

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 144

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Rulemaking Proceeding to Consider) ORDER ADOPTING
the Adoption of Proposed Commission) COMMISSION RULE R8-70
Rule R8-70)

BY THE COMMISSION: On April 1, 2015, the North Carolina General Assembly ratified Senate Bill 305, and the Governor signed it into law the following day. See N.C. Session Law 2015-3. Among other things, Senate Bill 305 enacted G.S. 62-133.14, a new section of Chapter 62, the Public Utilities Act. In summary, G.S. 62-133.14 provides for the cost recovery of costs incurred by an electric utility to acquire, operate and maintain interests in electric generating facilities purchased from a joint municipal agency. Pursuant to G.S. 62-133.14(a), the Commission is required to adopt rules to implement the provisions of the new statute.

On June 12, 2015, Duke Energy Progress, Inc. (DEP) and the Public Staff (collectively, Movants) jointly filed an application for adoption of proposed Commission Rule R8-70 in the above-captioned docket. In summary, Movants stated that the proposed rule would implement the cost recovery provisions of G.S. 62-133.14. Further, Movants stated that proposed Rule R8-70 was developed through a deliberate and lengthy process by DEP and the Public Staff, and reflects input from the Carolina Industrial Group for Fair Utility Rates II (CIGFUR) and the Carolina Utility Customers Association, Inc. (CUCA). In addition, Movants noted that on May 12, 2015, the Commission issued its related Order Approving Transfer of Certificate and Ownership Interests in Generating Facilities in Docket Nos. E-2, Sub 1067 and E-48, Sub 8, in connection with the transaction contemplated by G.S. 62-133.14. Finally, DEP requested expedited approval of the proposed rule on or before June 24, 2015, in order to facilitate the closing of the transaction between DEP and the North Carolina Eastern Municipal Power Agency on July 1, 2015.

On June 16, 2015, the Commission issued an Order Requesting Comments Regarding Proposed Rule R8-70. The Order allowed petitions to intervene and initial comments to be filed by June 30, 2015, and reply comments to be filed by July 7, 2015.

On June 17, 2015, CIGFUR filed a petition to intervene. On June 23, 2015, the Commission issued an Order granting CIGFUR's petition.

No other persons intervened in the docket and no comments or reply comments were filed.

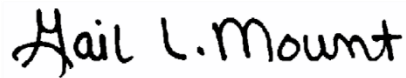
Based on the foregoing and the record, the Commission is of the opinion that Rule R8-70 as proposed by DEP and the Public Staff is consistent with the provisions of G.S. 62-133.14, will assist the Commission to properly implement the statute, and will serve the public interest. In addition, the Commission concludes that there is good cause to adopt proposed Rule R8-70. Therefore, Commission Rule R8-70, attached hereto as Attachment A, shall be, and is hereby, adopted effective the date of this Order.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of July, 2015.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Gail L. Mount". The signature is written in a cursive, flowing style.

Gail L. Mount, Chief Clerk

RULE R8-70

Rule R8-70 COST RECOVERY FOR COSTS INCURRED BY AN ELECTRIC PUBLIC UTILITY TO ACQUIRE, OPERATE AND MAINTAIN INTEREST IN ELECTRIC GENERATING FACILITIES PURCHASED FROM A JOINT MUNICIPAL POWER AGENCY

(a) Definitions.

