

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1052

DOCKET NO. E-7, SUB 1062

DOCKET NO. G-9, SUB 655

DOCKET NOS. E-2, SUB 1052 AND)
E-7, SUB 1062)

In the Matter of:)
Advance Notice by Duke Energy)
Carolinas, LLC and Duke Energy)
Progress, Inc. of Intent to File Proposed)
Precedent Agreements with Atlantic)
Coast Pipeline, LLC, Request to Enter)
Into the Proposed Agreements, and)
Request for Waiver of Code of Conduct)

DOCKET NO. G-9, SUB 655)

In the Matter of:)
Application of Piedmont Natural Gas)
Company, Inc. for Authorization to)
Enter Into Affiliate Agreements and)
Related Redelivery Agreement)
Amendments)

OBJECTION TO SECOND
AMENDMENTS TO PRECEDENT
AGREEMENTS AND FILING WITH THE
FERC PURSUANT TO REGULATORY
CONDITION 3.1(C)

INTRODUCTION

On October 29, 2014, the Commission issued *Orders Accepting Affiliate Agreements, Allowing Payment Thereunder and Granting Limited Waiver of Code of Conduct*, authorizing Duke Energy Carolinas, LLC (“DEC”), Duke Energy Progress, LLC (“DEP”), and Piedmont Natural Gas, Inc. (“PNG”) (collectively, “Utilities”) to, among other things, enter into precedent agreements for firm natural gas transportation services between DEC and DEP and Atlantic Coast Pipeline, LLC (“Atlantic”) and between PNG and Atlantic.

In an order entered June 28, 2017, the Commission accepted the Utilities' request for expedited acceptance and approval of their First Amendments to the precedent agreements with Atlantic and authorized the utilities to operate according to their amended terms.¹

Following this expedited approval, the Sierra Club filed a petition to intervene in these dockets and requested that the Commission reconsider its approval of the First Amendments to the precedent agreements.² In their responses to the Sierra Club's petitions, the Utilities denied that the First Amendments would be filed with the Federal Energy Regulatory Commission ("FERC"). As a result, the Utilities contended that Regulatory Condition 3.1(c) and its requirements for advance notice and ability for parties to intervene did not apply.³ The Commission affirmed that Regulatory Condition 3.1(c) did not apply to the First Amendments and denied the Sierra Club's Petition to Intervene as untimely.⁴

On November 7, 2017, the Utilities filed Advance Notice and Request for Authorization to Enter into Second Amendments to Precedent Agreements with Atlantic. In these filings, the Utilities informed the Commission of their intention to file the

¹ *Order Accepting Amendment to Affiliate Agreements, Allowing Payment Thereunder and Granting Limited Waiver of Code of Conduct*, Docket Nos. E-2, Sub 1052 and E-7, Sub 1062 (June 28, 2017) at 2.

² *Sierra Club's Petitions to Intervene and Motions for Reconsideration*, Docket Nos. E-2, Sub 1052; E-7, Sub 1062; and G-9, Sub 655 (July 21, 2017)

³ *Response of Piedmont Natural Gas Company, Inc. to Sierra Club's Petition to Intervene and Motion for Reconsideration*, Docket No. G-9, Sub 655 (July 28, 2017); *Response of Duke Energy Carolinas, LLC and Duke Energy Progress, Inc. to Sierra Club's Petition to Intervene and Motion for Reconsideration*, Docket Nos. E-2, Sub 1052; E-7, Sub 1062 (July 28, 2017).

⁴ *Order Denying Petitions to Intervene*, Docket Nos. E-2, Sub 1052; E-7, Sub 1062; and G-9, Sub 655 (September 6, 2017) at 2

Second Amendments with the FERC and thus, acknowledged that Regulatory Condition 3.1(c) governs these proceedings.⁵ Because this Regulatory Condition allows for interested persons to object, Sierra Club’s accompanying Petition to Intervene is timely.

