

BEFORE

THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2011-20-E - ORDER NO. 2011-454

JULY 1, 2011

IN RE: Amended Project Development Application) ORDER APPROVING
of Duke Energy Carolinas, LLC for) AMENDED PROJECT
Approval of Decision to Incur Nuclear) DEVELOPMENT
Generation Pre-Construction Costs) APPLICATION AND
) SETTLEMENT
) AGREEMENT

I. INTRODUCTION

This matter is before the Public Service Commission of South Carolina (“the Commission”) pursuant to S.C. Code Ann. §58-33-225 and the Amended Project Development Application (the “Application”) of Duke Energy Carolinas, LLC (“Duke Energy Carolinas” or the “Company”) for approval of the Company’s decision to incur additional pre-construction costs for two units at the proposed William States Lee, III Nuclear Station in Cherokee County, South Carolina (“Lee Nuclear Station” or “facility”). This Application is the second filed with the Commission relating to the development of Lee Nuclear Station and follows the Commission’s June 2008 approval (in Order No. 2008-417) of the Company’s prior Application for approval to incur \$230 million in pre-construction costs for the facility through December 31, 2009.

The South Carolina Office of Regulatory Staff (“ORS”) was a party to this proceeding pursuant to statute. The South Carolina Coastal Conservation League (“CCL”), the South Carolina Energy Users Committee (“SCEUC”), and Tom Clements

intervened in this matter. The hearing was held at the Commission offices on May 16 and 17, 2011, with the Honorable John E. Howard, Chairman, presiding. At the hearing, Frank R. Ellerbe, III, Esquire, Timika Shafeek-Horton, Esquire, and Charles A. Castle, Esquire, represented Duke Energy Carolinas. Pursuant to Order No. 2011-175 dated March 2, 2011, the Commission granted the admission of Timika Shafeek-Horton, Esquire, to practice before the Commission *pro hac vice*. Robert Guild, Esquire, represented CCL. Scott Elliott, Esquire, represented SCEUC. Nanette S. Edwards, Esquire, and Courtney D. Edwards, Esquire, represented ORS. Mr. Clements appeared *pro se*.

By this Application, Duke Energy Carolinas sought Commission approval that it is prudent for the Company to incur additional pre-construction costs estimated at \$229 million through December 31, 2013, for a total estimate of \$459 million (including Allowance for Funds Used During Construction (“AFUDC”)), to ensure that the Lee Nuclear Station remains an option to serve customer needs in the 2021 timeframe.

II. PROCEDURAL HISTORY

The Company filed its Application with the Commission on January 7, 2011. The Commission instructed the Company to publish a prepared Notice of Filing in a newspaper of general circulation in the areas affected by the Company’s Application. The Notice of Filing indicated the nature of the Application and advised all interested persons desiring to participate in the scheduled proceedings of the manner and time in which to file appropriate pleadings for inclusion in the proceedings. In the same correspondence, the Commission also instructed the Company to notify each customer affected by the

Application. The Company furnished the Commission with an Affidavit of Publication demonstrating that the Notice of Filing had been duly published and with a letter in which the Company certified compliance with the Commission's instruction to mail or email a copy of the Notice of Filing to all customers affected by the Application. The Commission issued a Revised Notice of Filing and Hearing in this matter on January 27, 2011, setting this matter for a hearing on May 16, 2011.

SCEUC petitioned to intervene in this matter on March 3, 2011, and CCL and Tom Clements filed requests to intervene on March 18, 2011. On March 23, 2011, the Company filed an Objection to the Petition to Intervene of Tom Clements on the basis that Mr. Clements lacked standing to intervene as he is not a customer of Duke Energy Carolinas. Mr. Clements filed a response on March 24, 2011, asserting in part that because he uses the Broad River and engages in recreational activities near the proposed site, his request for intervention should be granted. The Commission found that Mr. Clements met the standards for intervention and issued Order No. 2011-264 on April 6, 2011.

