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July 5, 2023

Ms. A. Shonta Dunston  
Chief Clerk  
N.C. Utilities Commission  
430 N. Salisbury Street, Room 5063  
Raleigh, NC 27603

**Re: *New River Light and Power Company  
Agreement and Stipulation of Settlement  
Docket No. E-34, Subs 54 and 55***

Dear Ms. Dunston:

Attached hereto Agreement and Stipulation of Settlement to be filed in the above-referenced dockets.

Public Staff's Exhibit 1 for settlement and New River Light and Power's design for settlement will be filed tomorrow with the Settlement Testimony.

If you have any questions concerning this filing, please do not hesitate to contact me.

Sincerely,

*/s/ David T. Drooz*

David T. Drooz

pbb

Attachment

Ms. A. Shonta Dunston

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JUL 06 2023



Fox Rothschild <sup>LLP</sup>  
ATTORNEYS AT LAW

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cc: Parties and Counsel of Record  
NC Commission Staff  
NC Public Staff

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Jul 06 2023



STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. E-34 SUB 54  
DOCKET NO. E-34, SUB 55

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-34, SUB 54 )  
 )  
In the Matter of )  
Application of Appalachian State University, )  
d/b/a New River Light and Power Company )  
for Adjustment of General Base Rates and )  
Charges Applicable to Electric Service )  
 )  
DOCKET NO. E-34, Sub 55 )  
 )  
In the Matter of Petition of )  
Appalachian State University d/b/a New )  
River Light and Power Company for an )  
Accounting Order to Defer Certain Capital )  
Costs and New Tax Expenses )

**AGREEMENT AND  
STIPULATION OF  
SETTLEMENT**

Appalachian State University d/b/a New River Light & Power Company (NRLP or Company) and the Public Staff – North Carolina Utilities Commission (Public Staff), collectively referred to herein as the “Stipulating Parties”, through counsel and pursuant to N.C. Gen. Stat. § 62-69 and Commission Rule R1-24(c), respectfully submit the following Agreement and Stipulation of Settlement (Stipulation) for consideration by the North Carolina Utilities Commission (Commission) in the above captioned dockets.

## I. BACKGROUND

1. On November 8, 2022, NRLP filed its Petition for an Accounting Order to Defer Certain Capital-Related Costs and Tax Expenses in docket No. E-34, Sub 55.
2. On December 22, 2022, NRLP filed its Application to Adjust Retail Base Rates along with the testimony and exhibits of Edmond Miller and Randall Halley. The test year for purposes of establishing rates in this docket is the 12-month period ending December 31, 2021.
3. On February 1, 2023, the Commission entered an order granting NRLP's motion to consolidate Docket Nos. E-34, Sub 54 and E-34, Sub 55 filed on January 18, 2023.
4. On February 2, 2023, the Commission entered an order granting the Petitions to Intervene of Appalachian Voices that were filed on January 18, 2023, in Docket No. E-34, Sub 54 and on January 19, 2023, in Docket No. E-34, Sub 55.
5. On March 20, 2023, the Commission issued an Order scheduling this matter to be heard on July 10, 2023, at 2:00 P.M.
6. The public hearing was held as scheduled on May 23, 2023. Ten public witnesses testified.
7. On June 1, 2023, the Commission entered an order granting the Petition to Intervene of Nancy LaPlaca filed in Docket No. E-34, Sub 54 on May 30, 2023.

8. On June 9, 2023, the Public Staff filed the testimony and exhibits of witnesses John Hinton and Jack Floyd and the joint testimony and exhibits of witnesses Sonja Johnson and Iris Morgan.
9. On June 23, 2023, NRLP filed the rebuttal testimony and exhibits of witnesses Edmond Miller, David Stark, David Jamison, and Randall Halley.
10. On June 30, 2023, the Public Staff filed a motion to substitute James McLawhorn, Director of the Public Staff Energy Division, as the sponsor of the previously filed testimony and exhibit of Jack Floyd in this proceeding, along with a request to allow Mr. McLawhorn to testify in place of Mr. Floyd at the hearing on this matter. This motion remains pending.

## II. RESOLVED ISSUES

The Stipulating Parties have reached an agreement that resolves all areas of disagreement between the parties, including the following revenue requirement issues ("Resolved Issues"). The revenue requirement effects of the agreed-upon issues will be set forth in exhibits to be attached to supporting testimony. The areas of agreement are as follows:

### ***Cost of Capital***

11. The Stipulating Parties agree on a 6.165% overall rate of return.
12. The Stipulations Parties agree that for ratemaking purposes the capital structure of New River should be considered to consist of 50% common equity and 50% long-term debt.

