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April 4, 2011

FILED
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Clerk's Office
N.C. Utilities Commission

Ms. Renné C. Vance, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4325

OFFICIAL COPY

RE: Docket No. E-100, Sub 127

Dear Ms. Vance:

Enclosed for filing are the original and thirty (30) copies of Duke Energy Carolinas, LLC's Reply Comments in the above-referenced docket.

Sincerely,

Robert W. Kaylor

Robert W. Kaylor

Encls.

cc: Parties of Record

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AG
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Benning
Watson
vacant
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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-100, SUB 127

FILED
APR 04 2011

Clerk's Office
N.C. Utilities Commission

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In the Matter of)
Biennial Determination of)
Avoided Cost Rates for Electric)
Utility Purchases from Qualifying)
Facilities - 2010)

DUKE ENERGY CAROLINAS'
REPLY COMMENTS

Duke Energy Carolinas, LLC ("Duke Energy Carolinas" or the "Company") hereby submits these Reply Comments in support of Duke Energy Carolinas' proposed Schedule Purchased Power rates and Standard Purchased Power Agreement ("Schedule PP-H and PP-N" ("Standard PPA"), and in response to the Initial Statement of the Public Staff ("Public Staff Initial Statement").

INTRODUCTION

Duke Energy Carolinas submitted its Initial Statement and its Revised Initial Statement in this docket on November 1, 2010, and November 29, 2010, respectively. In its Initial and subsequent Revised Statement, Duke Energy Carolinas proposed its Standard Power Purchase Agreement ("PPA") and revision to the rates contained in its Schedule PP-H and PP-N. On March 1, 2011, the Public Staff filed its Initial Statement, in which it summarized the rates proposed in this proceeding by Duke Energy Carolinas, Carolina Power and Light Company, d/b/a Progress Energy Carolinas, Inc. ("Progress"), and Virginia Electric and Power Company, d/b/a/ Dominion North Carolina Power ("NC Power") (collectively, "Utilities") and identified and discussed three contested issues.

In these Reply Comments, Duke Energy Carolinas responds to the contested issues raised by the Public Staff that pertain to it.

DISCUSSION

In its Initial Statement the Public Staff identified two issues pertaining to Duke Energy Carolinas. First, the Public Staff questioned whether Duke Energy Carolinas' interim rate offering complied with the Public Utilities Regulatory Policies Act ("PURPA"). Second, the Public Staff expressed concerns regarding the Company's nominal fixed charge rate calculation. The Company's reply comments on each issue are below.

A. Interim Lack of Standard Rate Options

The Public Staff stated that both NC Power's and the Company's contract or tariff has "provisions that make the currently approved avoided cost rates unavailable as of the expected due date for the utilities' filing of proposed new rates in the next biennial avoided cost proceeding", and it questioned whether this practice is consistent with PURPA. Duke Energy Carolinas, however, does make available a valid, Commission-approved purchased power rate to Qualifying Facilities ("QFs") during this interim time period, and the Commission has approved provisions doing so in previous biennial proceedings. For the reasons set forth below, Duke Energy Carolinas' proposed Schedule PP-N, PP-H, and PPA continue to conform to PURPA and the Commission's previous orders.

The Public Staff noted recent arbitrations involving Progress and NC Power, Docket Nos. E-2, Sub 966, and SP-467, Sub 1, respectively, in which the Commission had stated that Federal Energy Regulatory Commission ("FERC") regulation, 18 C.F.R. 292.304(d), allows QFs to choose whether to sell power "as available" or to sell pursuant to a legally enforceable obligation over a specified term. The Public Staff explained that if the QF chooses to sell pursuant to a legally enforceable obligation, it may further choose the rates based upon the avoided costs

calculated at the time of delivery or at the time the obligation is incurred. For an obligation to be incurred, the QF must have a certificate of public convenience and necessity ("CPCN") and have clearly conveyed its intent to commit to selling to the utility its output. The Public Staff then indicated that, based on the Commission's interpretation, denying a QF "currently approved avoided cost rates, when that QF has its CPCN, is eligible for the standard rates, and has indicated that it intends to commit itself" appears to be inconsistent with PURPA.