As set forth in more detail below, Sierra Club respectfully requests that the Commission: (1) extend the Advance Notice period to allow for the free exchange of information and a thorough investigation of the issues surrounding the Second Amendments; (2) hold in abeyance the Utilities’ requests to proceed with the Second Amendments to their affiliate precedent agreements pending challenges to the FERC’s certificate to Atlantic submitted by intervenors, including the Commission; and (3) subject the Second Amendments and underlying affiliated precedent agreements to renewed scrutiny in light of the changed circumstances since this Commission first approved the affiliate agreements in 2014.

LEGAL STANDARD

The Regulatory Conditions established in connection with the merger of Duke Energy and Piedmont Natural Gas govern the Utilities’ request for approval of the Second Amendments. Those regulatory conditions were intended to mitigate the risk of “self-dealing or anti-competitive conduct by and among DEC, DEP and Piedmont after

⁵ *Advance Notice by Duke Energy Carolinas, LLC and Duke Energy Progress, Inc. of Intent to File Proposed Precedent Agreements with Atlantic Coast Pipeline, LLC, Request to Enter Into the Proposed Agreements, and Request for Waiver of Code of Conduct*, Docket Nos. E-2, Sub 1052 and E-7, Sub 1062 and *Application of Piedmont Natural Gas Company, Inc. for Authorization to Enter Into Affiliate Agreements and Related Redelivery Agreement Amendments*, Docket G-9, Sub 655 (Nov. 7, 2017) (the Utilities argue that they should not have to comply with the Advance Notice procedures under regulatory condition 3.1(c), but acknowledge that the plain language of the regulatory condition applies to any amendment that would be filed to the FERC).

the merger.”⁶ The Utilities are required to provide advance notice of any agreements between the affiliated companies that will be filed at the FERC.⁷

The provisions of Regulatory Condition 13.2 apply to an advance notice filed pursuant to Regulatory Condition 3.1(c). One of the reasons for this advance notice period is to provide opportunities for interested persons to raise objections with the proposed affiliate agreements: “If an objection to DEC, DEP, or Piedmont proceeding with the filing with the FERC is filed pursuant this Regulatory Condition, the proposed filing shall not be executed...until the Commission issues an order resolving the objection.”⁸ Those who were not parties to the Duke Energy-Piedmont Natural Gas merger docket can petition to intervene under Commission Rule R1-19.⁹

In addition, the Commission has the authority to evaluate whether the Second Amendments are “unjust or unreasonable” under N.C. Gen. Stat. § 62-153. This statute requires public utilities to seek prior approval of contracts entered into between their own affiliates.

Pursuant to Regulatory Condition 13.2(e), Sierra Club’s petition to intervene and objections to the Utilities proceeding with the Second Amendments is timely (“[a]ny other interested party may also file a response or objection within 15 days before the notice period expires”).

⁶ *Id.* Order at 57.

⁷ *Order Approving Merger Subject to Regulatory Conditions and Code of Conduct*, Docket Nos. E-2, Sub 1095, E-7, Sub 1100 and G-9, Sub 682, Regulatory Condition 3.1(c), p. 7 (Sept. 29, 2016)

⁸ *Id.*

⁹ *Id.*, Regulatory Condition 13.2, pp. 40-41

ARGUMENT

1. The Commission Should Extend the Advance Notice Period to Allow More time for the Free Exchange of Information and a thorough Investigation of the Issues Surrounding the Second Amendments

The Commission has the authority to extend the Advance Notice period to allow for a more thorough investigation of the issues raised by the Second Amendments.¹⁰

Sierra Club respectfully requests that the Commission extend the Advance Notice period in these dockets.

As an initial matter, the Utilities have not made even redacted versions of the proposed Second Amendments available to the public. Without any specific information about the substantive changes in the Second Amendments, it is impossible to review those proposed, amended contracts. Following intervention in this docket, Sierra Club would, consistent with the applicable Regulatory Condition, seek “free exchange of information” and “request additional relevant information” from the Utilities regarding the Second Amendment.¹¹

In their *Applications for Acceptance to Enter into Second Amendments to the Affiliate Agreements*, the Utilities allege that “there is no reason to believe that alternate capacity, even if it existed, would be less expensive than ACP capacity.” But the Commission itself has concerns about the expense of the ACP and the recourse rates that the FERC would allow Atlantic to charge. Outside scrutiny of the Utilities contracts should be allowed before approval can be considered.

