

PUBLIC VERSION

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-2, SUB 1204

In the Matter of:)
Application of Duke Energy Progress,)
LLC Pursuant to N.C. Gen. Stat. § 62-)
133.2 and Commission Rule R8-55) **POST-HEARING BRIEF**
Relating to Fuel and Fuel-Related) **OF THE SIERRA CLUB**
Charge Adjustments for Electric)
Utilities)

Pursuant Rule R1-25 of the North Carolina Utilities Commission, the Sierra Club respectfully files this post-hearing brief on Duke Energy Progress, LLC’s (“DEP”) application for a rider to recover its fuel and fuel-related costs.

I. Introduction

On June 12, 2019, DEP filed an application to recover fuel and fuel-related costs pursuant to N.C. Gen. Stat. § 62-133.2 and Commission Rule R8-55. In this annual fuel charge adjustment proceeding, the Commission establishes a rider to allow DEP to recover its reasonable and prudently incurred fuel and fuel-related costs from its customers. *Id.* Under N.C.G.S. § 62-133.2(a1)(8), the “[c]ost of fuel and fuel-related costs shall be adjusted for any net gains or losses resulting from any sales by the electric public utility of fuel and other fuel-related costs components.” The Commission held an evidentiary hearing on September 9 and 10, 2019 and heard testimony from DEP’s witnesses regarding its application.

An examination of DEP’s fuel procurement practices is a key part of the Commission’s review in this proceeding. N.C.G.S. § 62-133.2(c)(2) (requiring utilities to submit for the Commission’s inspection data related to “[f]uel procurement practices and fuel inventories for each facility.”). In reaching its decision, the Commission is permitted

to consider “any and all other competent evidence that may assist the Commission in reaching its decision[.]” N.C.G.S. § 62-133.2(d). The burden of proof as to the reasonableness of the requested charge and as to whether the costs were reasonable and prudently incurred is on the utility. *Id.*

The Sierra Club supports some elements of DEP’s application. First, the Company’s reduced reliance on coal-powered generation is a step in the right direction. During the test period, DEP’s coal burn decreased approximately 7% compared to the previous test period. Tr. Vol. 1 p. 55. DEP’s application also shows a relatively modest growth in electricity sales compared to its previous application, including decreased sales in the lighting and residential classes. These changes reflect the success of DEP’s demand-side management and energy efficiency efforts.

However, there are two key areas of concern reflected in DEP’s application: (1) an over-reliance on firm pipeline capacity to supply its natural gas power plants, and (2) insufficient data collection practices regarding DEP’s natural gas usage. These two areas of concern present opportunities for DEP to reduce fuel costs and save ratepayers money in the future.

II. Duke Energy Progress’ Acquisition of Firm Capacity for Natural Gas Plants

One area of concern is DEP’s reliance on firm pipeline capacity to supply its natural gas power plants. DEP has made gas-fired generation a central component of its resource plan, and has made the Atlantic Coast Pipeline (“ACP”) a part of its fuel procurement strategy for this gas-centric future. DEP has entered into a precedent agreement for firm natural gas transportation service with Atlantic Coast Pipeline, LLC (“Atlantic”), a joint venture of Dominion Resources, Southern Company, and DEP’s

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parent company Duke Energy.¹ Duke Energy and Dominion Resources have contracted with their own affiliates—including DEP—for the bulk of the capacity on the ACP, and Atlantic anticipates that eventually about 79% of the pipeline’s total capacity will go to fuel gas-fired generation.² If the ACP is completed and placed into service, DEP will ultimately ask this Commission, through a future fuel rider proceeding such as this one, to impose on its captive retail ratepayers the costs of shipping gas on the ACP.

Brett Phipps, DEP’s Managing Director of Fuel Procurement, discussed DEP’s fuel procurement practices in his testimony. Mr. Phipps stated that DEP contracts for fixed capacity in order to fuel DEP’s natural gas plants. Phipps Ex. 1; Tr. Vol. 1 p. 68. Mr. Phipps conceded that this capacity is paid for by ratepayers regardless of whether it is utilized or not. Tr. Vol. 1 pp. 78-79. Therefore, unutilized firm natural gas pipeline capacity represents an inefficiency that harms ratepayers. Allowing these inefficiencies to be reflected in the fuel rider directly contradicts the State’s policy that rates must be set to “promote adequate, reliable and economical utility service to all [customers]” and to “provide just and reasonable rates and charges for public utility services . . . consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy[.]” N.C. Gen. Stat. § 62-2.

[BEGIN CONFIDENTIAL] [REDACTED]

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¹ Atlantic Coast Pipeline, LLC, *Abbreviated Application for a Certificate of Public Convenience and Necessity and Blanket Certificates*, FERC Docket No. CP15-554 (Sept. 18, 2015) at 4, 7.

² *Id.* at 6.