ORS requested the pre-filed testimony dates be revised and the Commission issued a Revised Pre-filed Testimony letter on March 25, 2011. On April 12, 2011, the Commission granted confidential treatment of Exhibit NP-1 to the Direct Testimony of Nicholas Phillips, Jr. in Order No. 2011-292 and on May 4, 2011, granted the request of the Company for confidential treatment of Exhibit B to the testimony of Janice D. Hager in Order No. 2011-333.

On May 13, 2011, ORS filed an Explanatory Brief and Joint Motion to Approve Settlement Agreement along with the Settlement Agreement. The Settlement Agreement is attached hereto as Order Exhibit No. 1. The Company, ORS, CCL, and SCEUC (the “settling parties”) reached a settlement wherein the settling parties agreed that: (i) only the absolute minimum amount of dollars necessary to keep the nuclear option available should be spent and that the expenditures from January 1, 2011, through June 30, 2012, should be no more than \$75 million without AFUDC and not to exceed \$120 million including AFUDC; (ii) the prudency determination in this proceeding will only apply to the expenditure of these funds, and in any proceeding to recover costs the Company must show that the activities it undertook meet the requirements set forth in the Settlement Agreement; (iii) the Company will file monthly reports with the Commission and ORS while the North Carolina General Assembly is in session regarding the status of legislation to allow for recovery of financing costs outside of a rate case in North Carolina; (iv) the Company will file a quarterly report with the Commission and ORS on expenditures and AFUDC; (v) any change in ownership interest, output allocation, sharing of costs or control and any future option agreements concerning the proposed Lee Nuclear Station shall be subject to prior approval of the Commission; (vi) joint ownership of new nuclear units in South Carolina is to be encouraged among the electric service providers operating in whole or in part in South Carolina, and the Company committed to continuing to pursue good faith negotiations with the South Carolina Public Service Authority (“Santee Cooper”) and/or SCANA regarding an interest in V.C. Summer Units 2 and 3; and (vii) the Company will file a monthly report with the Commission under

seal, available to parties who signed a confidentiality agreement in this proceeding, on the progress of its negotiations regarding an interest in V.C. Summer Units 2 and 3. Tom Clements is the only party of record who did not sign the Settlement Agreement.

On May 16, 2011, a merits hearing concerning the Company's Application was held in the Commission's hearing room located at Synergy Business Park, 101 Executive Center Drive, Saluda Building, Columbia, South Carolina. The Commission, with Chairman John E. Howard presiding, heard the testimony of public witnesses both for and against the Company's Application. Vice Chairman, David A. Wright was not present for the hearing. The public witnesses were Mr. George Fletcher, Executive Director for the Council for Competitiveness; Mr. Timothy F. Spencer, Chairman, Cherokee County Council; Mr. Robert M. Hitt, III, Secretary, S.C. Department of Commerce; and Beth Henry, a resident of Charlotte, North Carolina.

The hearing continued on May 17, 2011, with the testimony of Ronald A. Jones (Senior V.P. of Nuclear Development of Duke Energy Carolinas), James E. Rogers (Chairman, President and Chief Executive Officer of Duke Energy Corporation), and Janice D. Hager (V.P., Integrated Resource Planning and Regulated Analytics for Duke Energy Business Services, LLC). Nancy Brockway testified on behalf of CCL. SCEUC presented the testimony of Kevin O'Donnell, CFA (President of Nova Energy Consultants, Inc.). ORS provided the testimony of Nicholas Phillips, Jr. (a consultant in the field of public utility regulation) with the firm of Brubaker & Associates.

During the hearing, the settling parties stipulated on the record that the Commission would have authority to review any ownership issues of the proposed Lee

Nuclear Station once the Company filed for a siting certificate or submitted an application under the Base Load Review Act (“BLRA”).