¹⁰ *Id.*, Regulatory Condition 13.2(h), p. 41.

¹¹ *Id.*, Regulatory Condition 13.2(d), p. 41.

This scrutiny is particularly warranted here, where there is a real risk that self-dealing would impact the motivations of the affiliated parties. The Atlantic Coast Pipeline is a joint venture of Dominion Resources, Duke Energy, and Southern Company; these three companies own 100% of Atlantic Coast Pipeline, LLC (“Atlantic”), which is the project developer.¹² However, each is also the parent company of one or more of the pipeline’s customers that are either regulated utilities or, in the case of Dominion Resources’ subsidiary Virginia Power Services, provide natural gas to a regulated utility. Together, these affiliates of Dominion Resources, Duke Energy, and Southern Company have entered into precedent agreements with Atlantic for 93% of the pipeline’s contracted capacity (89% of total capacity).¹³ Moreover, affiliates of Dominion Resources and Duke Energy hold the bulk of the contracted capacity for use by power plants, and Atlantic anticipates that eventually about 79% of the pipeline’s total capacity will fuel gas-fired generation.¹⁴

Given the entangled relationships between buyers and sellers in these arrangements, it is important for the Commission to scrutinize the Utilities’ claims the Second Amendments are truly the result of “arms-length negotiations.” As set forth in more detail below, emerging data throws doubt on the Utilities’ claims that the Atlantic Coast Pipeline is the “best/least cost provider of the additional interstate pipeline natural

¹² 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.

¹³ *Id.* at 12.

¹⁴ *Id.* at 6.

gas transportation capacity” and their argument that there is still a need for this project, one with more than a \$5 billion price tag.

2. The Commission Hold in Abeyance the Utilities’ Requests to Approve the Second Amendments to the Precedent Agreements in Light of its Own Dispute with the FERC Regarding the Appropriate Recourse Rate for Atlantic and Pending Challenges from Other Intervenors Challenging the Need for the Pipeline

The Commission has itself filed a Request for Rehearing with the FERC, concluding that the FERC’s decision to allow Atlantic to earn a 14 percent recourse rate is unreasonable and risks harm to consumers.¹⁵ The Commission should delay ruling on the Utilities’ request for approval of their Second Amendments to Precedent Agreements pending the final resolution of its and other intervenors’ requests for rehearing to the FERC.

In its request, the Commission argued that the FERC’s decision to grant an excessive return on equity would harm consumers and noted the importance of holding Atlantic accountable before it is too late: “If the recourse rates are not properly designed, they fail to provide the necessary check on the pipeline’s market power at the time it matters most: when the pipeline is entering into negotiated rate agreements.”¹⁶

Similarly, the Commission recognized the importance of getting the recourse rate right at the outset, and not waiting until construction is complete and after three years of operation: “Making parties wait to raise this issue in a review that will not begin until after construction and three years of operation of the new facilities will not address the time frame that actually matters (*i.e.*, the period during which the parties agreed to the

¹⁵ *North Carolina Utilities Commission, Request for Rehearing*, FERC Docket No. CP15-554, Accession Number 2017-11-13-5262 (Nov. 13, 2017).

¹⁶ *Id.* at p. 14.

negotiated rates).”¹⁷ By the same token, allowing the Second Amendments to go into effect, allowing the pipeline to be built and then waiting to see how the project will affect proposed rates from these utilities will not address the time frame that matters most, the period before construction has commenced. Given the Commission’s own interest in the pending challenge before the FERC, there is no need to rush to approve the Second Amendments.

