

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1023

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Application of Carolina Power & Light Company,)	ATTORNEY GENERAL'S
d/b/a Progress Energy Carolinas, Inc., for)	NOTICE OF APPEAL
Adjustment of Rates and Charges Applicable)	AND EXCEPTIONS
To Electric Utility Service in North Carolina)	

NOW COMES the North Carolina Attorney General (the "Attorney General"), 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 May 30, 2013 Order Granting General Rate Increase (the "Order") to Duke Energy Progress, Inc. (formerly Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc.) ("DEP" or the "Company")¹ issued by the North Carolina Utilities Commission (the "Commission") in the above-captioned proceeding. Pursuant to N.C. Gen. Stat. § 62-90(a), the Attorney General identifies the exceptions and the grounds on which he considers the Order to be erroneous, unlawful, unjust, unreasonable, unwarranted and prejudicial. As set forth below, the focus of this appeal is not on whether DEP should be allowed to recover its prudently invested capital, but instead whether there was sufficient evidence in the record for the Commission to determine that DEP's shareholder holding company should receive a 10.2% profit (or return on equity on that invested capital) and a 53% equity capital structure, and whether DEP met its burden of proof on those items.

¹ The application and filings in the case were made by Carolina Power & Light Company, d/b/a/ Progress Energy Carolinas, Inc., but as the Order states, the Company subsequently changed its name to Duke Energy Progress, Inc. Order p. 5.

EXCEPTION NO. 1:

The Commission did not sufficiently take customer interests into account when it made its return on equity (ROE) determination in this matter. The Commission did not make sufficient findings of fact regarding the impact of changing economic conditions when determining ROE. There is insufficient evidence in the record to support the Commission's finding of fact and conclusion of law that a 10.2% return on equity ("ROE") is just and reasonable, thus rendering the findings of fact and conclusions of law arbitrary and capricious and erroneous as a matter of law. (Finding of Facts and Conclusions Nos. 11 through 21). To the extent that the Commission made findings of fact related to the impact of the authorized 10.2% ROE on consumers, the findings and conclusions were not supported by substantial evidence. The Commission's order also relies on inappropriate evidence and findings.

The North Carolina General Statutes require the Commission to

Fix such rate of return on the cost of the property ascertained pursuant to subdivision (1) of this subsection as will enable the public utility by sound management to produce a fair return for its shareholders, **considering changing economic conditions and other factors**, including, but not limited to, the inclusion of construction work in progress in the utility's property under subdivision b. of subdivision (1) of this subsection, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms that are reasonable and **that are fair to its customers** and to its existing investors.

N.C. Gen. Stat. § 62-133(b)(4) (emphasis added). The Commission must take customer interests into account when making an ROE determination. State ex rel. Utils. Comm'n v. Cooper, ___ N.C. ___, 739 S.E.2d 541 (2013) ("Cooper"). "[C]ustomer interests

cannot be measured only indirectly or treated as mere afterthoughts” Cooper, ___ N.C. at ___, 739 S.E.2d at 548. The Commission’s findings and conclusions regarding ROE fail to comply with these and other applicable standards.

DEP had the burden of proof in the case, and failed to provide sufficient and substantial evidence showing the impact of changing economic conditions on consumers and that the rate of return is reasonable and fair to the Company’s customers as well as its investors. Customer interests were not sufficiently factored into the expert recommendations concerning ROE presented by Duke or other parties other than, at most, indirectly or as afterthoughts. Due to, among other things, the absence of sufficient evidence from the cost of capital expert witnesses regarding consumer impact and the otherwise deficient record, the Commission failed to make sufficient findings of fact and conclusions regarding the appropriate ROE in this case.

The Commission’s order is likewise not supported by lay testimony provided by public witnesses. Indeed, the overwhelming majority of public witnesses strongly opposed a rate increase and described the burden that the rate increase would impose during these economic times. The Commission’s order does not sufficiently explain how the lay testimony supports or justifies the 10.2% ROE granted by the Commission. State ex rel. Utils. Comm’n v. Cooper, ___ N.C. ___, 739 S.E.2d 541 (2013); Duke Power v. Public Staff, 322 N.C. 689, 701 (1988).

Accordingly, the Commission’s 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.

EXCEPTION NO. 2:

The Commission's finding of fact and conclusion of law that a capital structure made up of 53% equity and 47% debt is just and reasonable are insufficient and lack sufficient support from the record. There is insufficient evidence in the record to support this finding and conclusion. (Finding of Facts Nos. 11 through 21)

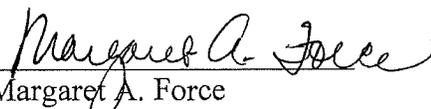
Accordingly, the Commission's order is arbitrary and capricious, is affected by errors of law, is unsupported by competent, material, and substantial evidence in light of the entire record and is beyond the Commission's statutory power and jurisdiction.

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.

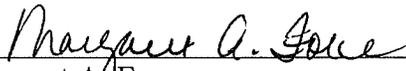
Respectfully submitted, this the 1st day of July, 2013.

NORTH CAROLINA ATTORNEY
GENERAL

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CERTIFICATE OF SERVICE

The undersigned certifies that she has served a copy of the foregoing Attorney General's Notice of Appeal and Exceptions upon the parties of record in this proceeding by electronic mail and hand delivery or depositing a copy of the same in the United States Mail, postage prepaid this the 1st day of July, 2013.



Margaret A. Force
Assistant Attorney General