McGILLIVRAY
WESTERBERG
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ATTORNEYS

July 8, 2010

VIA ERF

Ms. Sandra Paske
Secretary to the Commission
Public Service Commission of Wisconsin
P.O. Box 7854
Madison, WI 53707-7854

Re: Investigation on the Commission's Own Motion to Review Potential Excess Capacity in EGUs Owned by Wisconsin Electric Utilities
Docket No. 5-EI-150

Dear Ms. Paske:

Please find enclosed for filing the Sierra Club's Initial Comments in the above-referenced docket.

Those parties identified on the Commission's June 28, 2010 service list have been served via email (PSC Ref # 133844).

Sincerely,

McGILLIVRAY WESTERBERG & BENDER LLC

Pamela R. McGillivray

Encls.

cc: Service List (via email)

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BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation on the Commission's Own Motion to Review Potential Excess Capacity in Electric Generating Units Owned by Wisconsin Electric Utilities	Docket No. 5-EI-150

INITIAL COMMENTS OF SIERRA CLUB

On June 10, 2010, the Commission issued its Notice of Investigation and Request for Comments for this docket. The Commission noted that

> In recent dockets some parties have requested the Commission to review Wisconsin's current excess electric generating capacity and whether certain existing electric generating plants in Wisconsin should be retired. . . . Various parties [including Sierra Club] have suggested that mothballing or retiring such plants could reduce costs for ratepayers . . . and may otherwise be economic in light of developing climate change and air pollution regulations, and/or may reduce the emission of air pollutants in Wisconsin.

(Notice, PSC Ref # 133008). This investigation is to gather information to address those questions.

By its order dated June 30, 2010, the Commission extended the deadline for comments on Questions 3., 4.c. to k., 5, 6, 7 and 8. (Amend. Sch. Order, PSC Ref # 134027). Those issues will be addressed in comments filed on or before August 9, 2010, per the order.

Sierra Club's comments on the Questions 1., 2, 4.a. and 4.b. follow:

<u>ISSUE 1:</u> THE COMMISSION'S AUTHORITY TO ORDER THAT A PUBLIC UTILITY MOTHBALL OR RETIRE AN ELECTRIC GENERATING UNIT, BASED ON THE UTILITY'S EXISTING CAPACITY AND ITS CAPACITY NEEDS.

COMMENT:

It is Sierra Club's position that the Commission has authority to order a public utility to mothball or retire an electric generating unit based on existing capacity and capacity needs for a particular utility. The Commission has broad power "to supervise and regulate every public utility in this state and to do all things necessary and convenient to its jurisdiction." Wis. Stat. § 196.02(1); *Clean Wis. v. PSC*, 2005 WI 93, ¶ 136 ("[T]he legislature has specifically charged the PSC with the interpretation of chapter 196. The legislature has given the PSC jurisdiction to 'supervise and regulate every public utility in this state and to do all things necessary and convenient to its jurisdiction.' Wis. Stat. § 196.02(1)."). Within that statutory authority, the Commission has power to investigate, hold technical hearings, declare that certain units must be retired or mothballed, find that a particular utility's charges related to excess capacity are unjust and unreasonable, and order that a specific utility retire/mothball certain excess, inefficient units as a condition of receiving construction authority on its other units.

1. <u>Investigative and Declaratory Ruling Authority</u>

Pursuant to Wis. Stat. §196.02(7), the Commission may initiate, investigate and order a hearing at its discretion of any matter within its jurisdiction. Implicit in that statutory authority and its broad regulatory jurisdiction over public utilities, the Commission may issue an order directing the utilities to take certain action the Commission determines is necessary based on its findings of fact and conclusions of law after an investigation and hearing. For example, the Commission opened an investigatory docket related to damages on dairy farms caused by stray voltage. Docket No. 05-EI-115, Findings of Fact, Conclusion of Law and Order, 7/16/1996 (PSC Ref # 1). After public and technical hearings, the Commission ordered the utilities to propose a uniform tariff and file for tariff revisions to pay for equipment to reduce stray voltage on affected farms. *Id*.

