

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. G-5, SUB 667

In the Matter of
Joint Application of Public Service
Company of North Carolina, Inc.
and Enbridge Parrot Holdings, LLC
to Engage in a Business Combination
Transaction

) **SETTLEMENT TESTIMONY OF**
) **MICHELLE BOSWELL**
) **PUBLIC STAFF –**
) **NORTH CAROLINA**
) **UTILITIES COMMISSION**

MAY 29, 2024

1 **Q. Please state your name, business address, and present**
2 **position.**

3 A. My name is Michelle Boswell. My business address is 430 North
4 Salisbury Street, Raleigh, North Carolina. I am the Director of the
5 Accounting Division of the Public Staff – North Carolina Utilities
6 Commission (Public Staff).

7 **Q. Would you briefly discuss your education and experience?**

8 A. My education and experience are summarized in Appendix A of this
9 testimony.

10 **Q. What is the mission of the Public Staff?**

11 A. The Public Staff represents the concerns of the using and consuming
12 public in all public utility matters that come before the North Carolina
13 Utilities Commission (Commission). Pursuant to N.C. Gen. Stat. §
14 62-15(d), it is the Public Staff's duty and responsibility to review,
15 investigate, and make appropriate recommendations to the
16 Commission with respect to the following utility matters: (1) retail
17 rates charged, service furnished, and complaints filed, regardless of
18 retail customer class; (2) applications for certificates of public
19 convenience and necessity; (3) transfers of franchises, mergers,
20 consolidations, and combinations of public utilities; and (4) contracts
21 of public utilities with affiliates or subsidiaries. The Public Staff is also

1 responsible for appearing before State and federal courts and
2 agencies in matters affecting public utility service.

3 **Q. Please describe the purpose of your testimony in this**
4 **proceeding.**

5 A. The purpose of my testimony is to present the results of the Public
6 Staff's investigation of the joint application filed on October 20, 2023,
7 by Public Service Company of North Carolina, Inc., d/b/a Dominion
8 Energy North Carolina (PSNC) and Enbridge Parrot Holdings, LLC
9 (EP Holdings) (together, Joint Applicants) pursuant to N.C.G.S. § 62-
10 111(a) and Commission Rule R1-5 for authorization to engage in a
11 business combination transaction as described in more detail below
12 (the Transaction).

13 In my testimony, I describe the scope of the Public Staff's
14 investigation of the Transaction; discuss the balancing of costs and
15 benefits of the Transaction; describe the new Regulatory Conditions
16 and Code of Conduct related to the Transaction which are agreed to
17 and attached as Exhibit 1 to the Agreement and Stipulation of
18 Settlement (Stipulation) (Regulatory Conditions) between the Joint
19 Applicants and the Public Staff (the Stipulating Parties); and present
20 the Public Staff's recommendation regarding Commission approval
21 of the Transaction.

1 **Q. Please describe the Public Staff's investigation.**

2 A. A task force of accountants, engineers, attorneys, and financial
3 analysts conducted an investigation of the Transaction. We reviewed
4 the joint application, including the Cost-Benefit Analysis and Market
5 Power Analysis submitted with the joint application, to assess
6 potential costs and benefits of the Transaction and analyzed the
7 proposed ownership chain above PSNC. In the course of our
8 investigation, we submitted data requests to the Joint Applicants and
9 reviewed the responses to those data requests. As part of its review,
10 the Public Staff held numerous meetings, both in person and online,
11 with the Joint Applicants. The Public Staff also reviewed the public
12 service commission dockets for related transactions in other
13 jurisdictions, along with associated data requests and responses.¹

¹Contemporaneously with the Transaction at issue here, Dominion Energy, Inc. (Dominion Energy) entered into two additional separate purchase and sale agreements involving Dominion Energy assets in Ohio and Utah (and also limited operations in Wyoming and Idaho) with two separate subsidiaries of Enbridge Genoa U.S. Holdings, LLC (Genoa) pursuant to which those subsidiaries each separately agreed to acquire all of the outstanding equity interests in other Dominion Energy subsidiaries: (i) Dominion Energy Questar Corporation, Dominion Energy Gas Distribution, LLC, The East Ohio Gas Company, and DEO Alternative Fuel, LLC; and (ii) Questar Gas Company, Wexpro Company, Wexpro II Company, Wexpro Development Co., and Dominion Energy Wexpro Services Co., and each of Dominion Gas Projects Co., LLC and Questar InfoComm Inc. The completion of the transactions contemplated by these separate agreements and the Transaction contemplated by the Purchase and Sale Agreement entered into by Dominion Energy and EP Holdings are not cross-conditioned on one another.

