

168 FERC ¶ 61,194  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

Duke Energy Carolinas, LLC

Docket No. ER19-2468-000

ORDER ACCEPTING REQUEST FOR RECOVERY OF CANCELLED NUCLEAR  
PLANT COSTS

(Issued September 25, 2019)

1. On July 26, 2019, Duke Energy Carolinas, LLC (DEC) submitted a filing (Filing) pursuant to section 205 of the Federal Power Act<sup>1</sup> and Part 35 of the Commission's regulations<sup>2</sup> to recover the wholesale portion of the 50 percent of the total costs incurred for the development of the cancelled Lee Nuclear Station Units 1 & 2 in Cherokee, South Carolina (Lee Nuclear Project). DEC proposes to include the costs associated with the Lee Nuclear Project cancellation in the wholesale formula rates contained in 14 power purchase agreements (PPAs) between DEC and applicable wholesale customers (Wholesale Customers).<sup>3</sup> For the reasons discussed below, we accept DEC's Filing to recover 50 percent of the wholesale portion of the costs of the cancelled Lee Nuclear Project.

**I. Background**

2. DEC is a wholly-owned subsidiary of Duke Energy Corporation, and serves both retail and wholesale customers in North Carolina and South Carolina.<sup>4</sup> DEC's service area covers approximately 24,000 square miles and supplies electric service to 2.5 million

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<sup>1</sup> 16 U.S.C. § 824d (2018).

<sup>2</sup> 18 C.F.R. § 35.13(a)(2)(iii) (2019).

<sup>3</sup> Transmittal at 1. DEC notes in the Filing that it is authorized to state that the Wholesale Customers support the proposed recovery of their applicable share of the costs for the cancelled Lee Nuclear Project.

<sup>4</sup> Transmittal at 4.

residential, commercial, and industrial customers.<sup>5</sup> DEC is a vertically integrated utility with generation, transmission and distribution facilities, which it uses to serve its retail customers and Wholesale Customers.

3. The relevant Wholesale Customers' PPAs are all long-term requirements service demand-based formula rate power purchase agreements under which DEC provides firm native load service.<sup>6</sup> The Wholesale Customers under the PPAs are electrical cooperatives and municipal utilities whose service territories are located within DEC's balancing authority area.<sup>7</sup>

4. Before submitting this Filing, DEC states that it engaged in settlement negotiations with its Wholesale Customers regarding the recovery of the cancelled Lee Nuclear Project costs under the PPAs. As a result, DEC and the Wholesale Customers agreed either to a twelve-year amortization period or a one-time payment to DEC for their full load ratio share of the cancelled Lee Nuclear Project costs.<sup>8</sup>

5. DEC requests that the Commission approve the Filing as of September 25, 2019, so that the twelve-year amortization may commence beginning October 1, 2019, and so the one-time payment may be included on the first invoice following October 1, 2019, as agreed upon by DEC and the Wholesale Customers.

6. The Commission's existing policy for recovering the costs of abandoned plants was established in Opinion No. 295.<sup>9</sup> The proceeding involved utility investment in a nuclear unit which was cancelled prior to completion and entry into commercial service. In Opinion No. 295, the Commission found that prudently incurred abandoned plant costs should be equitably allocated between ratepayers and shareholders, and specified how to determine amortization periods. Specifically, the Commission found that companies with investments in cancelled plants were entitled to a 50/50 sharing of the abandonment loss with rate base treatment of the unamortized portion of 50 percent of such investments (i.e., a return on investment).<sup>10</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 4-5.

<sup>7</sup> *Id.* at 5.

<sup>8</sup> *Id.* at 1-2; see *infra* Appendix.

<sup>9</sup> *New England Power Company*, Opinion No. 295, 42 FERC ¶ 61,016, *order on reh'g*, Opinion No. 295-A, 43 FERC ¶ 61,285 (1988) (Opinion No. 295).

<sup>10</sup> *Id.*, Opinion No. 295, 42 FERC at 61,081-82.

