

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-7, SUB 1146  
DOCKET NO. E-7, SUB 819  
DOCKET NO. E-7, SUB 1152  
DOCKET NO. E-7, SUB 1110

DOCKET NO. E-7, SUB 1146 )  
)  
    In the Matter of )  
Application of Duke Energy Carolinas, )  
LLC for Adjustment of Rates and )  
Charges Applicable to Electric Utility )  
Service in North Carolina )  
)  
DOCKET NO. E-7, SUB 819 )  
)  
    In the Matter of )  
Amended Application by Duke Energy )  
Carolinas, LLC, for Approval of )  
Decision to Incur Nuclear Generation )  
Project Development Costs )  
)  
DOCKET NO. E-7 SUB 1152 )  
)  
    In the Matter of )  
Petition of Duke Energy Carolinas, LLC )  
for an Order Approving a Job Retention )  
Rider )  
)  
DOCKET NO. E-7, SUB 1110 )  
)  
    In the Matter of )  
Joint Application by Duke Energy )  
Progress, LLC and Duke Energy )  
Carolinas, LLC for Accounting Order to )  
Defer Environmental Compliance Costs )

**SIERRA CLUB'S NOTICE OF  
APPEAL AND EXCEPTIONS**

NOW COMES Sierra Club, by and through undersigned counsel, pursuant to N.C. Gen. Stat. § 62-90 and Rule 18 of the North Carolina Rules of Appellate Procedure, and gives notice of appeal to the North Carolina Supreme Court from the June 22, 2018

Order Accepting Stipulation, Deciding Contested Issues and Requiring Revenue Reduction (the “Order”) issued by the North Carolina Utilities Commission (the “Commission”) in the above-captioned proceedings.

As set forth below, the Order grants Duke Energy Carolinas, LLC (“Duke”) coal ash cost recovery which overcharges the customers of Duke in contravention of North Carolina law. Moreover, the Order lacks findings of fact sufficient to support the Commission’s conclusion that recovery of coal ash costs is just and reasonable. Accordingly, the Order is unlawful, unjust, unreasonable, and unwarranted, and includes errors of law.

**EXCEPTION NO. 1:**

The Commission erred in finding that “[T]he actual coal ash basin closure costs DEC has incurred during the period from January 1, 2015 through December 31, 2017, amount to \$545.7 million. DEC is eligible to recover these coal ash basin closure costs. The actual coal ash basin costs incurred by DEC are known and measurable, reasonable and prudent, and, to the extent capital in nature, used and useful in the provision of service to the Company’s customers.” Order at 23 (¶ 70). These findings are beyond the Commission’s statutory authority and jurisdiction, are affected by errors of law, are unsupported by competent, material, and substantial evidence in light of the entire record, are arbitrary and capricious, and are not in the public interest.

The law requires that rates charged by public utilities “shall be just and reasonable,” N.C. Gen. Stat. § 62-131(a), and that the Commission “shall fix such rates as shall be fair both to the public utilities and to the consumer,” N.C. Gen. Stat. § 62-133(a). Rates that allow for recovery of cleanup costs for coal ash impoundments where DEC’s

maintenance of the impoundments was not reasonable and prudent are neither just, nor reasonable, nor fair. The evidence shows that DEC acted negligently in maintaining its coal ash impoundments, that it failed to exercise the proper degree of care, attention, and skill, and that DEC ignored best practices as they developed over time.

Moreover, the Commission's conclusion that a mismanagement penalty was appropriate – albeit a conclusion that was based on the incorrect finding that DEC's mismanagement was limited to those acts and failures to act that DEC admitted in the federal criminal case, Order at 23 (¶ 71), 319-321 – is inconsistent with its conclusion that DEC is entitled to recover \$545.7 million for coal ash basin closure costs.

**EXCEPTION NO. 2:**

The Commission erred in concluding that “[t]he costs being incurred are not resulting from an unlawful discharge as defined by the statute [N.C. Gen. Stat. § 62-133.13], which is a discharge that results in a violation of State or federal surface water quality standards,” and that “DEC is incurring the costs to comply with the federal CCR Rule and CAMA.” Order at 302. Such conclusion is beyond the Commission's statutory authority and jurisdiction, is affected by errors of law, is unsupported by competent, material, and substantial evidence in light of the entire record, is arbitrary and capricious, and is not in the public interest.

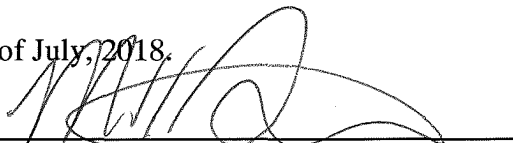
The law expressly prohibits recovery of “costs resulting from an unlawful discharge to the surface waters of the State from a coal combustion residuals surface impoundment.” N.C. Gen. Stat. § 62-133.13. The Order allows DEC to recover such costs from its retail electric customers, despite undisputed evidence that unpermitted seeps at DEC's coal ash ponds convey untreated, pollutant-laden wastewater into nearby

surface waters in violation of federal and state law, that those seeps discharge pollutants at concentrations above relevant surface water quality standards, and that closure of the ponds is necessary to eliminate seeps. The evidence in the record does not support the finding that “[t]he vast majority of these costs would have been incurred irrespective of management inefficiency in order to comply with EPA CCR requirements.” Order at 312. In fact, the record lacks evidence that cleanup costs would have been the same had DEC acted prudently and taken corrective action at its coal ash ponds sooner.

### **CONCLUSION**

For the reasons set forth above, the Order is arbitrary and capricious, is affected by errors of law, is unsupported by competent, material, and substantial evidence in light of the entire record, and is beyond the Commission’s statutory power and jurisdiction.

Respectfully submitted, this 23rd day of July, 2018.



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**CERTIFICATE OF SERVICE**

The undersigned certifies that on this day a copy of the foregoing **SIERRA CLUB'S NOTICE OF APPEAL AND EXCEPTIONS** was served upon each of the parties of record in this proceeding or their attorneys of record by electronic mail, hard delivery or depositing a copy of the same in the United States mail, postage prepaid.

This 23rd day of July, 2018.

LEWIS & ROBERTS, PLLC

By: 

Matthew D. Quinn