Through an investigatory docket, the Commission may "issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforced by it." Wis. Stat. 227.41(1). After an opportunity of all interested parties to be heard on the issue, the declaratory

ruling "shall bind the agency and all parties to the proceedings on the statement of facts alleged, unless it is altered or set aside by a court." *Id*. Recently, the Commission opened an investigatory docket related to the application for approval for WPPI to purchase and leaseback the City of Menasha's electrical utility facilities and shares of ATC. Docket No.5-EI-149, Final Decision, dated 3/12/2010 (PSC Ref # 128227). Hearings were held and post-hearing briefs were filed by the parties. The Commission set various conditions on the approval and issued a requested declaratory ruling to WPPI per § 227.41 that the Commission's regulatory authority over it was not altered by the lease. *Id*. at p. 27.

Here, the Commission has authority under Wis. Stat. §§ 196.02 and 227.41 to issue an order finding that certain units in the state should be retired/mothballed. The Wisconsin utilities (WEPCO, WPL, WPSC, WPPI, NSP, MGE, and DPC), American Transmission Company and the Municipal Electric Utilities are participating in this docket. (*See e.g.*, PSC Ref # 133413). After an initial investigation and discovery phase, the Commission should hold technical hearings on the issue of what units can be retired/mothballed/replaced with energy efficiency, renewables and high efficiency natural gas units. Based on the record at hearing, the Commission can issue a declaratory ruling applying its findings of fact to Wis. Stat. §§ 1.12(4) (the Energy Priorities Law), 196.02(1) (the Commission's jurisdictional authority), 196.025 (the Commission's duty under the Energy Priorities Law), 196.37 (the Commission's authority to issue orders to correct unjust and unreasonable rates), 196.49(3) (the Commission's authority to grant certificates of authority), and 196.491(3) (the Commission's authority to grant certificates of convenience and necessity) and Wis. Admin. Code § PSC 112.07(2) (the Commission's regulation allowing conditional orders in construction cases), as described below. All of the parties to this docket would be bound by that declaratory ruling for subsequent rate or construction cases unless the ruling is modified by the Commission. *See* Wis. Stat. §§ 196.39(1) (authorizing the Commission to reopen to rescind, alter, or amend any order for any reason, at any time).

2. <u>Just and Reasonable Rates for Excess Capacity Under Section 196.37(1) and (2)</u>

Pursuant to Wis. Stat. § 196.37(1) and (2), a utility may only charge a just and reasonable rate for its services. Subsection (1) provides that "if, after an investigation under this chapter . . ., the commission finds rates, tolls, charges, schedules or joint rates to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential or otherwise unreasonable or unlawful, the commission shall determine and order reasonable rates, tolls, charges, schedules or joint rates to be imposed, observed and followed in the future." Subsection (2) provides similar authority to modify, *inter alia*, any "practice, act or service" of

the utilities that is unjust or unreasonable through any just and reasonable order to be observed in the future.[1] This section provides the Commission statutory authority to determine that charges related to excess capacity, including amortized construction costs, operating and maintenance costs for, capital expenditures at, and fuel costs for existing units, are unreasonable and allows the Commission to order rates for future service that do not include charges for that excess capacity.

The Wisconsin Supreme Court has upheld the Commission's authority to shift the cost of excess capacity to the utilities' shareholders. In *MGE v. PSC*, 109 Wis.2d 127 (Wis. 1982), the Court noted its earlier precedent holding that "the PSC has the authority to shift some of the cost of excess generating capacity to utility shareholders where (1) the excess generating capacity was imprudently acquired, or (2) the excess capacity was not used or useful in serving the public." 109 Wis.2d at 135 (footnote and citations omitted). The Court adopted a two-part approach to assigning the cost of excess capacity to utility shareholders: First, the PSC must determine that excess capacity exists; and second, it must determine whether and to what extent those costs should be borne by ratepayers. *Id*. at 136 (following the Iowa State Commerce Commission's approach). Thus, the Court found that the Commission, upon finding that there is excess capacity, could exercise its discretion to determine "who shall bear the burden for paying for all or part of the excess capacity." *Id*.