## II. DEC Filing

### A. Lee Nuclear Project Timeline

7. The Lee Nuclear Project was a planned, two-unit nuclear power plant to be built in Cherokee County, South Carolina. The Lee Nuclear Project was included in DEC's state-mandated Integrated Resource Plan (IRP). In an effort to determine, over a fifteen-year planning horizon, a reliable and economic mix of planned nuclear, fossil, and renewable generation, as well as demand-side and energy efficiency resources, DEC's 2005 and 2006 Annual Plans identified nuclear generation as the least-cost supply-side alternative to meet its need for significant capacity additions by summer 2016.<sup>11</sup>

8. In March 2006, DEC announced that it selected the Cherokee, South Carolina site for evaluation for possible nuclear expansion.<sup>12</sup> In December 2007, DEC submitted a Combined Construction and Operating License Application (COLA) to the Nuclear Regulatory Commission (NRC) for two Westinghouse AP1000 Pressurized Water Reactors (AP1000). In December 2016, the NRC issued DEC's Combined Construction and Operating Licenses for the Lee Nuclear Project (COL),<sup>13</sup> allowing DEC to construct and operate the units at the Cherokee, South Carolina site for 40 years.<sup>14</sup>

9. DEC explains that, during the years after the COL's issuance, a variety of circumstances outside of DEC's control negatively impacted DEC's ability to initiate construction and resulted in DEC's conclusion that it would no longer be beneficial to its customers to construct and commence operation of the Lee Nuclear Project.<sup>15</sup>

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<sup>11</sup> Transmittal at 6.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* In each annual plan or IRP between 2006 and 2017, the Lee Nuclear Project was identified as a cost-effective option to meet base load energy needs for customers.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 7. DEC cites to the Westinghouse Electric Company (Westinghouse) filing for bankruptcy on March 29, 2017, and Westinghouse being unable to proceed with the Engineering, Procurement and Construction of the AP1000 units under construction in South Carolina and Georgia. Additionally, DEC cites to the decision of the project owners for the South Carolina Westinghouse project to cease construction on July 31, 2017, of the South Carolina AP1000 units.

10. DEC states that it filed a request with the North Carolina Utilities Commission (North Carolina Commission) on August 23, 2017, to cancel the Lee Nuclear Project, which was approved on June 22, 2018, finding that the costs DEC incurred for the development of the project were reasonable and prudent and that DEC could amortize and recover the North Carolina retail portion of those costs over a twelve-year period.<sup>16</sup>

11. On May 21, 2019, the Public Service Commission of South Carolina (South Carolina Commission) issued an order finding that the costs DEC incurred for the development of the project to be reasonable and prudent and allowing DEC to amortize and recover the South Carolina retail portion of cancelled Lee Nuclear Project development costs over a twelve-year period.<sup>17</sup>

12. DEC states that it submitted the instant Filing after it reached agreement with its Wholesale Customers in late June 2019, following months of discussions, to recover the applicable portion of the cancelled Lee Nuclear Project, based on a load-ratio share, from the Wholesale Customers through the formula rates in their PPAs.<sup>18</sup> DEC seeks waiver of Opinion No. 295's requirement that DEC seek recovery of the cancelled Lee Nuclear Project costs within one year of the decision to cancel the project.<sup>19</sup>

13. DEC also requests waiver of section 35.13 of the Commission's regulations, including waiver of the full Period I-Period II data requirements, and waiver of the requirements in section 35.13(a)(2)(iv) to determine if and the extent to which a proposed change constitutes a rate increase based on Period I-Period II rates and billing determinants. DEC states that the testimony and other exhibits submitted as attachments to this Filing provide more than ample support for the reasonableness of the proposed recovery of the cancelled Lee Nuclear Project costs.

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<sup>16</sup> *Id.* The North Carolina Commission's approval of DEC's costs does not include the amount spent on a visitor's center at the plant site or the purchase price of the Cherokee, South Carolina site.

<sup>17</sup> *Id.* The South Carolina Commission's approval of DEC's costs does not include the amount spent on a visitor's center at the plant site or the purchase price of the plant site.

<sup>18</sup> *Id.* at 8.