13. The embedded cost rate of debt agreed to by the Stipulating Parties as appropriate and reasonable for purposes of this proceeding is 3.23%.
14. The rate of return on equity agreed to by the Stipulating Parties as just, appropriate, and reasonable for purposes of this proceeding is 9.10%.

#### ***Revenue Requirement***

15. The Stipulating Parties have agreed to a total annual revenue requirement increase of \$4,288,000. Part of that increase is a reallocation of purchased power costs from the PPA.

#### ***Accounting Adjustments***

16. The Stipulating Parties agree to resolve the Unrelated Business Income Tax (UBIT) Expense Deferral sought by NRLP by allowing the deferral of the 2023 UBIT estimated amount of \$364,646 over a 3-year amortization period, with a reduction to the regulatory asset in the event that the actual amount of UBIT is lower than \$346,646 where the Company will reduce the deferral to the actual amount of UBIT expense paid by NRLP. In the event the actual amount of UBIT is greater than the estimate, the Company will not seek recovery on the amount over \$346,646. Additionally, the Company will place all over-amortization amounts from the deferral (anything over 36 months) into a regulatory liability account to be refunded back to ratepayers with interest at the Company's weighted average cost of capital over a period to be determined in the next general rate case.

17. The Stipulating Parties agree for purposes of compromise to the Public Staff's position related to the Campus substation deferrals, including allowing a return for the new substation in-service costs for the period recommended by the Public Staff as well as amortizing the new substation over the 40-year useful life of the asset and reducing the amount of the old campus substation deferral to include the full depreciation of the old campus substation through July 31, 2023. Additionally, the Stipulating Parties agree that any over-amortization amounts for either deferral should be recorded in a regulatory liability account to be refunded to ratepayers with interest at the Company's weighted average cost of capital over a period to be determined in the next general rate case.
18. The Stipulating Parties agree to additional annual rate case expense in the amount of \$56,750. The Stipulating Parties agree that the total amount of rate case expense is just and reasonable and that the Company shall not be entitled to seek additional rate case expense, if any, that exceeds the total amount agreed upon by the Stipulating Parties; nor shall there be an adjustment if actual rate case expense were to be less.

***Other Adjustments***

19. The Stipulating Parties agree to eliminate the Public Staff proposed "Usage Adjustment" found in the Pre-filed Testimony of John R. Hinton and in Hinton Exhibit 12.



***Other Recommendations***

20. The Stipulating Parties agree the Company and the Public Staff will work together prior to the Company's next general rate case to assist the Company with appropriately calculating its recommended revenue requirement. The Public Staff has agreed to provide the Company with template schedules to assist the Company in its calculations. Additionally, the Stipulating Parties have agreed to meet at least one-month prior to the filing of the Company's next general rate case to review and discuss the Company's proposed calculations.

***Other Areas of Agreement Between the Stipulating Parties***

Paragraphs 22 through 32 below reflect other areas of agreement between the Stipulating Parties that are reflected in the pre-filed testimony and rebuttal testimony of the Stipulating Parties, and which have been memorialized herein:

21. The Stipulating Parties agree that the Company should closely monitor the credits accumulated, consumption patterns, revenues, and costs related to proposed Schedule NBR and file an annual report in conjunction with each Purchased Power Adjustment Clause (PPAC) proceeding.
22. The Stipulating Parties agree that proposed Schedule NBR should be amended to include the following statement: "Any renewable energy credits (RECs) associated with electricity delivered to the grid by the Customer under Schedule NBR shall be retained by the Customer."
23. The Stipulating Parties agree that it is appropriate to review the proposed design of proposed Schedule NBR, re-evaluate the energy resetting