3. The Commission Should Subject the Second Amendments and the Underlying Affiliated Precedent Agreements to Renewed Scrutiny Because of the Lack of Demonstrated Market Demand for the Atlantic Coast Pipeline and Because of Changed Circumstances Since 2014

The Commission originally approved the precedent agreements between the Utilities and Atlantic in October 2014. Much has changed since 2014, however. The energy landscape that prompted Dominion Energy and Duke Energy to propose the pipeline in 2014 has shifted dramatically, and the purported justification for the pipeline has eroded.

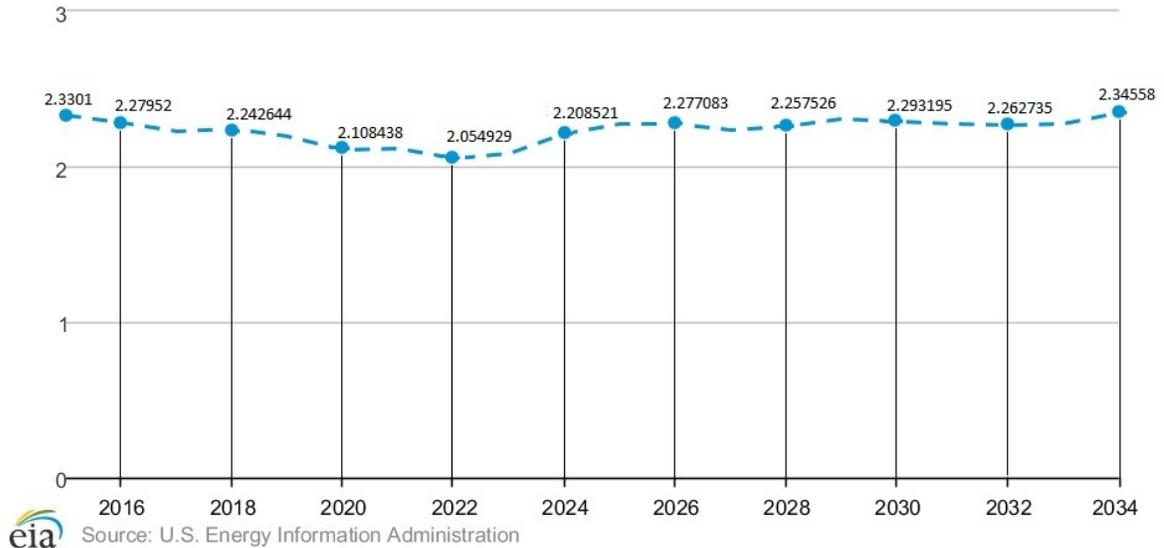
Projected demand for natural gas for power generation in the region that includes Virginia and North Carolina is flat through 2030. As shown in the figure below, the Energy Information Administration (“EIA”) projects that the demand for natural gas for electricity generation in the South Atlantic region will decrease from 2015 to 2020, and will not return to 2015 levels until approximately 2034.¹⁸

¹⁷ *Id.* at p. 16.

¹⁸ See U.S. Energy Info. Admin., *Annual Energy Outlook 2017, Table: Energy Consumption by Sector and Source*, <https://www.eia.gov/outlooks/aeo/data/browser/#/?id=2-AEO2017&cases=ref2017&sourcekey=0> (last visited June 21, 2017).

Energy Use: Electric Power: Natural Gas

Case: Reference case | Region: South Atlantic
quads



Load forecasts for the electric utilities that would be served by the pipeline have declined since 2014, throwing into question the need for new pipeline capacity to fuel gas-fired power plants. PJM¹⁹ significantly revised its electricity demand projections downward for Dominion Energy Virginia’s service territory in 2016 and 2017.²⁰ And PJM is likely still over-projecting the electricity demand in the Dominion service territory. DEC’s and DEP’s load forecasts have also declined since 2014. Mr. Wilson concludes that if these utilities “were to re-evaluate [their] commitment to ACP, [they] would likely find that the commitment is not needed at this time, it is unclear when such

¹⁹ PJM Interconnection is a regional transmission organization (“RTO”) that coordinates the movement of wholesale electricity in much of the mid-Atlantic and parts of the Midwest, including parts of Virginia and North Carolina.