<sup>19</sup> *Id.* at 16; Opinion No. 295, 42 FERC at 61,081.

**B. Lee Nuclear Project Costs**

14. DEC states that the costs to develop the Lee Nuclear Project were prudently incurred and were undertaken to ensure a diverse, cost-effective, and reliable supply of energy for DEC's wholesale customers.<sup>20</sup>

15. To support its argument, DEC presents written testimony from Christopher M. Fallon, DEC's Vice President of Nuclear Development during the relevant time period. Mr. Fallon's testimony claims that DEC continued to identify the Lee Nuclear Project as a cost-effective option to meet base load energy needs for customers in IRPs from 2006-2017. Moreover, Fallon states, DEC's decision to proceed with the project was encouraged by an environment of high and volatile natural gas prices, the expected impacts of the 2005 Clean Air Interstate Rule, and other possible carbon limiting environmental regulations, as well as the positive support for nuclear generation afforded by the Energy Policy Act of 2005.<sup>21</sup> According to Fallon, any decision to suspend the COLA prior to the COL's issuance would have substantially delayed the COLA's review and negated the requirements for new nuclear plant construction DEC had completed up to that point.<sup>22</sup>

16. Additionally, DEC notes that both the North Carolina Commission and the South Carolina Commission deemed the Lee Nuclear Project costs to be just and reasonable, permitting DEC to amortize the allocated North Carolina Commission and South Carolina Commission retail portions of the overall costs incurred over a twelve-year period.<sup>23</sup> Specifically, DEC incurred actual costs for the development of the Lee Nuclear Project of \$558 million.<sup>24</sup>

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<sup>20</sup> Transmittal at 9.

<sup>21</sup> DEC Ex. DEC-001 at 3 (citing 42 U.S.C. §§ 16011-16042 (2012)).

<sup>22</sup> *Id.* at 9.

<sup>23</sup> Transmittal at 7.

<sup>24</sup> DEC is not seeking to recover \$500,000 spent on the visitor's center at the Cherokee, South Carolina site, which was disallowed by the North Carolina Commission and South Carolina Commission, and the cost to purchase the land of approximately \$40.9 million for the Lee Nuclear Project. DEC states that the costs to purchase the land have been transferred to FERC Account No. 105, Electric Plant Held for Future Use.

17. DEC is seeking the Commission's approval to recover from the Wholesale Customers their load ratio share of the cancelled Lee Nuclear Project through the formula rates in the Wholesale Customers PPAs.

**C. Proposed Methods of Cost Recovery**

18. DEC seeks approval to recover the wholesale portion of the cancelled Lee Nuclear Project costs based on a twelve-year amortization period or through a one-time payment based on the payment method selected by the individual wholesale customer.<sup>25</sup> DEC is not seeking recovery of costs associated with a visitor's center and certain costs of land purchased for the Lee Nuclear Project. Subtracting these amounts from the total costs incurred, the total portion DEC seeks in this proceeding is the wholesale portion of 50 percent of approximately \$516.5 million,<sup>26</sup> or about \$258.2 million.

19. DEC states that those Wholesale Customers selecting the twelve-year amortization period have PPAs which contain a Schedule 1, which has a specific provision for the inclusion of "Other Regulatory Assets/Liabilities Recorded On or After January 1, 2018." According to DEC, given that it proposes to record the cancelled Lee Nuclear Project costs in FERC Account 182.2, with such amounts to be amortized to FERC Account 407, Schedule 1 expressly allows for the inclusion of the Lee Wholesale Costs upon Commission approval.<sup>27</sup> Recovery of the wholesale portion of the cancelled Lee Nuclear Project costs will be on a straight-line basis, will include a return on the unamortized balance based on DEC's weighted average cost of capital, and will include a return on a deferred tax asset that DEC will accrue in rate base ratably during the twelve-year

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<sup>25</sup> See *infra* Appendix for the payment method selected by each Wholesale Customer.

<sup>26</sup> Transmittal at 8. The \$516.5 million is comprised of \$247.6 million in carrying costs for the Allowance for Funds used During Construction, \$189.4 million in Labor and related Overheads, \$119.7 million in other direct costs, and \$1.3 million in engineering and licensing support from the AP1000 Group LLC.