1 **Q. Why is it important to identify and balance the costs and**
2 **benefits of a proposed merger or business combination?**

3 A. N.C.G.S. § 62-111(a) provides that no merger or combination
4 affecting any public utility shall be made through acquisition or
5 control by stock purchase or otherwise, except after Commission
6 approval, which “shall be given if justified by the public convenience
7 and necessity.”

8 As explained in the Order Approving Merger Subject to Regulatory
9 Conditions and Code of Conduct issued September 29, 2016, in
10 Docket Nos. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682
11 (Duke/Piedmont Merger Order):

12 In prior merger proceedings the Commission has
13 established a three-part test for determining whether a
14 proposed utility merger is justified by the public
15 convenience and necessity. That test is (1) whether the
16 merger would have an adverse impact on the rates and
17 services provided by the merging utilities; (2) whether
18 ratepayers would be protected as much as possible
19 from potential costs and risks of the merger; and (3)
20 whether the merger would result in sufficient benefits to
21 offset potential costs and risks. See Order Approving
22 Merger Subject to Regulatory Conditions and Code of
23 Conduct (Duke/Progress Merger Order), issued June
24 29, 2012, in Docket Nos. E-2, Sub 998 and E-7, Sub
25 986, aff’d, In re Duke Energy Corp., 232 N.C. App. 573,
26 755 S.E.2d 382 (2014). These questions are related to
27 one another and together establish a reasoned
28 framework upon which utility mergers may be
29 evaluated. In making these assessments, the
30 Commission has also examined factors such as
31 whether service quality will be maintained or improved,
32 the extent to which costs can be lowered and rates can
33 be maintained or reduced, and whether effective
34 regulation of the merging utilities will be maintained. See

1 Order Approving Merger and Issuance of Securities,
2 issued April 22, 1997, in Docket No. E-7, Sub 596.

3 Duke/Piedmont Merger Order, p. 68.

4 **Q. What are the requirements of the Commission's Order**
5 **Requiring Filing of Analyses issued November 2, 2000, in**
6 **Docket No. M-100, Sub 129 (M-100, Sub 129 Order)?**

7 A. The M-100, Sub 129 Order requires that merger applications be
8 accompanied by a market power analysis and a cost-benefit
9 analysis. The Joint Applicants submitted that the Cost-Benefit
10 Analysis and Market Power Analysis attached to the application
11 comply with this requirement. An investigation and verification of a
12 cost-benefit analysis and market power analysis is an essential part
13 of the Commission's consideration of the Transaction and the
14 application of the statutory standard for approval. As evidenced by
15 the Stipulation, the Public Staff believes the quantitative benefits,
16 together with the agreed upon Regulatory Conditions, are sufficient
17 to meet that standard.

18 **Q. Please describe the Transaction.**

19 A. On September 5, 2023, Dominion Energy, Inc. (Dominion Energy)
20 and EP Holdings entered into a Purchase and Sale Agreement (the
21 Agreement) containing the terms of the Transaction. Pursuant to the
22 Agreement, EP Holdings will purchase Dominion Energy's right, title,
23 and interest in and to all of the membership interests in Fall North

1 Carolina Holdco LLC (NC Holdco), which owns all of the issued and
2 outstanding shares of capital stock in PSNC. Upon close of the
3 Transaction, if approved by the Commission, NC Holdco will become
4 a wholly owned subsidiary of EP Holdings.