²⁰ James Wilson, *Evaluating Market Need for the Atlantic Coast Pipeline*, at 13 (April 3, 2017).

capacity might be needed, and it is also unknown whether better options might be available at such time as incremental pipeline capacity does become needed.”²¹

The capacity of existing natural gas pipelines will be sufficient to meet demand for natural gas in Virginia and North Carolina. In 2016, the consulting firm Synapse Energy Economics examined the need for additional pipeline infrastructure to deliver natural gas in Virginia, North Carolina, and South Carolina.²² Synapse concluded that the existing pipeline system and proposed upgrades to that system, such as bi-directional flow on the Transco pipeline, would provide enough gas to this three-state region to meet demand through 2030 even under an unlikely high-gas demand scenario.²³

Duke Energy’s electric utilities have recently slashed their forecasts of peak demand and energy growth. The utilities’ updated Integrated Resource Plans (“IRPs”), filed with this Commission on September 1, 2017, featured drastically lower load forecasts compared to previous IRPs.

In its revised load forecasts, after accounting for projected energy efficiency, DEP anticipates average annual increases of only .6% from 2018 until 2032, with much of the increase projected to occur in later years. Between 2018 and 2022, DEP forecasts only a one percent increase in overall energy demand. In contrast, just one year earlier, DEP had forecasted a 2.6% increase in overall energy demand for that same five-year period. DEP also dramatically reduced its 2017 forecasts for winter and summer peak demand. Projected annual growth in winter peak demand is now at .7%—down from 1.1% in

²¹ Wilson, *supra* note 20, at 5.

²² Rachel Wilson *et al.*, *Synapse Energy Economics, Are the Atlantic Coast Pipeline and the Mountain Valley Pipeline Necessary? An Examination of the Need for Additional Pipeline Capacity into Virginia and the Carolinas*, at 1-4 (2016).

²³ *Id.* at 3-4.

2016. For summer peak demand, projected annual growth is .7%, whereas it was projected to be 1.3% the year before.²⁴

DEC also projects lower, though somewhat less reduced, load and energy growth over the next 15 years. The 2016 IRP projected average annual growth in summer peak demand of 1.2% and in winter peak demand of 1.3%, after energy efficiency programs. In its updated September 2017 filing, DEC revised down these forecasts to 0.4% average annual growth in summer peak demand and 0.9% in winter peak demand.²⁵ Table 1, below, taken from a recent Duke Energy presentation, presents a comparison of the 2016 and 2017 load forecasts.²⁶

²⁴ Duke Energy Progress, Integrated Resource Plan (Annual Report), p. 18, Docket E-100, Sub 147 (Sept. 1, 2016), <http://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=5de73974-cacf-4484-814d-48364446728a> (hereinafter “2016 DEP IRP”).

Duke Energy Progress, Integrated Resource Plan (Update Report), p. 48, Docket E-100, Sub 147 (Sept. 1, 2017), <http://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=040feb17-3f8b-4b6b-b620-b1cac673e7e1> (hereinafter “2017 DEP IRP”).

²⁵ Duke Energy Carolinas, Integrated Resource Plan (Annual Report), p. 17, Docket E-100, Sub 147 (Sept. 1, 2016), <http://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=0707e812-b29f-4d0e-8974-d215cb3a6e87> (hereinafter “2016 DEC IRP”).

Duke Energy Carolinas, Integrated Resource Plan (Update Report), p. 12, Docket E-100, Sub 147 (Sept. 1, 2017), <http://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=05fb2b10-a879-4a9e-a881-f9cbb60a69a5> (hereinafter “2017 DEC IRP”).

²⁶ Duke Energy Carolinas and Duke Energy Progress, 2017 Integrated Resources Plans, 2017 Stakeholder Meeting at 16.