The Public Staff's position in its Initial Statement, however, could result in QFs seeking contracts after November 1, 2012, (when the utilities file their proposed avoided cost rates in the next biennial review proceeding) locking into long-term fixed rates that were calculated approximately two years prior to that date. The Commission has reviewed this issue before. As the Public Staff recounted, in earlier proceedings, the Commission allowed a utility to file a motion to suspend the availability of the currently approved cost rates and tariff, with QFs that had their CPCNs as of the date of the motion being entitled to the existing rates. QFs that did not have their CPCNs and signed contracts at the new, proposed rates were entitled to have their payments increased if the Commission approved avoided cost rates higher than the rates proposed by the utilities. If the Commission approved lower rates, however, the Commission would not permit the utilities to decrease the payments to the QFs. See *Order on Pending Motions*, Docket No. E-100, Sub 74, issued February 13, 1995.

In Docket No. E-100, Sub 79 (1996 Biennial Proceeding), the Company requested that the Schedule PP rates be available only to QFs entering contracts on or before the 1998 due date for the next biennial proceeding, for delivery on or before May 4, 2001. The Company argued that allowing its request would better ensure that the avoided costs rates reflect current avoided costs, noting that even with that time limitation, nearly four years could elapse from the time that

avoided costs were estimated until delivery begins. The Commission approved the Company's request by Order issued June 19, 1997. Therefore, until 2007, the availability of Schedule PP expired upon the filing of new proposed avoided cost rates in the next biennial proceedings.

In Docket No. E-100, Sub 106 (2006 Biennial Proceeding), however, the Company requested to modify the expiration of Schedule PP. To make standard rates available to QFs during the time the next biennial proceeding was pending, while recognizing that the new rates would be based upon more current avoided cost projections, Duke Energy Carolinas proposed that the fixed long-term rates be available only to customers under contract with the Company on or before November 1, 2008, and that the variable rates remain available until new variable rates were approved. Without objection from any party, the Commission approved the Company's request.

Duke Energy Carolinas, therefore, does make its currently approved variable rates available to QFs seeking a contract while the Commission's review of its proposed avoided costs rates is underway in this proceeding. The Company proposes to do the same for the next biennial proceeding. The proposed provision reads as follows:

The Fixed Long-Term Rates on this Schedule are available only to Customers under contract with the Company on or before November 1, 2012 for delivery of power beginning on or before the earlier of thirty (30) months from the date of execution of the contract or May 1, 2015.

As the Company explained in its Initial Statements, this provision "make[s] standard rates available to QFs during the time the next proceeding is pending, while recognizing that the new rates will be based upon more current avoided cost projections." In other words, Duke Energy Carolinas proposes to continue its currently approved procedure of making its variable rates that are approved by the Commission in this proceeding available to QFs until the Commission approves new variable rates in the next biennial proceeding. Furthermore, customers that

execute contracts containing the variable rates after expiration of the long-term rates may then amend their contracts to select one of the long-term rates for which they are eligible once new avoided cost rates are approved by the Commission.

This provision is intended to ensure that rates in the contracts will not become excessively out of date before actual delivery begins. Duke Energy Carolinas has noted that its experience has shown that a utility's filing to lower its avoided cost rates sometimes prompts QFs to try to "lock in" at the current higher rates before the Commission acts. This concern still stands. As recently as January 21, 2011, Mayo Hydropower, LLC filed a complaint in Docket No. E-7, Sub 978, essentially seeking to "lock in" the long-term rates that were approved in the last biennial proceeding, when its contract expired after November 1, 2010.¹

The Commission's decisions in the recent arbitrations do not mandate that QFs be able to lock into older, less current, fixed long-term rates during the interim period to avoid taking the long-term rates proposed for the Commission's biennial review. In those arbitrations, the Commission considered several issues concerning the specific contract negotiations between Progress and a QF and NC Power and a QF. In both, the Commission discussed 18 C.F.R. Sec. 292.304(d), which provides:

(d) Purchases "as available" or pursuant to a legally enforceable obligation. Each qualifying facility shall have the option either:

(1) To provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery; or

(2) To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for such purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either:

- (i) The avoided costs calculated at the time of delivery; or
- (ii) The avoided costs calculated at the time the obligation is incurred.