<sup>27</sup> *Id.* at 10; in Docket No. AC19-178, DEC concurrently filed an accounting letter requesting approval to use Account 182.2, Unrecovered Plant and Regulatory Study Costs, for the Total Lee Development Costs, and is requesting authorization to amortize the balance in Account 182.2 to Account 407, Amortization of Property losses, Unrecovered Plant and Regulatory Study Costs or to FERC Account No. 426.5, Other Deductions, if recovery of any of the costs is disallowed by the Commission. This filing is still pending before the Commission.

amortization period.<sup>28</sup> DEC will accrue one-twelfth of approximately \$40 million of the deferred tax asset into rate base each year during the twelve-year amortization period.

20. The second method DEC proposes is a one-time payment of the wholesale portion of the cancelled Lee Nuclear Project costs.<sup>29</sup> The one-time payment, selected by certain Wholesale Customers, is derived from each customer's load ratio share of the wholesale portion of the cancelled Lee Nuclear Project costs. Wholesale customers electing this payment method will not be responsible for any return or other costs related to the unamortized balances of the cancelled Lee Nuclear Project costs or the deferred tax asset.<sup>30</sup> The accounting treatment for the one-time payment under the PPAs is the same as that used for the twelve-year amortization method. DEC states that upon Commission approval, the billing for the one-time payment will occur in the first invoice following October 1, 2019, and receipt of the payment will complete the paying customer's obligation for the cancelled Lee Nuclear Project costs.

21. DEC states that the one-time payment has also been selected by North Carolina Electric Membership Corporation (NCEMC) for its Catawba Interconnection Agreement (Catawba IA). The Catawba IA does not contain Schedule 1, but instead has a production fixed costs formula rate, with a line item in its formula rate for "Amortization of Losses/Gains" (with the associated note specifying that this line is only for Amortization of Losses/Gains in Account 407).<sup>31</sup> DEC seeks the Commission's approval to allow for the one-time payment associated with the cancelled Lee Nuclear Project costs under the Catawba IA to be recognized by a debit to FERC Account No. 407, and to allow for the use of FERC Account 182.2 on a one-time basis until the one-time payment is made by NCEMC.<sup>32</sup>

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<sup>28</sup> *Id.* The deferred tax asset relates to the accounting entries booked during the write-off and subsequent deferral of the Lee Nuclear Project costs, which in conjunction with applicable Internal Revenue Service regulations, resulted in a deferred tax asset of approximately \$80 million within DEC's books and records.

<sup>29</sup> See *infra* Appendix.

<sup>30</sup> Transmittal at 11.

<sup>31</sup> *Id.* at 11-12.

<sup>32</sup> *Id.* at 3 n.4.

### **III. Notice and Interventions**

22. Notice of DEC's filing was published in the Federal Register, 84 Fed. Reg. 37,861 (2019), with interventions or comments due by August 16, 2019. NCEMC filed a timely motion to intervene. No protests or comments were filed.

### **IV. Discussion**

#### **A. Procedural Matters**

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), NCEMC's timely unopposed motion to intervene serves to make it a party to this proceeding.

#### **B. Substantive Matters**

24. As discussed below, we accept DEC's filing to recover the wholesale portion of 50 percent of the \$516.5 million of cancelled Lee Nuclear Project costs from the Wholesale Customers.

25. Commission policy, pursuant to Opinion No. 295, dictates that DEC should recover these costs over the "life of the plant" which for the Lee Nuclear Plant would be for 40 years, the length of the COL. In *Maine Public Service Commission*, the Commission recognized that, under "unusual circumstances," agreements that do not conform to Opinion No. 295's "life of the plant" amortization period requirement can be proper so long as the result is "a reasonable sharing of costs."<sup>33</sup>

26. Under the circumstances presented in this case, we find that DEC's proposed methods for amortization are a reasonable compromise that provide savings to the Wholesale Customers in reducing the carrying costs by shortening the amortization period and result in a reasonable sharing of the cancelled Lee Nuclear Project costs among its Wholesale Customers. The amount of costs to be recovered and the amortization methods have been agreed to by DEC's Wholesale Customers. The twelve-year amortization method parallels the retail treatment of the cancelled Lee Nuclear Project costs approved by both the North Carolina Commission and the South Carolina Commission as described above. There are no protests to the proposed costs or amortization methods under review.