Table 1: Comparison of 2016 and 2017 DEC and DEP Load Forecasts

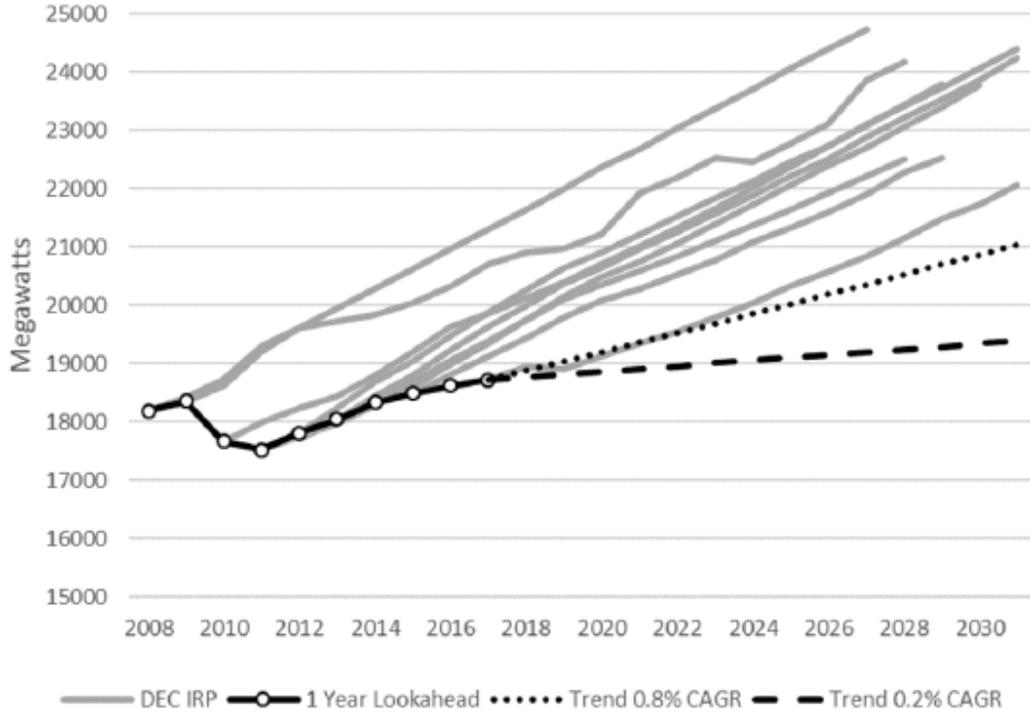
DEC	2017 Forecast (2018 – 2032)			2016 Forecast (2017 – 2031)		
	Summer Peak Demand	Winter Peak Demand	Energy	Summer Peak Demand	Winter Peak Demand	Energy
<i>Excludes</i> Impact of new EE programs	0.7%	1.0%	0.7%	1.3%	1.4%	1.1%
<i>Includes</i> Impact of new EE programs	0.4%	0.9%	0.4%	1.2%	1.3%	1.0%

DEP	2017 Forecast (2018 – 2032)			2016 Forecast (2017 – 2031)		
	Summer Peak Demand	Winter Peak Demand	Energy	Summer Peak Demand	Winter Peak Demand	Energy
<i>Excludes</i> Impact of new EE programs	0.9%	0.8%	0.8%	1.3%	1.4%	1.1%
<i>Includes</i> impact of new EE programs	0.7%	0.7%	0.6%	1.1%	1.3%	0.9%

Duke Energy’s drastically reduced 2017 load forecasts are especially startling in light of the company’s history of inflated projections for demand for electricity. Historically, both DEC and DEP have overestimated their peak load and energy forecasts, skewing high their assessment of future capacity and fuel needs. In testimony filed recently with the Commission, an energy economics expert testified that a review of past DEC IRPs reveals that the Company “consistently forecasts greater annual peak load growth than ultimately materializes” and that its forecasting errors “grow[] larger the farther in the future DEC forecasts,” as shown in the following line graph.²⁷

²⁷ See *Application of Duke Energy Carolinas, LLC for a Certificate of Public Convenience and Necessity to Construct a 402 MW Natural Gas-Fired Combustion Turbine Generating Facility in Lincoln County*, Docket No. E-7, Sub 1134, Tr. Vol. 3, Testimony of Thomas Vitolo at 73 (hereinafter “Lincoln County Gas-Fired CT CPCN”).