- process and the Supplement Standby Charge (SSC) in five years, and adjust the energy credit as appropriate with every PPAC filing.
24. The Stipulating Parties agree that the energy credit for proposed Schedule PPR should be based on total system avoided costs rather than just residential class avoided costs. The Stipulating Parties further agree that this calculation can be provided with the compliance filing after the Commission's final order, and then updated with each PPAC filing.
  25. The Stipulating Parties agree that proposed Schedule PPR should be amended to include the following statement: "Any renewable energy credits (RECs) associated with electricity delivered to the grid by the Customer under Schedule PPR shall be retained by the Customer."
  26. The Stipulating Parties agree that the design of proposed Schedule PPR should be reviewed during the Commission's biennial avoided cost proceedings.
  27. The Stipulating Parties agree that for proposed Schedule IR, no credits will be paid if the participant is unable to curtail or if the curtailment does not align with the coincident peak.
  28. The Stipulating Parties agree that in order to reflect the advantage of remote disconnects and reconnects made possible by the AMI metering technology, the current reconnection fees during working hours and otherwise should be replaced with one single reconnection fee of \$11.50.
  29. The Stipulating Parties agree that the revised rate design shown in Halley Rebuttal Exhibit No. 1, filed on June 23, 2023, which eliminates the

proposed two-year phase in, is appropriate for allocation of the rate increase by customer class in this proceeding.

30. The Stipulating Parties agree that, except as denoted above, all other proposed changes to the rate schedules included in the Company's original Application are appropriate and should be approved.
31. The Stipulating Parties agree that the Commission's final order and notices to the public about the rate increase should include the decrease to the PPA factor.

### **III. AGREEMENT IN SUPPORT OF SETTLEMENT; NON-WAIVER**

32. The Stipulating Parties shall act in good faith and use their best efforts to recommend to the Commission that this Stipulation be accepted and approved. The Stipulating Parties further agree that this Stipulation is in the public interest because it reflects a give-and take of contested issues and results in rates that are just and reasonable. The Stipulating Parties intend to support the reasonableness of this Stipulation in any hearing before the Commission and any proposed order or brief in this docket.
33. Neither this Stipulation nor any of the terms shall be admissible in any court or Commission except insofar as such court or Commission is addressing litigation arising out of the implementation of the terms herein or the approval of this Stipulation. This Stipulation shall not be cited as precedent by any of the Parties regarding any issue in any other proceeding or docket before this Commission or in any court.

34. The provisions of this Stipulation do not reflect any position asserted by any of the Stipulating Parties but reflect instead the compromise and settlement among the Stipulating Parties as to all the issues covered hereby. No Party waives any right to assert any position in any future proceeding or docket before the Commission or in any court.
35. This Stipulation is a product of negotiation among the Stipulating Parties, and no provision of this Stipulation shall be strictly construed in favor of or against any Party.

#### **IV. RECEIPT OF TESTIMONY AND WAIVER OF CROSS-EXAMINATION**

36. The pre-filed testimony and exhibits or portions thereof of the Stipulating Parties on Resolved Issues may be received in evidence without objection, and each Party waives all right to cross examine any witness with respect to such pre-filed testimony and exhibits. If, however, questions are asked by any Commissioner, or if questions are asked or positions are taken by any person who is not a Stipulating Party, then any Stipulating Party may respond to such questions by presenting testimony or exhibits and cross-examining any witness with respect to such testimony and exhibits.

#### **V. STIPULATION BINDING ONLY IF ACCEPTED IN ITS ENTIRETY**

37. This Stipulation is the product of negotiation and compromise of a complex set of issues, and no portion of this Stipulation is or will be binding on any of the Stipulating Parties unless the entire Agreement and Stipulation is accepted by the Commission. If the Commission rejects any part of this

Stipulation or approves this Stipulation subject to any change or condition or if the Commission's approval of this Stipulation is rejected or conditioned by a reviewing court, the Stipulating Parties agree to meet and discuss the applicable Commission or court order within five business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, each Party retains the right to seek additional procedures before the Commission, including cross-examination of witnesses, with respect to issues addressed by the Stipulation and shall not be bound or prejudiced by the terms and conditions of the Stipulation.

#### **VI. COUNTERPARTS**

38. This Stipulation may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Execution by electronic signature shall be deemed to be, and shall have the same effect as, execution by original signature.

#### **VII. MERGER CLAUSE**

39. This Stipulation supersedes all prior agreements and understandings between the Stipulating Parties as to the issues discussed herein and may not be changed or terminated orally, and no attempted change, termination,

or waiver of any of the provisions hereof shall be binding unless in writing and signed by the parties hereto.

The foregoing is agreed and stipulated this the 5th day of July, 2023.

Appalachian State University  
d/b/a New River Light & Power Company

By: /s/ Daniel Layzell  
Daniel Layzell  
Vice Chancellor of Finance  
and Operations  
Appalachian State University

Public Staff North Carolina Utilities Commission

By: /s/ Christopher J. Ayers  
Christopher J. Ayers  
Executive Director  
Public Staff  
North Carolina Utilities Commission