5 **Q. Please describe PSNC.**

6 A. PSNC is a corporation duly organized and existing under the laws of
7 the State of South Carolina, having its principal office and place of
8 business in Gastonia, North Carolina. PSNC is engaged in providing
9 natural gas service to the public and is a public utility as defined in
10 N.C.G.S. § 62-3(23), subject to the jurisdiction of the Commission.
11 PSNC operates a natural gas pipeline system for the transportation,
12 distribution, and sale of natural gas to more than 640,000 customers
13 in the State of North Carolina. PSNC is a direct wholly owned
14 subsidiary of NC Holdco.

15 **Q. Please describe the Enbridge corporate structure.**

16 A. EP Holdings was formed in 2023 for the purpose of acquiring
17 ownership of PSNC in connection with the Transaction. EP Holdings
18 is a holding company and direct wholly owned subsidiary of Enbridge
19 Genoa U.S. Holdings, LLC (Genoa), which was formed in 2023 for
20 the purpose of holding the equity interests of EP Holdings and two
21 separate additional companies that have each entered into separate
22 agreements to acquire retail gas distribution companies (and certain

1 related companies) from Dominion Energy.² Genoa is a direct wholly
2 owned subsidiary of Enbridge U.S. Inc. (Enbridge U.S.). Enbridge
3 U.S. is an indirect wholly owned subsidiary of Enbridge Inc.
4 (Enbridge), a Canadian corporation.

5 According to the joint application, Enbridge is a leading North
6 American energy infrastructure company. Enbridge's core business
7 units include Liquid Pipelines, which consist of pipeline and terminals
8 in Canada and the United States that transport and export various
9 grades of crude oil and other liquid hydrocarbons; Gas Transmission
10 and Midstream, which consist of investments in natural gas pipelines
11 and gathering and processing facilities in Canada and the United
12 States; Gas Distribution and Storage, which consist of natural gas
13 utility operations that serve residential, commercial, and industrial
14 customers in Ontario and Québec; and Renewable Power
15 Generation, which consists primarily of investments in wind and solar
16 assets, as well as geothermal, waste heat recovery, and
17 transmission assets, in North America and Europe. Enbridge owns
18 and operates North America's largest natural gas utility by volume of
19 natural gas delivered and third largest by customer count.

² See Footnote 1.

1 **Q. Please describe the Regulatory Conditions agreed to by the**
2 **Stipulating Parties.**

3 A. As a result of its investigation and negotiations with the Joint
4 Applicants, the Stipulating Parties developed their recommended
5 Regulatory Conditions, which they believe are necessary to ensure
6 that the Transaction meets the Commission's three-part test for
7 determining whether a proposed utility merger is justified by the public
8 convenience and necessity and serves the public interest. The
9 following is a description of the Regulatory Conditions agreed to by
10 the Stipulating Parties:

11 **Applicability of the Regulatory Conditions**

12 The Regulatory Conditions apply jointly and severally to Genoa, EP
13 Holdings, NC Holdco, and PSNC (collectively, the Regulatory
14 Condition Parties).

15 **Commitment of the Parent Entities**

16 The Regulatory Conditions set forth the commitments of Enbridge,
17 Enbridge US Holdings Inc. (Enbridge US Holdings), and Enbridge
18 U.S., as well as any additional or successor entities with control over
19 Genoa, EP Holdings, NC Holdco, and PSNC (collectively the Parent
20 Entities). The Parent Entities acknowledge and consent to the
21 Regulatory Conditions agreed and entered into by the Regulatory
22 Condition Parties. The Parent Entities further commit not to cause

1 the Regulatory Condition Parties to violate such Regulatory
2 Conditions and not to prevent the Regulatory Condition Parties from
3 taking commercially reasonable actions to comply with the
4 Regulatory Conditions, for so long as such Regulatory Conditions
5 remain in effect and applicable to the Regulatory Condition Parties.
6 The Regulatory Conditions provide that the Parent Entities shall be
7 bound by the Regulatory Conditions only as set forth therein.

8 **Section I** of the Regulatory Conditions defines all terms utilized
9 throughout the document, including the entities included as affiliates
10 to PSNC, transaction-related costs, transition services agreement,
11 and intercorporate services agreement.