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<sup>33</sup> *Maine Pub. Serv. Comm'n*, 47 FERC ¶ 61,183, at 61,612 (1989). The transmission provider in *Maine Pub. Serv. Co.* had also reached a settlement agreement with its affected customer base regarding proposed costs and amortization methods for the cancelled nuclear project.



The Commission orders:

(A) DEC's request to recover the wholesale portion of 50 percent of the \$516.5 million of cancelled Lee Nuclear Project costs from the Wholesale Customers is accepted, as discussed in the body of this order.

(B) DEC's proposed recovery methods of using either a twelve-year amortization or a one-time payment as negotiated with its Wholesale Customers are hereby accepted, effective September 25, 2019, as requested.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix<sup>34</sup>**

<b>Wholesale Customer</b>	<b>PPA</b>	<b>12-year amortization/ One-time payment</b>
Central Electric Power Cooperative, Inc. (“Central EMC”)	DEC Rate Schedule FERC No. 336 – Power Purchase Agreement Between DEC and Central	12-year amortization
Town of Forest City, North Carolina (“Forest City”)	DEC Rate Schedule FERC No. 330 – Power Purchase and REPS Compliance Service Agreement Between DEC and Forest City	12-year amortization
Town of Highlands, North Carolina (“Highlands”)	DEC Rate Schedule FERC No. 337 – Power Purchase and REPS Compliance Service Agreement Between DEC and Highlands	12-year amortization
Town of Prosperity, South Carolina (“Prosperity”)	DEC Rate Schedule FERC No. 333 – Power Purchase Agreement Between DEC and Town of Prosperity	12-year amortization
Western Carolina University (“Western Carolina”)	DEC Rate Schedule FERC No. 338 – Power Purchase Agreement Between DEC and Western Carolina	12-year amortization
Blue Ridge Electric Membership Corporation (“Blue Ridge EMC”)	DEC Rate Schedule FERC No. 315 – Full Requirements Power Purchase and REPS Compliance Service Agreement Between DEC and Blue Ridge EMC	One-time payment
Town of Dallas, North Carolina (“Dallas”)	DEC Rate Schedule FERC No. 328 – Power Purchase and REPS Compliance Service Agreement Between DEC and Dallas	One-time payment
Town of Due West, South Carolina (“Due West”)	DEC Rate Schedule FERC No. 329 – Power Purchase Agreement Between DEC and Due West	One-time payment
Haywood Electric Membership Corporation (“Haywood EMC”)	DEC Rate Schedule FERC No. 335 – Requirements Power Purchase Agreement Between DEC and Haywood	One-time payment

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<sup>34</sup> See Transmittal at 2 – 3.

**Appendix (continued)**

Lockhart Power Co. ("Lockhart")	DEC Rate Schedule FERC No. 332 – Power Purchase Agreement Between Duke Energy Carolinas, LLC and Lockhart Power Company	One-time payment
North Carolina Electric Membership Corporation ("NCEMC")	DEC Rate Schedule FERC No. 326 – Power Purchase Agreement Between DEC and NCEMC	One-time payment
NCEMC	DEC Rate Schedule FERC No. 273 – NCEMC Catawba Interconnection Agreement ("NCEMC Catawba IA")	One-time payment
Piedmont Electric Membership Corporation ("Piedmont EMC")	DEC Rate Schedule FERC No. 316 – Full Requirements Power Purchase Agreement Between DEC and Piedmont EMC	One-time payment
Rutherford Electric Membership Corporation ("Rutherford EMC")	DEC Rate Schedule FERC No. 317 – Partial Requirements and REPS Compliance Service Agreement Between DEC and Rutherford EMC	One-time payment