- (1) Unless listed below, the definitions of all terms used in this rule shall be as set forth in G.S. 62-133.14.
- (2) "Acquired plant" means a joint agency's proportional ownership interest in electric generating facilities purchased by an electric public utility prior to December 31, 2016.
- (3) "Acquisition costs" means the amount paid by an electric public utility on or before December 31, 2016, to acquire the proportional ownership interest in electric generating facilities from a joint agency, including the amount paid above the net book value of the generating facilities. Acquisition costs include the amounts recorded by the joint agency in its accounting records for plant, accumulated depreciation, net nuclear fuel, spare parts, fuel and materials and supplies inventories, construction work in progress, and any other items related to the acquired plant, plus the amount paid by an electric public utility above the net book value of the generating facilities.
- (4) "Financing costs" means the debt and equity return on the electric public utility's average rate base investment determined using the weighted average net of tax cost of capital as authorized by the Commission in the electric public utility's most recent general rate case, including gross-up for income taxes.
- (5) "Joint agency" means a joint agency established under Chapter 159B of the General Statutes.
- (6) "Levelized" means an even amount of revenue requirement over a period of time that is equivalent to the present value of the stream of revenue requirements that would be determined for the same period of time based upon the declining book value of the items subject to the levelization. The return to be used in the present value calculations is based on the net of tax rate of return authorized by the Commission in the utility's last general rate case.
- (7) "Non-fuel operating costs" means the reasonable and prudent costs incurred to operate and maintain electric plant in service and the related depreciation and amortization expense, nuclear decommissioning expense, Commission regulatory fee, income taxes and property taxes, but excluding costs recoverable under G.S. 62-133.2.

- (8) "Joint Agency Asset rider" means a charge or rate established by the Commission annually pursuant to G.S. 62-133.14 to allow an electric public utility to recover the North Carolina retail portion of all reasonable and prudent costs incurred by the electric public utility to acquire, operate and maintain the acquired plant, as well as reasonable and prudent financing costs and non-fuel operating costs related to capital investments in the acquired plant.
 - (9) "Rate period" means the period during which the Joint Agency Asset rider established under this rule will be in effect. For each public utility, this period will be the same as the period during which the rider established under Rule R8-55 is in effect, unless otherwise ordered by the Commission.
 - (10) "Test period" shall be the calendar year that precedes the end of the test period for each electric public utility for purposes of Rule R8-55, unless otherwise ordered by the Commission.
- (b) Recovery of Costs.
- (1) In determining the amount of the Joint Agency Asset rider, the Commission shall include the following:
 - i. The financing costs and depreciation and amortization expenses associated with the acquired plant, including the amount paid over book value, levelized over the remaining useful life of the electric generating facilities. The remaining useful life will be determined at the time of the acquisition.
 - ii. The financing costs associated with coal inventory and the acquisition costs not included in amounts being levelized in (b)(1)(i), including net nuclear fuel, fuel inventory, and materials and supplies inventory, but excluding construction work in progress.
 - iii. The estimated non-fuel operating costs for the acquired plant, not recovered through (b)(1)(i), based on the experience of the test period and the costs projected for the next 12 month rate period.
 - iv. The estimated financing costs and non-fuel operating costs associated with the reasonable and prudent proportional capital investments including allowance for funds used during construction (AFUDC) in the acquired plant that are placed in service subsequent to the acquisition date.
 - v. Adjustments to reflect changes in the North Carolina retail portion of financing and non-fuel operating costs related to the electric public utility's other used and useful generating facilities owned at the time of the acquisition to properly account for changes in the jurisdictional allocation factors that result from the addition of the joint agency to the load served by those other facilities.

