilities. Once DEC included those costs as part of its cost recovery request in Docket No. E-7, Sub 1146, it had made a minimal prima facie case. Those particular expenditures were not challenged for reasonableness, and were included for

rate recovery in the general rate case order. Moreover, DEC maintains, once the Public Staff had notice of the proposed sale in August 2017, it had an increased reason to review the net book value component of the anticipated loss on sale. That is, these costs were not just buried within larger accounts, but instead had been brought more to the Public Staff's attention in the August 23, 2017, meeting.

DEC's argument is not without merit; however, it ignores certain realities of the rate case and deferral processes before the Commission. Those realities are pertinent to the Public Staff's motion under N.C. Gen. Stat. § 62-80. Specifically:

a) It is not realistic to expect the Public Staff to promptly raise the question, after the August 2017 presentation, why a PVRR was not done in 2014, 2011, or earlier, to obtain an estimate of the value of divestiture versus continued ownership before a major uptick in capital expenditures occurred. DEC's presentation focuses on the net benefit to customers of a sale of the Facilities. Whether the net benefit could have been greater if DEC had performed a PVRR and made a sale decision at an earlier time was not addressed by DEC and was not necessarily an obvious question for intervenors to conceive.

b) DEC filed its general rate case two days after the August 2017 presentation on its proposed sale of the Facilities. This rate case came close on the heels of the Duke Energy Progress general rate case, which was filed on June 1, 2017. As Public Staff witness Maness testified, DEC included over \$8 billion in capital expenditures in its 2017 rate case, so in the Public Staff's effort to focus its investigation on the major cost items, a \$17 million spend on hydroelectric rehabilitation would not necessarily be selected for sampling and review as part of

the investigation. This is especially compelling where, as the Public Staff points out, the bidding process and therefore the amount of loss on sale was unresolved for months after the Public Staff filed its rate case testimony: “The proposed sale of the hydroelectric facilities had not become concrete enough to merit investigation when the Public Staff was preparing its rate case testimony.”

c) The Joint Notice and Request filed by DEC on July 5, 2018, states in part: “An accounting order granting the relief that DEC seeks [deferral of the loss on sale to a regulatory asset] will not preclude the Commission or parties from addressing the reasonableness of the costs deferred arising from the Transaction in the next general rate case.” Nothing in the record shows that DEC informed the Public Staff any differently during the rate case investigation period.

d) When a deferral request is made, the routine practice of the Commission is to allow reasonableness to be addressed in subsequent rate cases. This is such an engrained practice it hardly needs citation, but the deferral requests of DEC and DEP that were reviewed in connection with their most recent general rate cases are an example. For the loss on sale of the Facilities in the present case, it was reasonable for the Public Staff to expect that the reasonableness review that occurs in the general rate case subsequent to a deferral would include all components of the loss on sale – net book value as well as the legal transaction costs.

The question under N.C. Gen. Stat. § 62-80 is whether a reasonableness review of the 2015 – 2017 costs should be done at all. On the one hand, DEC completed its prima facie case of reasonableness in Docket No. E-7, Sub 1146, and without any

challenge to the prudence of those costs, the Commission approved them for rate recovery. On the other hand, it appears there was no real investigation of those costs during the general rate case, and the Public Staff now believes there is a question worthy of investigation; namely, should DEC have conducted a PVRR analysis before expending unusually large sums on the Facilities, and if it had done so, would the net benefit to customers have been greater (or otherwise stated, should the net loss reasonably have been smaller).

This dispute is muddled by discussion of the amount of discovery conducted by the Public Staff in the present docket. That discovery occurred mainly after the sales contract between DEC and Northbrook had been executed on May 15, 2018, with the Public Staff's first data request being sent to Duke on May 22, 2018. The Commission finds it was not unreasonable for the Public Staff to issue its data requests after the terms of the sale had been established, as opposed to proceeding earlier when the quantification of loss was still speculative. More importantly, the quantity of discovery does not address the issue of whether the question of reasonableness of the loss on sale should be reviewed, versus denying opportunity for review because the costs were included in the rate case (albeit without detailed review of those specific costs).