12 **Section II** of the Regulatory Conditions are based on the general
13 power and authority granted to the Commission in Chapter 62 of the
14 North Carolina Statutes to control and supervise the public utilities of
15 the State as well as address specific exercises of the Commission's
16 authority and provide mechanisms to enable the Commission to
17 determine the extent of its authority over proposed activities and
18 transactions involving PSNC.

19 **Section III** of the Regulatory Conditions is intended to protect the
20 jurisdiction of the Commission as a result of the Transaction and to
21 affirm the jurisdiction of the Commission with respect to agreements
22 and transactions between and among PSNC and any Affiliate;

1 financing transactions involving PSNC; PSNC's operations; and the
2 ownership, use, and disposition of assets by PSNC.

3 **Section IV** of the Regulatory Conditions is intended to ensure that
4 the costs incurred by PSNC are properly incurred, accounted for, and
5 directly charged, directly assigned, or allocated to its North Carolina
6 retail operations and that only costs that produce benefits to PSNC's
7 Customers are included in PSNC's North Carolina cost of service for
8 ratemaking purposes.

9 **Section V** of the Regulatory Conditions incorporates a Code of
10 Conduct, which governs the relationships, activities, and
11 transactions between or among the public utility operations of PSNC
12 and the Affiliates and Nonpublic Utility Operations of PSNC.

13 **Sections VI and VII** of the Regulatory Conditions are intended to
14 ensure that (a) PSNC's capital structure and cost of capital are not
15 adversely affected by either the Transaction or by PSNC's affiliation
16 with Enbridge U.S. and (b) PSNC has sufficient access to equity and
17 debt capital at a reasonable cost to adequately fund and maintain its
18 current and future capital needs and otherwise meet its service
19 obligations to its Customers. They are also intended to ensure the
20 continued viability of PSNC and to insulate and protect PSNC and its
21 Customers from the business and financial risks arising from PSNC's

1 affiliation with Enbridge and the Affiliates, including the protection of
2 utility assets from liabilities of Enbridge and Affiliates.

3 **Section VIII** of the Regulatory Conditions is intended to ensure that
4 the Commission exercises its lawful authority over proposed
5 mergers, acquisitions, and other business combinations involving
6 Genoa, EP Holdings, PSNC, other Affiliates, or the Nonpublic Utility
7 Operations.

8 **Section IX** of the Regulatory Conditions is intended to ensure that
9 the Commission receives adequate notice of, and opportunity to
10 review and take such lawful action as is necessary and appropriate,
11 with respect to changes to the structure and organization of
12 Enbridge, PSNC, Affiliates, and Nonpublic Utility Operations as they
13 may affect Customers.

14 **Section X** of the Regulatory Conditions is intended to ensure that
15 PSNC continues to implement and further its commitment to
16 providing superior public utility service by meeting recognized
17 service quality indices and implementing industry best practices of
18 each other and their Utility Affiliates, to the extent reasonably
19 practicable.

20 **Section XI** of the Regulatory Conditions is intended to ensure that
21 PSNC's Customers do not bear any additional income taxes as a
22 result of the Transaction.

1 **Section XII** of the Regulatory Conditions details the notice of filings
2 requirements applicable to all filings made pursuant to the Conditions
3 that are otherwise not expressly provided by Commission order, rule,
4 or statute.

5 **Section XIII** of the Regulatory Conditions is intended to ensure that
6 Genoa, PSNC, and all other Affiliates establish and maintain the
7 structures and processes necessary to fulfill the commitments
8 expressed in all of the Regulatory Conditions and the Code of
9 Conduct in a timely, consistent, and effective manner.

10 **Section XIV** of the Regulatory Conditions is intended to ensure the
11 continued use of good practices for use by PSNC in determining
12 long-term sources of pipeline capacity and supply.

13 **Section XV** of the Regulatory Conditions is intended to ensure,
14 through rate and other protections for PSNC's retail customers, that
15 the benefits of Transaction are equal to or surpass the costs of the
16 Transaction to those customers.