III. STANDARD OF REVIEW

In a project development application filed with the Commission and ORS, the Company shall: (1) describe the plant being considered and shall designate the anticipated generation capacity, or range of capacity, of the plant and the projected annual capacity factors, or range of factors, of the plant; (2) provide information establishing the need for the generation capacity represented by the potential plant and the need for generation assets with the indicative annual capacity factors of the potential plant; (3) provide information establishing the reasonableness and prudence of the potential fuel sources and potential generation types that the utility is considering for the plant; and (4) provide such other information as may be required to establish that the decision to incur pre-construction costs related to the potential nuclear plant is prudent considering the information known to the utility at the time and considering the other alternatives available to the utility for supplying its generation needs. S.C. Code Ann. § 58-33-225 (C).

The Commission shall issue a project development order affirming the prudence of Duke Energy Carolinas’ decision to incur additional pre-construction costs for the nuclear plant if the Company demonstrates by a preponderance of evidence that the decision to incur additional pre-construction costs for the plant is prudent. S.C. Code Ann. § 58-33-225 (D). In issuing its amended project development order, the Commission may not rule on the prudence or recoverability of specific items of cost, but

shall rule instead on the prudence of the decision to incur additional pre-construction costs for the plant. Id.

The Commission approved the Company's original decision to incur nuclear generation pre-construction costs in Order. No. 2008-417.

At any time after an initial project development order has been issued, the Company may file an amended project development application seeking a determination of the prudence of the Company's decision to continue to incur pre-construction costs considering changed circumstances or changes in the type or location of the nuclear plant that the Company is pursuing or considering other characteristics or decisions related to the plant. S.C. Code Ann. § 58-33-225 (I). The amended project development application must be considered in a separate docket; however, the testimony and other evidence of the prior docket must be considered to be part of the new docket. Id.

IV. DISCUSSION

The testimony of Company Witness Ronald A. Jones was taken on May 17, 2011. Mr. Jones adopted the pre-filed direct testimony of Dhiaa Jamil and submitted rebuttal and settlement testimony. Witness Jones provided an overview of the settlement and asserted that the Settlement Agreement reflects a constructive approach that will allow the Company to keep the nuclear option available and maintain the current schedule for obtaining a Combined Construction and Operating License ("COL") in 2013 from the Nuclear Regulatory Commission ("NRC"). (Tr. Vol. II, p. 88, ll. 2-3; 89)

The Company's nuclear generation portfolio consists of approximately 5,200 megawatts ("MWs") of generating capacity through the operation of its seven nuclear

units at its three nuclear stations: Oconee, McGuire, and Catawba. Oconee began commercial operation in 1973, and McGuire and Catawba began commercial operation in 1981 and 1985, respectively. (Tr. Vol. II, p. 66-67) The Company continues to pursue the option of building two Westinghouse AP1000 units with anticipated generation capacity of 1,117 MWs each at the Lee Nuclear Station, in Cherokee County, South Carolina, at the Company's former Cherokee Nuclear Station site. The Company does not seek a change in the type or location of the proposed nuclear plant. (Tr. Vol. II, p. 68-69)

Since the issuance of the Commission's Order No. 2008-417, the Company decided to delay the commercial operation date ("COD") of Lee Nuclear Station Unit 1 to the 2021-2023 time frame. Witness Jones testified that the regulatory approval and development process for Lee Nuclear Station is lengthy and complex with the Company responding to more than 800 NRC requests for additional information ("RAIs"). (Tr. Vol. II, p. 69-70) Along with the decision to delay the COD of Unit 1, expenditures for transmission right-of-way purchases, long-lead material reservations, and the training simulator were also postponed. (Tr. Vol. II, p. 70) As of December 31, 2010, total project development costs, including AFUDC, totaled \$208.4 million.¹ (Tr. Vol. II, p. 422 ll. 1-2)

The Company has incurred and anticipates incurring pre-construction costs in the following areas: COL Application preparation; NRC Review and Hearing Fees; Land and

¹ Commission Order No. 2008-417 authorized the Company to incur the South Carolina allocable share of the \$230 million in Lee Nuclear Station project development costs as described in its application, testimony and exhibits, through December 31, 2009. Mr. Clements inquired of the various witnesses about expenditures in 2010 during the hearing. See, e.g. Tr. Vol. II, p. 122. This Commission looks forward to further presentations on this question from the parties in future cost recovery proceedings.