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Overreliance on firm pipeline capacity results in unnecessary investment in pipeline infrastructure and unnecessary costs for DEP’s customers. Contracts for firm capacity lower the business risk borne by pipeline owners and increase risks to those holding firm capacity contracts.³ As Mr. Phipps testified, DEP pays for the firm pipeline capacity whether it is used or not, Tr. Vol. 1 p. 79, reducing the risk to pipeline owners. These lower risks make pipeline capacity easier to finance and, thus, lead to overbuilding.⁴ Because DEP is assured a rate of return, the risk it takes on by contracting for firm pipeline capacity is ultimately borne by ratepayers.⁵ For these reasons, the Sierra Club urges the Commission to examine to what extent costs incurred pursuant to DEP’s contracts for firm capacity constitute “reasonable and prudently incurred” costs, where they are consistently and dramatically underutilized.

III. Duke Energy Progress’ Data Collection Practices

An additional area of concern is DEP’s insufficient data collection practices, which make it difficult for intervenors and the Commission to determine whether DEP’s firm capacity is being utilized as efficiently as possible. DEP does not collect or utilize

³ Nina Hitchins & Gabrielle Maguire, *Generators’ Appetite to Finance Pipeline Capacity: New England and South Australia*, NERA Economic Consulting (2015), available at https://www.nera.com/content/dam/nera/publications/2015/PUB_Generators_Appetite_to_Finance_Pipeline_Capacity_1115.pdf (“The commitment to pay for reserved capacity on the pipeline provides owners with the certainty required to invest in new or expanded pipelines.”).

⁴ Cathy Kunkel & Tom Sanzillo, *Risks Associated with Natural Gas Pipeline Expansion in Appalachia*, Institute for Energy Economics and Financial Analysis (2016), available at http://ieefa.org/wp-content/uploads/2016/04/Risks-Associated-With-Natural-Gas-Pipeline-Expansion-in-Appalachia-_April-2016.pdf.

⁵ See *ENGIE Gas & LNG LLC v. Dept. of Pub. Utils.*, 56 N.E.3d 740, 754 (Mass. 2016) (“[G]as-fired generating businesses are unwilling to assume the risks associated with long-term gas pipeline capacity contracts because there ‘is no means by which they can’ assure recovery of those contract costs.”).

certain information about its current fuel procurement practices that is readily available and could inform future fuel procurement practices. For example, Mr. Phipps testified that DEP does not track or report how much unused pipeline capacity is available on a daily or hourly basis. Tr. Vol. 1, pp. 79-80. Nor does DEP track natural gas deliveries to each generating unit by day. Tr. Vol. 1, pp. 80-81.

Without this information, it is impossible for the Commission to determine whether DEP could release its fixed pipeline capacity at any given time, thus saving ratepayers money. A secondary market exists where DEP can sell unused firm pipeline capacity, recouping some or all of the cost to acquire firm capacity.⁶ The Commission has previously recognized that participation in capacity release transactions benefits ratepayers.⁷ The Sierra Club urges the Commission to require DEP to, at a minimum, track and report its gas pipeline utilization at a more granular scale to see if there are opportunities to resell unused pipeline capacity. In future fuel cases, DEP should have such available hourly and daily metered usage readily available for production. The Commission should require DEP to present evidence in its next fuel case regarding whether or not it can monetize the unused gas capacity on days when the system is not constrained, thus benefiting ratepayers from sales of unused natural gas capacity.

IV. Conclusion

In order to effectively evaluate whether DEP's fuel costs have been reasonably and prudently incurred, the Commission needs to evaluate the entirety of the data concerning DEP's natural gas powered generation, including what opportunities exist to

⁶ See *Order on Annual Review of Gas Costs*, N.C.U.C. Docket No. G-9, Sub 569 (17 February 2010).

⁷ *Order on Annual Review of Gas Costs*, N.C.U.C. Docket No. G-5, Sub 533 (9 October 2012) (“the Company earned \$10,159,936 of margin on secondary market transactions, including capacity release transactions and storage management arrangements, during the review period. Of this amount, \$7,619,954 was credited . . . for the benefit of ratepayers.”).

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offset natural gas costs. Unfortunately, DEP's current data collection and reporting practices make it impossible for the Commission to do so. Without access to hourly or even daily information concerning DEP's generation fleet's gas burn, pipeline capacity, or potential to release unused capacity, the Commission cannot evaluate whether DEP's fixed capacity costs have been reasonably and prudently incurred. This information gap also makes it impossible for the Commission to determine whether DEP is over-reliant on fixed capacity.

Therefore, the Sierra Club recommends the Commission take the following steps:

- 1) Require DEP to track and report its gas pipeline utilization on an hourly and daily basis.
- 2) Require DEP to present evidence in its next fuel case regarding whether or not opportunities exist to monetize unused gas capacity.
- 3) Examine to what extent DEP's reliance on firm capacity constitutes "reasonable and prudently incurred" costs, where that capacity is consistently and dramatically underutilized.

Respectfully submitted this 4th day of November, 2019.

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CERTIFICATE OF SERVICE

I certify that all parties of record have been served with the foregoing Post-Hearing Brief of the Sierra Club – Public Version either by electronic mail or by deposit in the U.S. Mail, postage prepaid.

This the 4th day of November, 2019.

/s Tirrill Moore