Figure 1: DEC Peak Load Forecasts and Trends



Source: DEC IRPs 2008–2016.

In fact, “each IRP forecast since 2002 has consistently overestimated the load that would manifest seven years from publication.”²⁸ Given this trend, the utilities’ downward revisions in load growth over the next 15 years are especially significant.

In addition, Duke Energy’s forecasts recognize that per-customer electricity usage is generally flat, and accordingly, DEC and DEP base their growth projections on anticipated population increases: “[t]he outlook for usage per customer is slightly negative to flat through much of the forecast horizon, so most of the growth is primarily due to customer increases.”²⁹ In recent testimony to the Commission, DEC’s Director of

²⁸ *Id.* at 91.

²⁹ 2016 DEC IRP, Appendix C at 92-93

Load Forecast & Fundamentals explained that “[a] great deal of this change [in the 2017 load forecasts] is due to expected increases in energy efficiency.”³⁰

Compounding the uncertainty regarding load growth is the fact that much of DEC’s assumed future need for natural gas-fired generating capacity could be obviated or delayed by energy efficiency and demand-side management. In a recent Commission proceeding on a CPCN for a new gas plant, the lead economist with the Public Staff, North Carolina’s consumer advocate agency, testified that “[t]he possibility of additional DSM and EE development is another example of the uncertainty that gives rise to the Public Staff’s concerns in this proceeding” that the need for DEC’s proposed gas plant may not materialize.³¹ The downward adjustments in load forecasts result in lower capacity needs compared to the 2016 IRP.³² Reduced load forecasts also mean lower energy needs, and a correspondingly reduced need for natural gas to fuel electric generating plants.

In its application to the FERC for a Certificate of Public Convenience and Necessity under the federal Natural Gas Act, Atlantic relied on the precedent agreements as the primary evidence of need for the pipeline, stating in the application that the agreements “demonstrate the long-term market need for the Project from major electric utilities and local distribution companies in Virginia and North Carolina.”³³ Without

³⁰ See Lincoln County Gas-Fired CT CPCN, Tr. Vol. 4, Testimony of Philip Stillman at 169.

³¹ See Lincoln County Gas-Fired CT CPCN, Tr. Vol. 3, Testimony of John Hinton, at 161.

³² Compare 2016 DEC IRP at 40 (Table 8-C, Load, Capacity and Reserves Table – Winter) with 2017 DEC IRP at 46 (Table 6-A, Load, Capacity and Reserves Table – Winter).

³³ *Id.* at 33.

more information from the Utilities, there is a risk that the Second Amendments serve the interests of the affiliated companies and shift the risks of building the pipeline to captive ratepayers while allowing the Utilities' shareholders to earn a lucrative return established by the FERC.

Precedent agreements between a pipeline developer and its affiliates are not reliable indicators of market demand. Energy experts have recognized that pipeline developers use precedent agreements between the developer and an affiliated regulated utility with captive ratepayers—like the agreements at issue here—to justify building pipeline infrastructure even if market demand is weak or absent. For example, James F. Wilson, an independent consultant on energy economics, concludes that because “the future need for incremental gas supply for new gas-fired generation is highly uncertain,” precedent agreements between affiliates involving captive ratepayers “may not be a reliable indicator of the market need” for new natural gas pipelines.³⁴ Steven Isser, an independent consultant in energy law and economics, has concluded that “[w]here pipelines are financed through long-term contracts with LDCs or utilities that are subsidiaries of the parent company building the pipeline, the efficiency of the pipeline cannot be presumed by a full subscription to its capacity. . . . An uneconomic project that creates excess capacity can be financed in this manner by guaranteeing its income stream at the expense of alternative transport options.”³⁵ This structure subverts the “price signals sent by a rational market.”³⁶

³⁴ James Wilson, *supra* note 20, at 3.

³⁵ S. Isser, *Natural Gas Pipeline Certification and Ratemaking* (2016) at 24.