Right-of-Way Purchases; Pre-Construction and Site Preparation; Supply Chain, Construction Planning and Detailed Engineering; and Operational Planning. In its Application, the Company sought a determination that it was prudent to continue project development work up through the anticipated receipt of the COL in 2013. (Tr. Vol. II, p. 93) The Company estimates that it will cost \$459 million to get the project to that point. (Tr. Vol. II, p. 158, ll. 13-15)

Witness Hager, Vice President of Integrated Resource Planning and Regulated Analytics, testified that before the impact of energy efficiency plans is included, Duke Energy Carolinas' load forecast reflects a 1.8% average annual growth in summer and winter peak demands, and a 2.0% average annual increase in total energy usage. (Tr. Vol. II, p. 327, ll. 11-14) The 2010 Integrated Resource Plan ("IRP") assumes the retirement of 370 MWs of the Company's oldest combustion turbines as well as retirement of 1,667 MWs of coal-fired generation which represents all of the Company's coal-fired generation without installed flue gas desulfurization facilities (also known as SO₂ scrubbers) by 2015. (Tr. Vol. II, p. 332, ll. 4-8) Witness Hager explained that these retirements are driven by the conditions set forth in the North Carolina Utilities Commission's *Order Granting Certificate of Public Convenience and Necessity With Conditions* in Docket No. E-7, Sub 790 (March 21, 2007) ("Cliffside Order") and the anticipated impact of a series of new proposed U.S. Environmental Protection Agency ("EPA") rules regulating multiple areas relating to generation resources, such as mercury, SO₂, NO_x, coal combustion by-products and fish impingement/entrainment. (Tr. Vol. II, 332, ll. 8-14) She testified that if these new EPA rules are implemented, it will increase

the need for the installation of additional environmental control technology or retirement of coal fired generation in the 2014 to 2018 timeframe. (Tr. Vol. II, p. 332 ll. 14-17) Witness Hager concluded that the “IRP demonstrate[s] that the 2020 time frame for new nuclear generation remains beneficial for Duke Energy Carolinas’ customers; it creates the optimal result in meeting the Company’s obligation to supply power at the least cost to its customers and builds in the opportunity to develop partners and pursue legislation to ensure Lee Nuclear Station is brought on line at the lowest possible cost.” (Tr. Vol. II, p. 336, ll. 13-18)

Witness Rogers, Chairman, President and Chief Executive Officer of Duke Energy Corporation, testified in support of the need for the Lee Nuclear Station. The Lee Nuclear Station, he argued, “will provide significant value to our customers in the face of the uncertainties posed by future economic, environmental, regulatory and operating circumstances, and as such, it is prudent...to continue the necessary development activities to obtain the Combined Construction and Operating License (“COL”) for Lee Nuclear Station...” (Tr. Vol. II, p. 156, ll. 5-10) However, he testified that the Company will not move forward with building the Lee Nuclear Station until: (1) the regulatory regime is in place in North Carolina allowing recovery of financing costs outside of a rate case in North Carolina similar to provisions contained in the South Carolina BLRA; (2) the COL is in place; and (3) all necessary approvals from state regulators are obtained. The reason the North Carolina legislation is important to the Company, he explained, is that it has been proven that the recovery of the financing cost reduces the financial risk and cost to consumers. The alternative is that the Company would have to file a rate case

every year in North Carolina. (Tr. Vol. II, p. 209-210) Although Witness Rogers could not predict when the North Carolina legislation would be introduced, the Company committed that a monthly report would be provided to the Commission and ORS regarding the status of any such legislation while the North Carolina General Assembly is in session. (Tr. Vol. II, p. 147-148; 210)

Witness Rogers reasserted the Company's commitment to the Lee Nuclear Station in response to a question from Commissioner Fleming, stating that the facility is critical to the future, that the Company is going to build the facility, and that the question is when and under what conditions. (Tr. Vol. II, p. 236-237)