- vi. A Joint Agency Asset rolling recovery factor (Joint Agency Asset RRF) to reflect the under or over recovery balance. The electric public utility will maintain an under or over recovery balance and add to the balance the difference between the reasonable and prudent financing and non-fuel operating costs incurred by the electric public utility during the test period and the revenues to recover these costs during the test period that were actually realized.
 - vii. Upon request by the electric public utility, the experienced under or over recovery of financing and non-fuel operating costs incurred after the test period and up to thirty (30) days prior to the date of the hearing in its determination of the Joint Agency Asset rider, provided that the reasonableness and prudence of these costs shall be subject to review in the utility's next annual Joint Agency Asset rider hearing.
- (2) In determining cost recovery allocation, the Commission shall utilize the jurisdictional and customer class allocation methodology used in the electric public utility's most recent general rate case.
 - (3) Each electric public utility shall utilize deferral accounting for costs considered for recovery through the Joint Agency Asset rider. The balance in the deferral account, net of tax, shall accrue a monthly return at the net-of-tax rate of return, grossed up for income taxes, as approved in the electric public utility's most recent general rate proceeding.
 - (4) The provisions of this Rule shall not relieve the Commission of its responsibility to determine the reasonableness and prudence of the cost of capital additions or operating costs incurred related to the acquired plant in a general rate proceeding.
 - (5) The burden of proof as to the correctness, reasonableness, and prudence of the cost of capital additions or operating costs sought to be included in the Joint Agency Asset rider, including the Joint Agency Asset RRF, shall be on the electric public utility.
- (c) Annual Proceeding.
- (1) Each year the Commission shall hold a hearing pursuant to G.S. 62-133.14 to establish an annual Joint Agency Asset rider for the applicable electric public utility.
 - (2) The annual rider hearing will be scheduled as soon as practicable after the hearing held by the Commission for the electric public utility under Rule R8-55. Each electric public utility shall file its application for recovery of costs under this Rule at the same time that it files the information required by Rule R8-55.
 - (3) After the initial establishment, the Joint Agency Asset rider will remain in effect, subject to annual updates as provided in this rule, until the end of the useful life of the acquired plant, with any remaining unrecovered costs deferred until the electric public utility's next general rate proceeding.

(d) Initial Rider.

- (1) For the initial filing to establish the Joint Agency Asset rider pursuant to this rule, the electric public utility shall submit an application no later than 60 days after the date of acquisition containing such information as the Commission may require to recover all estimated financing and non-fuel operating costs which the utility expects to incur during the period from the date of acquisition until the effective date of the rates approved by the Commission in the Company's next annual Joint Agency Asset Rider. After hearing, the Commission shall approve an initial Joint Agency Asset rider to the electric public utility's rates.
- (2) The initial filing should include a special fuel rider to be implemented on the same date as the initial Joint Agency Asset rider that reflects the estimated fuel savings to be experienced by the utility when the purchased Joint Agency assets are included in the utility's system fuel costs. This special fuel rider is eliminated at the effective date of the implementation of a fuel cost rate per Rule R8-55 which reflects a system fuel costs including the acquired plant assets.

(e) Filing Requirements and Procedure.

- (1) The electric public utility filing proposed adjustments to the Joint Agency Asset rider shall submit to the Commission the following information:
 - i. The deferred balance at the beginning of the test year plus any under or over recovery resulting from the operation of the Joint Agency Asset rider during the test period.
 - ii. Any rate changes necessary to recover costs forecasted for the rate period.
 - iii. The weighted average cost of capital as authorized by the Commission in the electric public utility's most recent general rate case, grossed-up for income taxes and Commission regulatory fee, applicable to the test period and rate period, after the initial establishment of the rider. This weighted average cost of capital should be applied to both the remaining acquisition costs and any additional capital investment placed in service made by the electric utility in the acquired electric generating facilities.
 - iv. Any changes to the customer allocation methodology determined in any general rate proceeding of the electric public utility occurring after the initial establishment of the rider.
 - v. The acquisition costs of the generating facilities and accumulated depreciation and amortization reserve as of the end of the test period.

- vi. For each of the first ten years of the rider, the total test period fuel savings for the North Carolina retail jurisdiction, by customer class, arising as a result of the electric public utility's acquisition of the acquired plant.
- (2) The Commission shall require the electric public utility to file a monthly report, which shall contain such information as may be agreed to by the Public Staff and the electric public utility and approved by the Commission.
- (f) The electric public utility shall publish notice for two (2) successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least 30 days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-133.14 and setting forth the time and place of hearing.
- (g) If the Commission has not issued an Order within 180 days after the electric utility has filed the proposed changes under this rule, then the electric utility may place such proposed changes into effect, subject to later refund of any amount collected plus interest that the Commission might determine to be in excess of the amount ultimately approved by the Commission.