17 **Q. Please describe the major provisions of the Regulatory**
18 **Conditions intended to ensure that the Transaction will result in**
19 **sufficient benefits to offset potential costs and risks.**

20 **A.** In addition to the Joint Applicants agreeing not to pass any
21 transaction-related expenses to PSNC, as part of the Stipulation in
22 the present case the Stipulating Parties have agreed to the following

1 provisions to ensure that the Transaction will result in sufficient
2 benefits to offset potential costs and risks:

3 **Bill Credits to All Customers.** PSNC will create a regulatory liability
4 of \$4,000,000 to provide bill credits to all customers. This regulatory
5 liability will not be funded by ratepayers. Such credits will be provided
6 to customers in the following manner: \$1 million in January 2025, \$1
7 million in January 2026, \$1 million in January 2027, and \$1 million in
8 January 2028. The credits will be calculated based on customer
9 usage consistent with the manner bills were credited pursuant to
10 Docket No. G-5, Sub 585.

11 **Low-Income Customer 2025 Bill Credits.** PSNC will create a
12 regulatory liability of \$1,020,000 for bill credits to qualifying low-
13 income customers. This regulatory liability will not be funded by
14 ratepayers. Qualifying low-income customers are those residential
15 customers that received or will receive federal utility bill assistance
16 in 2023 and 2024 from the Low-Income Energy Assistance Program
17 (LIEAP) or Crisis Intervention Program (CIP) administered by the NC
18 Department of Health and Human Services (DHHS). All qualifying
19 customers will automatically be enrolled to receive the bill credit. The
20 credits will be applied to qualifying customers' bills rendered during
21 the winter months of 2024-2025 (November to March) in an amount
22 not to exceed \$30 per month, subject to an aggregate cap of
23 \$1,020,000. The credits will be calculated on a per-capita average

1 basis (total amount divided by eligible customers) and will be
2 nonrefundable but will be carried over on the customer's account
3 should the credit exceed monthly billing.

4 **Rate Moratorium/Rider.** The Stipulating Parties acknowledge that
5 PSNC's current base rates are designed on rate base investments
6 through June 30, 2021. Ongoing capital expenditures and economic
7 conditions may necessitate filing for adjustment to base rates in
8 2025, subject to review and approval by the Commission. In such a
9 rate case, the Public Staff and PSNC agree to support the
10 establishment of a cost recovery rider for the incremental costs
11 associated with the M-71 pipeline, the Moriah LNG facility, and the
12 non-Integrity Management Tracker (IMT) rate base portion of the T-
13 15 pipeline as they are completed and placed into service with a
14 return at the weighted average cost of capital authorized in the then
15 most recent base rate case, including depreciation. The rider would
16 operate in a similar manner as the current IMT rider. Provided that
17 the rider is approved by the Commission materially consistent with
18 the joint recommendation of the Public Staff and PSNC and placed
19 into effect, PSNC agrees that it will not file an additional application
20 for a general rate case until 2028. This commitment does not apply
21 to (1) adjustments or changes pursuant to Rider C (Customer Usage
22 Tracker), Rider D (Purchased Gas Adjustment Procedures), Rider E
23 (Integrity Management Tracker), and Rider F (Energy Efficiency

1 Tracker) pursuant to N.C.G.S. § 62-133.4, N.C.G.S. § 62-133.7, and
2 N.C.G.S. § 62-133.7A; (2) rate adjustments necessary to reflect the
3 financial impact of governmental action (legislative, executive, or
4 regulatory) having a substantial specific impact on the gas industry
5 generally or on a segment thereof that includes PSNC, including but
6 not limited to major expenditures for environmental compliance; or
7 (3) adjustments necessary to reflect the financial impact of major
8 expenditures associated with force majeure.