Tom Clements questioned witness Rogers as to whether other options such as offshore wind were being pursued by the Company. Witness Rogers explained that the Company reviewed offshore wind opportunities and given the impediments and cost, made the decision not to pursue offshore wind at this time. (Tr. Vol. II, p. 216-217) Witness Rogers was also questioned by Mr. Clements as to whether the events at Fukushima would drive up the cost of the Lee Nuclear Station project. Witness Rogers responded that once the NRC approves the Company's COL, the Company will have a better understanding of the costs. In response to a question from Commissioner Hall, witness Rogers explained that the events of Japan provide an opportunity for education, but that nuclear will be financially viable. (Tr. Vol. II, p. 243) He also emphasized his support for regional nuclear development and that he is continuing to look for partners for the benefit of both the Company's shareholders and customers. (Tr. Vol. II, p. 355)

CCL Witness Nancy Brockway testified that it would not have been prudent for Duke Energy Carolinas to pursue the Lee Nuclear Station as the Company had originally requested in its Application but that she was supportive of the Settlement Agreement. (Tr. Vol. II, p. 302) She noted the uncertainties the Company faces in building the Lee Nuclear Station such as the recent events in Japan, among other issues, and she noted that the North Carolina legislation sought by the Company had not yet been introduced. She also advocated that a regional approach to new nuclear development would mitigate the risk to South Carolina ratepayers. (Tr. Vol. II, p. 303)

Witness Kevin W. O'Donnell, testifying on behalf of SCEUC, had recommended in his pre-filed testimony that the Commission delay approval of the Company's request for a period not to exceed six months due to the nuclear disaster in Japan. (Tr. Vol. II, p. 395) At the hearing, Witness O'Donnell testified in support of the Settlement Agreement on the basis that the agreement allows the Company to incur no more than an additional \$120 million in pre-construction costs inclusive of AFUDC which is the minimum amount required to keep the Lee Nuclear Station option available. (Tr. Vol. II, p. 396-397)

The testimony of Nicholas Phillips, Jr. of the firm Brubaker & Associates was also taken on May 17, 2011. Witness Phillips, testifying on behalf of ORS and in support of preserving the nuclear option, stated that “[b]ased on an analysis of available information, knowledge of the Duke system, and a review of information regarding the options available and Duke's request of the Commission, it is reasonable and prudent for Duke to preserve nuclear as a resource option.” (Tr. Vol. II, p. 420 ll. 1-4) Witness

Phillips noted that his reporting recommendations on the North Carolina legislation among other recommendations in his pre-filed testimony are part of the Settlement Agreement, and he recommended that the Settlement Agreement be approved. (Tr. Vol. II, p. 428)

No party of record offered testimony in opposition to the Settlement Agreement. Based on the testimony and evidence in the record, the Commission concludes that preserving the opportunity for future nuclear generation is in the public interest. We find that the Settlement Agreement ensures that the Lee Nuclear Station remains an option to serve customer needs in the 2021 timeframe while also providing that only the minimal amount necessary to keep the nuclear option available should be spent.

V. FINDINGS OF FACT

The evidence in support of these findings of fact is found in the Application of Duke Energy Carolinas, the pleadings, testimony, exhibits in this docket, and the statutes, case law, and rules governing the authority and jurisdiction of this Commission.

1. Duke Energy Carolinas is a public utility under the laws of South Carolina and is subject to the jurisdiction of this Commission.
2. Duke Energy Carolinas is engaged in the generation, transmission, distribution, and sale of electric energy at retail in the western portion of South Carolina and the central and western portions of North Carolina. The Company sells electricity at wholesale to municipal, cooperative and investor-owned electric utilities.
3. Duke Energy Carolinas seeks approval of the decision to incur additional pre-construction costs for two units at the proposed Lee Nuclear Station.

4. Approximately 30,000 new residential customers and 4,000 new commercial customers have been added and served by the Company on average each year for the past five years.

5. The Company's IRP includes renewable resources, energy efficiency and demand-side management resources, and additional base load, intermediate and peaking generation to meet its estimated cumulative need for 6,000 MWs of additional capacity by 2030.