Nor is there good reason to require the Public Staff to address the reasonableness of the loss on sale in the present docket, on the theory that the Public Staff has now had enough discovery time. The present docket concerns approval of an accounting order that will allow deferral of the loss on sale to a regulatory asset. This is not a cost recovery proceeding. The reasonableness of costs is a question for cost recovery proceedings, and the next cost recovery proceeding will be DEC's next general rate case.

On balance, the Commission finds and concludes that the Public Staff should have the opportunity to raise the issue of the reasonableness of the loss on sale in DEC's next general rate case, including the prudence of investing \$17.3 million in the Facilities in the three or so years prior to deciding it was not economical to continue with ownership of the Facilities. The Commission has the authority to reach this decision under N.C. Gen. Stat. § 62-80. The unusual circumstances surrounding the sale of the Facilities include DEC's statement that the reasonableness could be subsequently reviewed, and the amount of loss was speculative at the time of the rate case investigation, and the Commission concludes that the public interest is better served by having these particular costs receive reasonableness review rather than precluding review on some variation of the laches concept. The Commission expects that any issue raised by the Public Staff will meet the standard of (1) whether DEC's actions and omissions were reasonable based on what DEC knew or should have known at the time, and (2) if DEC's actions were unreasonable, whether that caused increased costs.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7**

Finding of Fact No. 7 is supported by the Joint Notice and Request and by the Comments of the Public Staff. It is not disputed by any party.

As noted in the Comments, N.C. Gen. Stat. § 62-133.8(a)(5)c. defines a "new renewable energy facility" to include "a hydroelectric power facility with a generation capacity of 10 megawatts or less that delivers electric power to an electric power supplier." Each of the hydroelectric facilities proposed for sale from DEC to Northbrook satisfies this definition. N.C. Gen. Stat. § 62-133.8(b)(2)e. allows DEC to satisfy part of its REPS compliance requirement by purchase of RECs from a "new renewable energy facilities."

Consequently, the Commission concludes that it should grant the joint request for a declaratory judgment that the Facilities will be “new renewable energy facilities” and that the RECs generated by the Facilities will be eligible for DEC to use for REPS compliance purposes.

IT IS, THEREFORE, ORDERED as follows:

1. That the proposed sale of the assets comprising the DEC hydroelectric facilities at Bryson, Franklin, Mission, Tuxedo, and Gaston Shoals to Northbrook is approved;

2. That the transfer of DEC’s Certificates of Public Convenience and Necessity for the Bryson, Franklin, and Mission facilities to Northbrook Carolina Hydro II, LLC, and transfer of the CPCN for Tuxedo to Northbrook Tuxedo, LLC, is approved upon closing of the sale transaction;

3. That DEC may defer the estimated loss on the sale of the Facilities to a regulatory asset, with amortization to begin once the sale is closed, at an amortization rate equivalent to the remaining 20-year life of the assets;

4. That the amortization rate and the reasonableness of the loss on sale may be reviewed in DEC’s next general rate case, including the prudence of expenditures made in the Facilities during the 2015 – 2017 timeframe;

5. That the Facilities will qualify as New Renewable Energy Facilities once Northbrook takes ownership, and the renewable energy certificates purchased by DEC from Northbrook will qualify for DEC’s compliance with the Renewable Energy and Energy Efficiency Portfolio Standard; and

6. That upon closing of the sale, Northbrook’s registration statements for the Facilities are accepted and DEC’s registration statements for the Facilities are cancelled.

ISSUED BY ORDER OF THE COMMISSION.

This the \_\_\_\_\_ day of March, 2019.

NORTH CAROLINA UTILITIES COMMISSION

M. Lynn Jarvis, Chief Clerk