³⁶ *Id.*

As the Commission is aware, the Utilities will ultimately ask their captive retail ratepayers bear the costs of the Pipeline, if it is built. In testimony before a Congressional committee, Jonathan Peress of the Environmental Defense Fund testified that “we are seeing a disturbing trend of utilities pursuing a capacity expansion strategy by imposing transportation contract costs on state-regulated retail utility ratepayers so that affiliates of those same utilities can earn shareholder returns as pipeline developers. . . . Thus ratepayer costs which may not be justified by ratepayer demand are being converted into shareholder return.”³⁷ This type of financing and ownership structure allows the shipper to “impose long-term financial obligations on captive ratepayers.”³⁸ Utility ratepayers bear the risk that demand for the pipeline will not materialize—along with the other risks inherent in a multi-billion-dollar infrastructure project—while the shareholders of the utility’s parent company receive a generous return. In comments filed with the FERC, the Commission itself has objected to the 14% return on equity (“ROE”) proposed by Atlantic, which is factored into the proposed recourse rate.³⁹ As stated by the Commission, “rather than supporting the proposed 14% return on equity (‘ROE’) and demonstrating that the proposed ROE reflects current market conditions and investor

³⁷ *Hearing to Examine Oil and Gas Pipeline Infrastructure and the Economic, Safety, Environmental, Permitting, Construction, and Maintenance Considerations Associated with that Infrastructure: Hearing Before the S. Comm. on Energy & Nat. Res.*, 114th Cong. 5 (June 14, 2016) (statement of N. Jonathan Peress, Env’tl Def. Fund).

³⁸ *Id.* at 5.

³⁹ The Commission pointed out that even though ACP has entered into negotiated rate agreements with shippers, the cost-of-service-based recourse rate is important because it provides a check on the pipeline’s market power during the establishment of negotiated rates.

expectations, ACP has failed to demonstrate that the proposed recourse rates in its application are consistent with the public convenience and necessity.”⁴⁰

Although the Commission has expressly stated that its Orders accepting the affiliate agreements does not constitute approval of cost recovery through retail rates for the Atlantic Coast Pipeline, by the time the Utilities seek to recover costs incurred pursuant to the precedent agreements, the pipeline will already have been built. Now is the time for the Commission to take a hard look at the precedent agreements and determine whether they are in the public interest. Although the FERC has primary jurisdiction over the Pipeline, the protection of North Carolina ratepayers is squarely within this Commission’s jurisdiction. Our General Assembly has declared that “the rates, services and operations of public utilities . . . are affected with the public interest,” N.C. Gen. Stat. § 62-2(a), and accordingly has vested the Commission with “such general power and authority to supervise and control the public utilities of the State as may be necessary to carry out the laws providing for their regulation, and all such other powers and duties as may be necessary or incident to the proper discharge of its duties,” *id.* § 62-30. The Commission should not cede this jurisdiction to the FERC, or abdicate its responsibility to protect the interests of ratepayers in North Carolina.

CONCLUSION

For the foregoing reasons, the Sierra Club respectfully requests that the Commission extend the Advance Notice period, hold these matters in abeyance pending the outcome of the challenges to the FERC’s certificate to Atlantic, and scrutinize the

⁴⁰ *Comments in Support of Project and Protest of Proposed Recourse Rates of the North Carolina Utilities Commission*, FERC Docket No. CP15-554 (Oct. 23, 2015) (footnote omitted).

substance of the Second Amendments and underlying precedent agreements in light of changed circumstances since the Utilities' precedent agreements were approved by this Commission in 2014.

Respectfully submitted this 6th day of December 2017.

s/ David L. Neal

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion for Reconsideration by the Sierra Club, as filed today in Docket Nos. E-2, Sub 1052, E-7, Sub 1062, and G-9, Sub 655 has been served on all parties of record by electronic mail or by deposit in the U.S. Mail, first-class, postage prepaid.

This 6th day of December, 2017.

s/ Robin G. Dunn