

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

STAFF CONFERENCE AGENDA
April 22, 2019

COMMISSION STAFF

NO AGENDA ITEMS

PUBLIC STAFF

B. NATURAL GAS

- P1. DOCKET NO. G-9, SUB 743 – APPLICATION OF PIEDMONT NATURAL GAS COMPANY, INC., FOR AN ADJUSTMENT OF RATES, CHARGES, AND TARIFFS APPLICABLE TO SERVICE IN NORTH CAROLINA, CONTINUATION OF ITS IMR MECHANISM, ADOPTION OF AN EDIT RIDER, AND OTHER RELIEF

EXPLANATION: On April 1, 2019, Piedmont Natural Gas Company, Inc. (Company), filed an application with the Commission requesting authority to adjust and increase its rates and charges for customers served in North Carolina effective May 1, 2019. The Company's application also includes, among other requests, a request for continuation of its Integrity Management Rider Mechanism (IMR), as well as a request that the Commission establish an Excess Deferred Income Tax (EDIT) Rider Mechanism.

The Public Staff recommends that an order be issued establishing a general rate case and suspending rates.

EXHIBIT: A proposed order is attached as Exhibit No. P-1.

RECOMMENDATION: (Patel/Hinton/Jayasheela/Culpepper/Jost) That the Commission issue the proposed order establishing a general rate case and suspending rates.

D. ELECTRIC

P1. DOCKET NO. M-100, SUB 152 – PETITION FOR DECLARATORY RULING BY CUBE YADKIN GENERATION, LLC

EXPLANATION: On March 8, 2019, Cube Yadkin Generation, LLC (Company), filed a petition requesting the Commission issue a declaratory ruling that the Company’s proposal to enter into one or more leasing arrangements, whereby electricity and other utility services will be bundled together with real estate and related landlord services for a flat monthly rental rate, would fall within the landlord/tenant exception in N.C. Gen. Stat. § 62-3(23)d and, therefore, the Company would not be acting as a “public utility” under applicable North Carolina law and regulations.

The Public Staff has reviewed the petition and discussed the proposed leasing arrangements with the Company. Based on its review, the Public Staff agrees that the proposal would not constitute public utility service, as the cost of water, sewer, and electric service to the Company’s tenants would be recovered as part of non-variable monthly rent. There would be no charge for utility services based on usage. No one has filed a protest or objection to the proposal and the Public Staff is not aware of any concerns from other persons.

EXHIBIT: A proposed order is attached as Exhibit No. P-2.

RECOMMENDATION: (Drooz) That the Commission issue the proposed order declaring that the proposed activity of Cube Yadkin Generation, LLC will not constitute public utility activity and, therefore, will not be subject to Commission regulation.

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. G-9, SUB 743

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Application of Piedmont Natural Gas Company, Inc., for an Adjustment of Rates, Charges, and Tariffs Applicable to Service in North Carolina, Continuation of its IMR Mechanism, Adoption of an EDIT Rider, and Other Relief)	ORDER ESTABLISHING GENERAL RATE CASE AND SUSPENDING RATES

BY THE COMMISSION: On April 1, 2019, Piedmont Natural Gas Company, Inc. (Piedmont or Company), filed an application with the Commission requesting authority to adjust and increase its rates for customers in North Carolina effective May 1, 2019. The proposed rate increase is based on a test period ending December 31, 2018. The Company's application includes requests for (1) continuation of Piedmont's Integrity Management Rider (IMR) contained in Appendix E to its approved service regulations; (2) regulatory asset treatment for certain incremental Distribution Integrity Management Program (DIMP) Operations and Maintenance (O&M) expenses; (3) adoption of revised and updated depreciation rates for the Company's North Carolina and joint property assets; (4) updates and revisions to Piedmont's rate schedules and service regulations; (5) revised and updated amortizations and recovery of certain regulatory assets accrued since Piedmont's last general rate case proceeding; (6) approval of expanded energy efficiency and conservation program spending; and (7) adoption of an Excess Deferred Income Tax (EDIT) Rider mechanism to manage the flowback to customers of deferrals and excess deferred income taxes created by changes to state and federal income tax rates.

The Commission is of the opinion that the application constitutes a general rate case and that the proposed new rates should be suspended pending investigation.

IT IS, THEREFORE, ORDERED as follows:

1. That this proceeding is declared a general rate case pursuant to N.C. Gen Stat. § 62-133 and Commission Rule R1-17;
2. That the proposed new rates are suspended for up to 270 days pursuant to N.C. Gen Stat. § 62-134;

3. That the test year period is established as the twelve-month period ending December 31, 2018; and

4. That an order scheduling hearings and requiring customer notice shall be issued by the Commission at a later date.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of April, 2019.

NORTH CAROLINA UTILITIES COMMISSION

M. Lynn Jarvis, Chief Clerk

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. M-100, SUB 152

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

)	ORDER ON PETITION FOR
Petition for Declaratory Ruling by)	DECLARATORY RULING
Cube Yadkin Generation, LLC,)	

BY THE CHAIRMAN: On March 8, 2019, Cube Yadkin Generation, LLC (Cube or Petitioner) filed a verified Petition requesting the Commission issue a declaratory ruling that its proposal to enter into one or more leasing arrangements, whereby electricity and other utility services will be bundled together with real estate and related landlord services for a flat monthly rental rate, would fall within the landlord/tenant exception in N.C. Gen. Stat. § 62-3(23)d and, therefore, would not cause Cube to be considered a “public utility” or to otherwise be furnishing public utility service under applicable North Carolina law and regulations.

