UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners:

Duke Energy Corporation Docket No. AC19-75-000

(Issued December 19, 2019)

1. Today, the Commission grants Duke Energy Corporation's (Duke) accounting request to treat its Cybersecurity Informational Technology-Operational Technology Program (Cybersecurity Program) as a single project for purposes of calculating Allowance for Funds Used During Construction (AFUDC).[1] The Commission allows Duke to continue to accrue additional AFUDC costs for components of its Cybersecurity Program for the entire time the program is under development, even though Duke acknowledges that elements of the program have or will be deployed before the program is completed. In doing so, the Commission permits Duke to inflate the cost of its Cybersecurity Program, and not only charge customers for these costs but also to earn a return on the inflated cost. The Commission's existing accounting and ratemaking methodologies already allow Duke to fully recover its costs to finance the development of the Cybersecurity Program, and Duke has demonstrated no need to alter the Commission's AFUDC policy here. I dissent from today's order because it is a blatant departure from the Commission's accounting rules—and a mistake that will needlessly burden consumers with significant additional cost.[2]

2. Traditionally, the Commission permits utilities to charge customers the costs of utility assets, including new utility plant, when those assets become "used and useful."[3] When the new utility plant is ready for service or placed in service, the cost of the construction, along with the accrued AFUDC, is used in developing rates (added to rate base), as it is used and useful in the provision of utility service. At this point, the utility may begin to recover both the costs of the investment (including the accrued AFUDC),

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[1] *Duke Energy Corp.*, 169 FERC ¶ 61,232 (2019) (Order Granting Accounting Request).

[2] *See* North Carolina Electric Membership Corporation Protest, 9-11 (estimating that "the incremental rate effect of the requested treatment on NCEMC's bills" will be "$590,000 . . . over the first fourteen years of the service lives of these facilities").

[3] *See* Order Granting Accounting Request, 169 FERC ¶ 61,232 at P 2 (citing *S. Nat. Gas Co.*, 130 FERC ¶ 61,193, at P 30 (2010)).

and a return on that investment. The Commission's Regulations and historical accounting guidance reflect this process, specifically providing that a utility may accrue AFUDC on an investment, including an individual component of a project only until it is placed in, or ready for, service, *even where construction on the project, as a whole, is ongoing*.[4]

3. It is unclear from the record before us when each individual component part of the Cybersecurity Program should be considered placed in, or ready for, service. That said, Duke's statements are clear: "constituent parts of the Cybersecurity Program will be deployed" before the program is completed.[5] From this alone, the Commission can easily conclude that at least some parts of its Cybersecurity Program will be placed in, or ready for, service before the program as a whole is complete. Moreover, Duke specifies components of the project that will be in operation, such as the automated asset identification management hardware and software, which Duke expects will only take 15-30 days to test and install per location. There is no reason to believe that once tested and installed, it is not ready for service. In fact, the identification of assets at risk for cyberattack is expected to provide value while the rest of the program is being implemented. Therefore, based on the record, there is no support to treat Duke's entire Cybersecurity Program as one project for the purposes of accruing AFUDC and instead, the Commission today should provide guidance that Duke should stop accruing AFUDC on these assets as the assets are placed in, or read for, service.

4. The cybersecurity of the energy sector is one of the most important priorities for the Commission and area of focus that my colleagues and I agree requires vigilance. But the importance of cybersecurity cannot be used to intentionally violate our accounting principles. If there is an interest in providing additional incentives for cybersecurity

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[4] *See* 18 C.F.R. Pt. 101 Electric Plant Instruction No. 3(17) (2019) (providing, in relevant part:

> When a part only of a plant or project is placed in operation or is completed and ready for service but the construction work as a whole is incomplete, that part of the cost of the property placed in operation or ready for service, shall be treated as *Electric Plant in Service* and [AFUDC] thereon as a charge to construction shall cease. [AFUDC] on that part of the cost of the plant which is incomplete may be continued as a charge to construction until such time as it is placed in operation or is ready for service . . . .);

see also Accounting Release No. 5 (AR-5) (Revised), Capitalization of Allowance for Funds Used During Construction, Docket No. AI11-1-000 (Feb. 16, 2011) (delegated order).

[5] Order Granting Accounting Request, 169 FERC ¶ 61,232 at P 34.

investment, that is a discussion we should have – but I cannot support an intentional misreading of a record, or an expansion of AFUDC policy simply to reward cybersecurity with an inflated rate base.

For these reasons, I respectfully dissent.

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Richard Glick
Commissioner