

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. G-5, SUB 585

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Petition of Application of Public Service)	COMMENTS OF
Company of North Carolina, Inc. for Waiver)	THE PUBLIC STAFF
of Code of Conduct Provision)	

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and respectfully submits its comments as provided for in the Commission’s *Order Requesting Additional Information From Applicant and Public Staff Comments* issued in this docket on September 8, 2020.

1. On August 5, 2020, Public Service Company of North Carolina, Inc. (PSNC or Company) filed a petition requesting that the Commission enter an order waiving the transfer pricing guideline in Section III.D.3(a) of PSNC’s Code of Conduct Governing the Relationship Among Dominion Energy North Carolina, Public Service Company of North Carolina, Inc., Their Affiliates, and Their Nonpublic Utility Operations (Code of Conduct) in connection with leases to be entered into by the Company with affiliates Dominion Energy Southeast Services, Inc. (DESS) and Dominion Energy Services, Inc. (DES) to use space in the Company’s Gastonia facility for the purpose of providing services to utility affiliates. The waiver would allow the Company to lease the space to DESS and DES at PSNC’s fully distributed cost instead of at the higher of market value or fully distributed cost.

2. On September 8, 2020, the Commission issued an order requesting additional information from the Applicant and Public Staff comments.

3. On September 11, 2020, the Company filed a response to Commission questions (Response), and on September 14, 2020, filed a Verification to its Response.

4. DESS is a Service Company providing gas dispatch services and gas measurement services for PSNC and Dominion Energy South Carolina, Inc. (DESC) from the Company's Gastonia facility. DESC is a Utility Affiliate under the Code of Conduct. DES is a Service Company that provides shared services to PSNC and its Affiliates, including Utility Affiliates. PSNC and DES intend to enter into a lease in order for DES to use the Company's Gastonia facility in connection with the provision of gas dispatch services to The East Ohio Gas Company, doing business as Dominion Energy Ohio (DEO). Because DESS and DES are Non-Utility Affiliates of PSNC, Section III.D.3(a) of the Code of Conduct requires that they pay PSNC the higher of Market Value or PSNC's Fully Distributed Cost as rent under their respective leases. The transfer pricing guideline Section III.D.3(d) of the Code of Conduct requires that, for un-tariffed goods and services provided by PSNC to utility affiliates, the transfer price on such transactions shall be the affiliate's fully distributed cost. Therefore, the Company requested that the Commission waive the application of the transfer pricing guideline in Code of Conduct Section III.D.3(a) and apply the guideline in Section III.D.3(d) applicable to transfers involving Utility Affiliates so that the rent can be set at PSNC's Fully Distributed Cost.

5. PSNC further stated that under these leases, DESS and DES will use the Gastonia facility only to provide services to PSNC and its Utility Affiliates and that the leases will have no negative impact on PSNC customers' rates and service and are in the public interest.

6. In its Response, PSNC provided additional information on the facilities being utilized under the proposed lease agreements, as well as the number of employees and functions being performed in each building. PSNC further stated in the Response that it believes that the waivers are in the public interest because they will promote efficient and cost-effective provision of utility service and will result in Utility Affiliates paying a share of the cost of a portion of PSNC's facilities that otherwise would be borne entirely by PSNC.

7. The Public Staff has reviewed the Company's Code of Conduct waiver request, the proposed lease agreements, and the Company's responses to Commission questions filed in this docket. Additionally, the Public Staff has had numerous discussions with the Company and sent informal data requests for information prior to PSNC's Code of Conduct waiver filing.

8. In response to the Commission's question about whether PSNC or the Public Staff conducted an analysis regarding the Market Value of the proposed leases to the Service Companies, the Public Staff notes that it asked the same questions to PSNC prior to the Code of Conduct waiver filing and determined that no market study had been completed by PSNC. The Public Staff submits that it also has not done a market value analysis, since the burden of proof would be on the Company to perform one if the agreement necessitated a market study.

9. The Public Staff determined that if the primary intent of the proposed lease agreements was for PSNC to lease office space to two of its Utility Affiliates, DESC and DEO, then the appropriate pricing between the two Utility Affiliates should be PSNC's fully distributed cost as reflected in Section III.D.3(d) of its Code of Conduct.

10. Because PSNC's two service companies, DES and DESS, are the entities that will actually be billing each of the Utility Affiliates instead of PSNC billing them directly, the transfer pricing standard has become an issue in this docket.

11. The Public Staff recognizes, however, that it is beneficial to the utility customers for PSNC to charge DES and DESS the fully distributed cost for these rent payments rather than charging market prices, as the payments will ultimately be passed on to customers in rates through the Company's Utility Affiliates, DESC and DEO. Therefore, the Public Staff believes that no utility customers are harmed by charging the fully distributed cost.

12. Because PSNC's proposed lease agreements with DES and DESS will ultimately be providing services to PSNC's Utility Affiliates, the Public Staff believes that the proposed lease agreements are beneficial to customers and are in the public interest.

13. The Public Staff, therefore, recommends that the transfer pricing waiver requested by PSNC be granted subject to the following conditions: (1) the waiver only applies to the proposed DESS and DES lease agreements filed herein, (2) if similar lease agreements arise, PSNC shall file them with the Commission

for approval, (3) PSNC shall maintain adequate documentation of the rent amounts charged to DESS and DES and billed to each of the Utility Affiliates, DESC and DEO, (4) such approval does not constitute approval of the amount of any compensation paid thereunder, and does not prejudice the right of any party to take issue with any provision of the lease agreements in question in a future proceeding.

14. WHEREFORE, the Public Staff respectfully requests that the Commission take the foregoing comments into consideration in its deliberations in this proceeding and grant the waiver of the application of the transfer pricing guideline in Code of Conduct Section III.D.3(a) subject to the conditions recommended by the Public Staff.

Respectfully submitted, this the 16th day of September, 2020.

PUBLIC STAFF
Christopher J. Ayers
Executive Director

Diana W. Downey
Chief Counsel

Electronically submitted
/s/ Gina C. Holt
Staff Attorney

4326 Mail Service Center
Raleigh, North Carolina 27699-4300
Telephone: (919) 733-6110
gina.holt@psncuc.nc.gov

CERTIFICATE OF SERVICE

I do hereby certify that I have this day served a copy of the foregoing upon each of the parties of record in this proceeding or their attorneys of record by emailing them an electronic copy or by causing a paper copy of the same to be hand-delivered or deposited in the United States Mail, postage prepaid, properly addressed to each.

This the 16th day of September, 2020.

Electronically submitted
/s/ Gina C. Holt