6. The Company has plans to retire approximately 1,667 MWs of coal-fired generating units in the next five years.

7. Duke Energy Carolinas currently operates seven units at its three nuclear stations as part of its generation portfolio.

8. The Lee Nuclear Station would be constructed in Cherokee County, South Carolina.

9. The Company has selected the Westinghouse AP1000 reactor for the technology to be implemented at the facility.

10. Each of the two proposed units has an anticipated generation capacity of 1,117 MWs.

11. The projected annual capacity factor of the facility is expected to exceed 90% based upon current Duke Energy Carolinas nuclear fleet performance.

12. On September 1, 2010, the Company filed its most recent Annual IRP in Commission Docket No. 2010-10-E.

13. The 2010 IRP identifies the need for capacity additions to meet future customer demand.

14. The Commission finds that preserving the nuclear energy option is reasonable in order to provide electric service to South Carolina citizens.

15. Duke Energy Carolinas' estimate for additional needed capacity of 2,200 MWs by 2020, an additional 1,800 MWs by 2025, and an additional 2,000 MWs by 2030 for a cumulative total of 6,000 MWs by 2030 is reasonable.

16. The Company has initiated site restoration and development at the Cherokee County site.

17. Duke Energy Carolinas has made no final determination to construct the Lee Nuclear Station.

18. The Commission makes no finding in this matter as to what costs qualify as "pre-construction costs" nor does the Commission make any finding on the prudence or recoverability of specific items of cost.

19. The Commission finds that it is prudent for Duke Energy Carolinas to incur additional pre-construction costs for the Lee Nuclear Station considering the prospect for future carbon and other environmental restraints, expected load growth, and retirement of existing capacity.

20. The Commission finds that the Settlement Agreement provides the Commission with additional oversight of the Company's activities as they pertain to the development of new nuclear generation in South Carolina and ensures that the Lee Nuclear Station remains an option to serve customer needs in the 2021 timeframe, while

also providing that only the minimal amount necessary to keep the nuclear option available is spent.

21. Consistent with the provisions of the Settlement Agreement, we find that joint ownership of new nuclear units in South Carolina is to be encouraged among the electric service providers operating in whole or in part in South Carolina, and that the Company has committed to continue to pursue good faith negotiations with Santee Cooper and/or SCANA regarding an interest in V.C. Summer Units 2 and 3.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction to determine the prudence of the Company's decision to incur additional pre-construction costs for the facility pursuant to S.C. Code Ann. § 58-33-225.

2. Duke Energy Carolinas has demonstrated by a preponderance of evidence that it is prudent to incur additional pre-construction costs for the Lee Nuclear Station.

3. The Commission finds that the Settlement Agreement attached hereto as Exhibit No. 1 is just and reasonable and in the public interest.

4. The Commission makes no determination of prudence or recoverability regarding specific items of cost. See S.C. Code Ann. § 58-33-225 (D).

IT IS, THEREFORE, ORDERED THAT:

1. The Settlement Agreement is approved in its entirety.
2. It is prudent for the Company to incur additional pre-construction costs relating to the development of the Lee Nuclear Station subject to the terms and conditions set forth in the Settlement Agreement.

3. The Company must incur only those costs absolutely necessary to keep the Lee Nuclear project available as an option in the 2021 time frame. The prudence determination made in this proceeding applies only to the South Carolina allocable share of the additional pre-construction costs of \$75 million without AFUDC, not to exceed \$120 million with AFUDC for the period of January 1, 2011 through June 30, 2012.

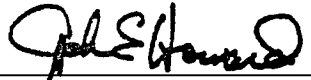
4. Pursuant to the terms of the Settlement Agreement, the Company shall provide the following reports to the Commission and ORS: (a) while the North Carolina General Assembly is in session, a monthly report regarding the status of legislation to allow for recovery of financing costs outside of a rate case in North Carolina; (b) a quarterly report on expenditures and AFUDC; and (c) a monthly report, available to parties who have signed a confidentiality agreement in this docket, on the progress of the Company's negotiations to acquire an interest in V.C. Summer Units 2 and 3.