In its filing, Cube stated that it owns and operates four hydroelectric stations, dams and reservoirs along a 38-mile stretch of the Yadkin River. These facilities were built and used by Alcoa Corporation and its predecessors to supply energy for its aluminum production operations in Badin and currently are being used by Cube to supply energy into the wholesale market under Cube’s federal authority as an Exempt Wholesale Generator. Cube further stated that it seeks to enter into bundled-service, flat rental rate lease arrangements with tenants that have defined, high-intensity energy needs at the former site of the Alcoa aluminum production facilities, which is now under redevelopment as Badin Business Park.

Specifically, Petitioner stated that Cube, either directly or through an affiliate, proposes to lease portions of the Badin Business Park to various industrial tenants. As a component of these lease arrangements, Cube proposes to provide typical landlord services, such as the construction of any needed tenant improvements and maintenance, property management, and security services, in addition to certain bundled utility services, such as electricity, water, sewer, and telecommunications/broadband. The utility services that Cube proposes to provide to each tenant will be bundled as part of the overall package of lease services and will not be separately metered or billed or be subject to any kind of true-up. Cube further stated that the lease agreement, as proposed, will prohibit tenants from reselling or otherwise making available to third parties the utility services provided by

Cube. The central premise of Cube's proposed leasing model is for it to provide space, services, and utilities to tenants for one flat, bundled rental rate. This will benefit energy-intensive tenants that seek significant amounts of space and intend to expand their operations over time.

Petitioner further stated that preliminary contact has been made with a number of potential tenants in order to gauge interest and assess needs and based on these discussions Cube has reason to believe that, if the declaratory ruling sought by its Petition is granted, binding lease agreements could be reached with one or more tenants. Cube noted that the proposed revitalization of Badin Business Park could lead to substantial new investment in the Stanly County community, including the creation of new jobs and expansion of the local tax base.

Petitioner also noted that its proposal is analogous to a prior proceeding in which the Commission issued a declaratory ruling finding that Catawba County's plan to construct and lease greenhouses, combined with energy generated by the County's Qualifying Facility, to a third party on up to 100 acres within the perimeter of the County's "Eco-Complex" did not subject the County to treatment as a public utility. *In re Catawba County*, Order on Request for Declaratory Ruling, Docket No. SP-100, Sub 22 (Oct. 19, 2006). Petitioner further argued that the grant of the Petition would be consistent with the principles established by the Commission's other decisions concerning the landlord/tenant exemption. See *Robertson Brothers Utilities*, Order Canceling Franchise and Requiring Customer Notice, Docket No. W-837, Sub 1 (Jan. 23, 2002); *Complaint of Colin Stafford*, Order Granting, in Part, and Denying in Part, Relief, Docket No. E-7, Sub 956 (May 11, 2011); *Public-Staff-North Carolina Utilities Commission v. Campus-Raleigh, LLC, and Campus Apartments, LLC*, Order Determining Utility Status, Denying Request for Declaratory Ruling, Requiring the Cessation of Unlawful Charges for Utility Service, and Requiring Refunds, Docket No. M-89, Sub 8 (June 1, 2012); and *In the Matter of Public Utility Status of American Homes 4 Rent – Public Staff Request for a Declaratory Ruling*, Order Issuing Declaratory Ruling, Docket No. M-100, Sub 144 (Oct. 18, 2016).

On April 22, 2019, the Public Staff presented this matter to the Commission at its Regular Staff Conference, stating that it had reviewed Cube's Petition and had concluded that Cube's proposal, if implemented as described in the Petition, would fall within the statutory exemption for landlord/tenant arrangements and the Commission's precedent interpreting that exemption. The Public Staff, therefore, recommended that the Commission issue an order declaring that, based upon the specific regulatory circumstances presented and the statements by Cube in the Petition, Cube's proposal falls within the landlord/tenant exemption in N.C. Gen. Stat. § 62-3(23)d and, accordingly, Cube would not be considered a public utility as a result of the activities described in the Petition.

Based upon its consideration of the facts and representations in Cube’s Petition and the Public Staff’s recommendation, the Commission concludes that Cube’s proposal as described in the Petition to enter into one or more lease arrangements, whereby electricity and other utility services will be bundled with real estate and other services and included in the flat rental rate, falls within the landlord/tenant exception in N.C. Gen. Stat. § 62-3(23)d. The Commission further concludes that neither Cube nor its affiliates should be considered a “public utility,” as that term is defined in N.C. Gen. Stat. 62-3(23)a or otherwise considered to be furnishing public utility service under applicable North Carolina law and regulations by virtue of its proposed activities. The Commission notes that the present decision is limited to the facts set forth in this Order and in Cube’s Petition and should not be regarded as a precedent for any other person engaging in activities other than those found in this case.

IT IS, THEREFORE, ORDERED that Cube and its affiliates shall not be considered “public utilities” as defined in N.C. Gen. Stat. § 62-3(23)a, or otherwise be considered to be furnishing public utility service under applicable North Carolina law and regulations, by virtue of the activities described in Cube’s Petition for Declaratory Ruling.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of April, 2019.

NORTH CAROLINA UTILITIES COMMISSION

M. Lynn Jarvis, Chief Clerk