¹ After Mayo Hydropower did not respond to the Company's Answer and Motion to Dismiss, the Commission dismissed the Complaint by Order dated March 9, 2011.

Neither the above regulation nor the Commission's interpretations of it require Duke Energy Carolinas to offer its fixed long-term rates that were calculated prior to November 2010 (that are still pending in this docket) to QFs seeking a contract after November 1, 2012. Instead, PURPA and the regulations promulgated from it require the avoided costs rates for purchases by electric utilities "shall be just and reasonable to the electric consumers of the electric utility and in the public interest" and shall not exceed the utilities' avoided costs. PURPA § 210(b); 18 C.F.R. 292.304(a). If a QF seeks a contract with Duke Energy Carolinas after November 1, 2012, the QF may obtain the variable rates approved in this docket that will be in effect until the Commission approves the Company's proposed, calculated avoided cost rates, including long-term fixed rates in the next biennial proceeding. The purpose of the biennial proceeding, as noted in the Commission's orders establishing the proceedings, is to "determine each utility's avoided costs with respect to the rates for purchases from qualifying cogenerators and small power production facilities." After that determination is made, the QF may amend its contract to opt into the approved, long-term rates for which it is eligible. This prevents exposing the utility and the ratepayers to paying for longer periods of time avoided costs rates that are in excess of the utility's actual avoided costs.

As discussed above, QFs seeking a new contract with the utility could preview the avoided cost rates calculated for the next biennial proceeding and then attempt to lock into the currently approved, but more outdated, long-term rates after the proposed rates are filed, if the QF did not find the newly proposed avoided cost rates advantageous. It is unlikely, however, that QFs would want to lock into approved currently approved long-term rates if the utility's proposed rates were higher. Duke Energy Carolinas' provision, however, avoids this inconsistency and allows for long-term avoided costs rates offered to the QFs to more closely

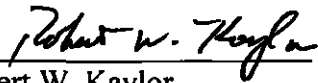
align to actual avoided costs, instead of simply providing a potential for QFs seeking to enter into contracts after November 1, 2012 to “game” the system.

Finally, the Public Staff also suggested that in the alternative to the Company’s provision, it could allow for the QF qualifying for standard rates to be entitled to the proposed avoided cost rates, subject to those rates being trued up if the Commission approved higher rates. The Company respectfully submits that its proposed Schedule PP-N and PP-H provide a mechanism that is consistent with PURPA, but less burdensome administratively than adding potential true-ups to an already complex proceeding. Moreover, the Company notes that Exhibit 6 to its Initial Statement shows that most of the Company’s PPAs with QF are at variable rates. Therefore, the Company’s provision also better reflects its experience with QFs in this respect.

B. Nominal Fixed Charge Rate Calculation

The Public Staff also questioned the Company’s nominal fixed charge rate calculation in that it appeared to have a higher debt component of ADC. The Public Staff and the Company are still discussing this issue, and if they are unable to resolve it, they will notify the Commission as appropriate.

Respectfully submitted, this the 4th day of April, 2011.


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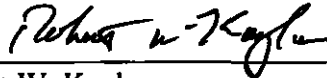
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ATTORNEYS FOR DUKE ENERGY CAROLINAS

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC's Reply Comments in No. E-100, Sub 127 has been served by electronic mail (e-mail), hand delivery or by depositing a copy in the United States Mail, first class postage prepaid, properly addressed to parties of record.

This the 4th day of April, 2011.

A handwritten signature in black ink, appearing to read "Robert W. Kaylor", is written over a horizontal line.

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