5. Any change in ownership interest, output allocation, sharing of costs or control and any future option agreements concerning the proposed Lee Nuclear Station shall be subject to prior approval of the Commission.

6. For ratemaking purposes, the issuance of this Order does not constitute approval of the reasonableness or prudence of specific project development activities or recoverability of specific items of cost, and the approval and grant contained herein is without prejudice to the right of any party to take issue with the treatment of specific project development costs.

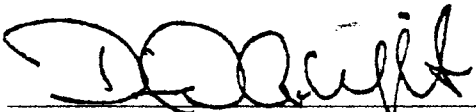
7. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



John E. Howard, Chairman

ATTEST:



David A. Wright, Vice Chairman

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2011-20-E

May 13, 2011

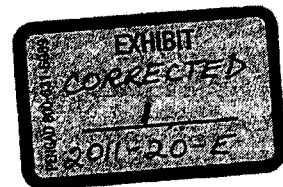
In the Matter of:)
)
Amended Project Development Application of) SETTLEMENT AGREEMENT
Duke Energy Carolinas, LLC)
for Approval of Decision to Incur)
NucleaGeneration Pre-Construction Costs)
)

The Settlement Agreement ("Settlement Agreement") is made by and among the South Carolina Office of Regulatory Staff ("ORS"), the South Carolina Coastal Conservation League ("CCL"), South Carolina Energy Users Committee ("SCEUC"), and Duke Energy Carolinas, LLC ("Duke Energy Carolinas" or the "Company") (collectively referred to as the "Parties" or sometimes individually as "Party").¹

WHEREAS, the Company has prepared and filed an Amended Project Development Application (the "Application") seeking approval of its decision to continue to incur additional pre-construction costs for the Company's proposed William States Lee, III Nuclear Station in Cherokee County, South Carolina ("Lee Nuclear Station");

WHEREAS, the Public Service Commission of South Carolina (the "Commission") opened this docket to consider Duke Energy Carolinas' request pursuant to the procedure established in S.C. Code Ann. § 58-33-225 (Supp. 2010);

¹ Tom Clements is not a party to the Settlement Agreement.



WHEREAS, the Parties to this Settlement Agreement are parties of record in the above-captioned docket;

WHEREAS, ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10(B) (Supp. 2010);

WHEREAS, ORS has conducted an investigation and examination relative to the matters raised in the Application;

WHEREAS, the Parties have varying positions regarding the issues in this case;

WHEREAS, the Parties have engaged in discussions to determine if a settlement of some or all of the issues would be in their best interests and, in the case of ORS, in the public interest;

WHEREAS, following those discussions, the Parties have determined that their interests, and ORS has determined that the public interest, would be best served by stipulating to a comprehensive settlement of all issues pending in the above-captioned case under the terms and conditions set forth herein; and

WHEREAS, the Parties to this Agreement believe that it is in their best interests and those of the State of South Carolina to enter into a Settlement Agreement relating to this matter to avoid the additional expense which the litigation of their positions would occasion in this proceeding.

NOW, THEREFORE, the Parties hereby stipulate and agree to the following terms:

I. STIPULATION OF TESTIMONY AND WAIVER OF CROSS-EXAMINATION

The Parties agree to stipulate into the record before the Commission this Settlement Agreement. The Parties further agree to stipulate into the record the pre-filed direct

testimony, supplemental testimony, rebuttal testimony, and settlement testimony and exhibits, if any, of Duke Energy Carolinas' witnesses James E. Rogers, Janice D. Hager, Dhiaa M. Jamil, and Ronald A. Jones; as well as the direct, settlement and surrebuttal testimony and exhibits, if any, of ORS witness Nicholas Phillips, Jr.; the pre-filed direct testimony of SCEUC witness Kevin W. O'Donnell; and the direct and surrebuttal testimony and exhibits of CCL witness Nancy Brockway; without objection, change, amendment or cross-examination. (collectively, the "Stipulated Testimony"). The proposals contained in the Application and Stipulated Testimony of Duke Energy Carolinas are incorporated by reference into this Settlement Agreement as pre-filed, except as otherwise changed by this Settlement Agreement. The Parties reserve the right to engage in any redirect examination of witnesses as necessary to respond to issues raised by the examination of their witnesses, if any, by non-Parties to this Agreement or members of the Commission or by late-filed testimony by non-Parties to this Agreement.