9 **O&M Costs for Future Rate Cases.** The Stipulating Parties agree
10 that O&M costs included in the cost of service in the 2025 rate case
11 will be based on the lower of: (1) 2023 actuals after audit and
12 adjustment or (ii) the average of 2022 and 2023 actuals after audit
13 and adjustments. For the 2022/2023 average O&M costs,
14 adjustments made for 2023 will be made proportionally to the 2022
15 O&M costs before the average is calculated. The Stipulating Parties
16 further agreed that any general rate case filed after the 2025 rate
17 case and no later than 2028 where a rider was not approved by the
18 Commission as described in Section 15.2(a) of the Regulatory
19 Conditions, the test period should, to the extent practicable, consist
20 of twelve months of non-TSA O&M data. In the event that the test
21 period utilized for any such general rate case does not include twelve
22 complete months of non-TSA O&M data, the Stipulating Parties
23 agreed that the amount(s) of any items for which there are not twelve

1 months of non-TSA data should be determined using the lower of
2 either: (i) TSA costs after audit and adjustments; or (ii) available
3 actual non-TSA costs for such items, after audit and adjustments,
4 and annualized for such costs to reflect a 12-month amount. Finally,
5 the Stipulating Parties agreed that in any general rate case filed in
6 2028 where a rider was approved by the Commission as described
7 in Section 15.2(a) of the Regulatory Conditions, the test period
8 should, to the extent practicable, consist of twelve months of non-
9 TSA O&M data. In the event that the test period utilized for any such
10 general rate case does not include twelve complete months of non-
11 TSA O&M data, the Stipulating Parties agreed that the amount(s) of
12 any items for which there are not twelve months of non-TSA data
13 should be determined using the lower of either: (i) TSA costs after
14 audit and adjustments; or (ii) available actual non-TSA costs for such
15 items, after audit and adjustments, annualized to reflect a 12-month
16 amount.

17 **Customer Assistance Program (CAP).** In its 2025 general rate
18 case, PSNC will propose a Customer Assistance Program (CAP) for
19 consideration by the Commission. In the event the Commission
20 approves a CAP in the 2025 general rate case, PSNC will, if
21 approved by the Commission, contribute funding to the CAP of up to
22 \$300,000 per year for a maximum of three years immediately
23 following approval of the CAP and create a regulatory liability

1 reflecting this funding commitment. With respect to the \$300,000
2 annually, this regulatory liability will not be funded by ratepayers.

3 **Q. What is the Public Staff's recommendation with regard to the**
4 **proposed Transaction?**

5 A. The Public Staff recommends that the proposed Transaction be
6 approved, subject to the provisions of the Stipulation and the agreed
7 upon Regulatory Conditions.

8 **Q. Does this conclude your testimony?**

9 A. Yes.

APPENDIX A**QUALIFICATIONS AND EXPERIENCE****MICHELLE BOSWELL**

I graduated from North Carolina State University in 2000 with a Bachelor of Science degree in Accounting. I am a Certified Public Accountant.

As Director of the Accounting Division of the Public Staff, I am responsible for the performance, supervision, and management of the following activities: (1) the examination and analysis of testimony, exhibits, books and records, and other data presented by utilities and other parties under the jurisdiction of the Commission or involved in Commission proceedings; and (2) the preparation and presentation to the Commission of testimony, exhibits, and other documents in those proceedings. I have been employed by the Public Staff since September 2000.

I have performed numerous audits and/or presented testimony and exhibits before the Commission regarding a wide range of electric, natural gas, and water topics. I have performed audits and/or presented testimony in multiple REPS, fuel, DSM/EE, JAAR, and CPRE cost recovery rider proceedings; 2008 Compliance Reports for North Carolina Municipal Power Agency 1, North Carolina Eastern Municipal Power Agency, GreenCo Solutions, Inc., and EnergyUnited Electric Membership Corporation; four recent Piedmont Natural Gas (Piedmont) rate cases; the 2016 rate case of

Public Service Company of North Carolina; the 2012 and 2019 rate cases for Dominion Energy North Carolina (DENC, formerly Dominion North Carolina Power); the 2013, 2017, 2019, and 2023 DEP rate cases; the 2017, 2019, and 2024 DEC rate cases; multiple fuel; several Piedmont, NUI Utilities, Inc. (NUI), and Toccoa annual gas cost reviews; the merger of Piedmont and NUI; and the merger of Piedmont and North Carolina Natural Gas, merger of CWSNC and Southwest, and many water and sewer rate cases.

CERTIFICATE OF SERVICE

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

This the 29th day of May, 2024.

Electronically submitted
/s/ William S. F. Freeman
Staff Attorney