PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE

ADMINISTRATIVE MATTER	☐	DATE	**May 23, 2012**
MOTOR CARRIER MATTER	☐	DOCKET NO.	**2011-158-E**
UTILITIES MATTER	☑	ORDER NO.	**2012-425**

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

SUBJECT:
DOCKET NO. 2011-158-E - Application Regarding the Acquisition of Progress Energy, Incorporated by Duke Energy Corporation and Merger of Progress Energy Carolinas, Incorporated and Duke Energy Carolinas, LLC – Discuss with the Commission Duke Energy Carolinas, LLC's Request for an Allowable Ex Parte Briefing Filed on May 17, 2012.

COMMISSION ACTION:
The parties to this case were last before us on December 12, 2011, when testimony supporting the various aspects of their proposed business combination was presented to this Commission. Subsequent to that hearing, a majority of the parties, (hereafter Joint Parties) submitted a Joint Proposed Order on December 20, 2011 that stated those parties' understanding of the commitments made at the December 12, 2011 hearing and the appropriate "path forward" regarding potential impacts of the market power mitigation proposals submitted to FERC. Of particular relevance to the present issue, the last two "Ordering Paragraphs" of the Proposed Order stated:

> 3. As a condition of our approval of the Joint Dispatch Agreement, PEC [Progress Energy Carolinas] and DEC [Duke Energy Carolinas] guarantee this Commission and their retail and wholesale customers $650 million in system savings over the five-year period 2012-2016, provided FERC and the North Carolina Utilities Commission also approve the JDA [Joint Dispatch Agreement] and the Merger. At the close of 2016, if actually achieved savings passed through to customers in the DEC's and PEC's South Carolina fuel cases do not total each company's allocable portion of South Carolina's pro rata share of the $650 million in guaranteed savings, in DEC's and PEC's 2017 fuel cases they will flow through their respective fuel riders their allocated share of the remaining obligation. In the event the actual savings exceed the guarantee, those additional savings will also be flowed through to DEC's and PEC's customers; and
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> 4. This docket shall remain open and the Commission may conduct further proceedings if the revised market power mitigation proposal filed by the Applicants with FERC has the potential to materially impact the JDA or the forecasted joint dispatch savings or require other conditions unacceptable to the Commission.

By electronic memorandum dated May 17, 2012, Duke Energy Carolinas has now requested the scheduling of an allowable *ex parte* hearing on: 1) the status of the Duke/Progress merger, 2)recent filings the companies have made with FERC and the North Carolina Utilities Commission, and 3) the commitments the companies have made to the Office of Regulatory Staff with regard to the Revised Mitigation Proposal filed with FERC on March 26, 2012.

While I appreciate both the desire and the need for such an update in light of the events occurring since the December hearing, I do not believe that an allowable *ex parte* briefing pursuant to §58-3-260 is appropriate at this stage of the proceedings, and would not serve to place evidence into the record – as contemplated by the Joint Parties' proposed order – regarding the issues listed in the May 17 briefing request from Duke Energy Carolinas.

The North Carolina Commission, faced with a similar need, has by Order dated May 15, 2012, set up a schedule for submission of written testimony to supplement the evidence submitted at its September 20-22, 2011, hearing regarding the proposed business combination. Similarly, I believe that providing written testimony is an appropriate alternative to the requested allowable *ex parte* briefing, and move that this Commission establish a schedule for the filing of verified testimony that updates this Commission on the impact of the events and filings since our hearing on December 12, 2011. This testimony should include the subjects listed in the May 17 briefing request, with a particular focus on the potential impact of the revised mitigation measures proposed to FERC and commitments made due to those changes, and PEC and DEC's guarantee to this Commission and their retail and wholesale customers of **$650 million** in system savings **over the five-year period 2012-2016,** provided FERC and the North Carolina Utilities Commission approve the JDA and the Merger. Of particular interest to me is how this commitment will be upheld for South Carolina ratepayers in spite of the fact that the Supplemental Agreement entered into with the North Carolina Public Staff allows DEC and PEC an additional 18 months to achieve the $650 million in fuel savings.

Therefore, I move that we initiate the following schedule:

Verified written testimony of all parties regarding the developments subsequent to our December 12 hearing as discussed above shall be due June 4, 2012. Responses, if any, shall be due June 11, 2012. On or about June 13, 2012, this Commission will address whether, upon review of the verified testimony of the parties, additional oral testimony is necessary. If so, then a hearing to present such testimony would be held on June 20, 2012, with proposed orders due June 25, 2012. Finally, I move that Staff is authorized to modify these dates without further decision by this Commission.

PRESIDING: Mitchell SESSION: Regular TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER	
FLEMING	☐	☑	☐		
HALL	☑	☑	☐		
HAMILTON	☐	☑	☐		
HOWARD	☐	☐	☐	Absent	EEI Speaking Engagement in New York
MITCHELL	☐	☑	☐		
WHITFIELD	☐	☑	☐		
WRIGHT	☐	☐	☐	Absent	NECPUC Conference in Rockport, ME

(SEAL) RECORDED BY: J. Schmieding

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