**II. COMPREHENSIVE SETTLEMENT AMONG DUKE ENERGY CAROLINAS,
ORS, CCL AND SCEUC**

For purposes of this Settlement Agreement and in recognition of the mutual compromises contained herein, Duke Energy Carolinas, SCEUC, CCL and ORS further agree that the Stipulated Testimony, the Application, and this Settlement Agreement conclusively demonstrate the following:

1. In its Application in this docket the Company sought approval of the prudence of the Company's decision to incur additional project development costs from January 1, 2010, through December 31, 2013. Those costs were estimated at \$229 million.

2. As a compromise to their respective positions, Duke Energy Carolinas, SCEUC, CCL and ORS stipulate and agree that the Commission should find that it is prudent for the Company to continue to incur development costs for the Lee Nuclear project only to the extent necessary to maintain the current schedule for obtaining a Combined Construction and Operating License ("COL") from the Nuclear Regulatory Commission to support a commercial operation date for the Lee Nuclear project in the 2021-2023 time frame. The Parties agree the the Commission should allow only the absolute minimum amount of dollars necessary to keep the nuclear option available. The Parties agree that the Commission should allow expenditures from January 1, 2011 through June 30, 2012 to be no more than \$75 million without AFUDC not to exceed \$120 million including AFUDC. The Parties also stipulate and agree that the prudence determination in this proceeding will only apply to the expenditure of the funds as described in this paragraph. In any proceeding to recover costs covered by this paragraph Duke must show that the activities that it undertook met the requirements of this paragraph.

3. While the North Carolina General Assembly is in session Duke Energy Carolinas agrees to file monthly reports with the Commission and ORS regarding the status of legislation to allow for recovery of financing costs outside of a rate case in North Carolina.

4. Duke Energy Carolinas agrees to file a quarterly report with the Commission and ORS on expenditures and AFUDC.

5. Duke Energy Carolinas agrees that any change in ownership interest, output allocation, sharing of costs or control and any future option agreements concerning the proposed Lee Nuclear Station shall be subject to the prior approval of the Commission.

6. The Parties agree that joint ownership of new nuclear units in South Carolina is to be encouraged among the electric service providers operating in whole or in part in South Carolina. As part of this Agreement, Duke commits that it will continue to pursue good faith negotiations with Santee Cooper and/or SCANA regarding an interest in V.C. Summer Units 2 and 3. Duke agrees to file a monthly report with the Commission under seal, available to parties who have signed a confidentiality agreement in this proceeding, on the progress of its negotiations.

III. REMAINING TERMS AND CONDITIONS

7. Duke Energy Carolinas, SCEUC, CCL and ORS agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding.

8. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission in its entirety. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein.

9. The Parties agree that signing this Settlement Agreement (a) will not constrain, inhibit, impair, or prejudice their arguments or positions held in future or collateral proceedings; (b) will not constitute a precedent or evidence of acceptable practice in future proceedings; and (c) will not limit the relief that any Party may seek or advocate in any future proceeding. If the Commission declines to approve this Settlement Agreement in its entirety,

then Duke Energy Carolinas, SCEUC, CCL or ORS may withdraw from the Settlement Agreement without penalty or obligation.

10. This Settlement Agreement shall be interpreted according to South Carolina law.

11. The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing its counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and e-mail signatures shall be as effective as original signatures to bind any Party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

[PARTY SIGNATURES TO FOLLOW ON SEPARATE PAGES]

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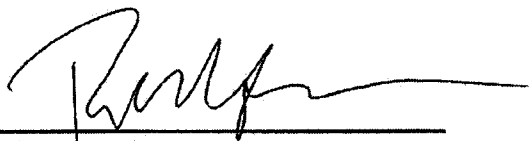
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