Here, the excess capacity may not have been imprudently acquired when the specific units were constructed, in some cases half a century ago. However, when considering the ongoing costs of continuing to operate the units in light of current and probable environmental regulations that will require expensive pollution control equipment and waste water systems, the cost of their continued operation is no longer prudent. *See Iowa-Illinois Gas and Elec. Co. v. Iowa State Commerce Comm'n*, 347 N.W.2d 423, 429 (Iowa S.Ct. 1984) (finding that excess capacity is imprudent in current ratemaking even where the capacity was prudent at the time of construction). As the Iowa Supreme Court has noted: "Nothing in the constitutional requirement that a utility receive a fair return on its investments prohibits a lower return from the ratepaying public upon a part of the investment that turns out to be unnecessary, even when the utility's decision to make the investment was prudent." *Id.*; *see also Iowa-Illinois Gas &*

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[1] Wis. Stat. §196.37(2): If the commission finds that any measurement, regulation, practice, act or service is unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise unreasonable or unlawful, or that any service is inadequate, or that any service which reasonably can be demanded cannot be obtained, the commission shall determine and make any just and reasonable order relating to a measurement, regulation, practice, act or service to be furnished, imposed, observed and followed in the future.

Elec. Co. v. Iowa State Commerce Comm'n, 412 N.W.2d 600, 607 (Iowa 1987) (finding that the Commission's decision not to allow rate recovery for excess capacity was not an unconstitutional taking and did not violate equitable principles of res judicata, equitable estoppel, or collateral estoppel). Similarly, the Kansas Court of Appeals explained:

> Initial exclusion of capacity as excess does not preclude its inclusion in the rate base at a future date. . . . Nor does current inclusion in the rate base guarantee that facilities will not become obsolete in the future and be excluded.

Kansas State Tel. Co. v. State Corp. Comm'n of Kansas, 1986 Kan. App. LEXIS 1471, *3-4 (Kan. Ct. App. Oct. 16, 1986). In short, the Commission has authority to exclude all costs associated with excess capacity from a utility's cost of service for purposes of setting rates. This is true even where the units were prudently acquired decades ago and have only recently become unnecessary under present and future load demands and regulatory environments. Old, inefficient units that will require expensive additions are obsolete and the Commission should exclude those from the rate base in the future.

3. <u>Authority Under Retrofit Cases and New Generation Construction Cases to Conditionally Order Retirement</u>

The Commission has authority when issuing a certificate of authority under § 196.49(3) or certificate of convenience and necessity under § 196.491(3) to conditionally grant the certificate subject to retiring or mothballing of the utility applicant's inefficient units. When issuing a CA or CPCN, the Commission must certify that the proposed project does not, *inter alia*, "[p]rovide facilities unreasonably in excess of the probable future requirements." Wis. Stat. §§ 196.49(3)(b)3., 196.491(3)(d)5. If a project as proposed will create excess capacity, the Commission may set any conditions that are necessary to prevent that excess capacity. Wis. Stat. §§ 196.49(3)(c), 196.491(3)(e). If there is already known excess capacity, any additional capacity cannot meet the certificate requirements unless a condition is set to retire or mothball other capacity.

Conditional authority to address excess capacity is not unique to Wisconsin. The North Carolina Utilities Commission recently granted a certificate of public convenience and necessity to Progress Energy for a 950 MW combined cycle natural gas plant, but subjected the CPCN to the condition of retiring "unscrubbed" coal units on a MW to MW basis. NCUC Docket No. E-2, SUB 960, Order, 10/22/09 (Ex. A) (granting a CPCN for the 950 MW CC plant conditioned on Progress Energy retiring a total of 950 MW of inefficient, uncontrolled coal units). This Commission has the same authority to condition a

request to extend the life of a unit by retrofitting that unit with pollution controls or to construct new generation on a reduction of uncontrolled coal unit generation capacity. In fact, as set forth below, the Energy Priorities Law may require that the Commission do so.

Moreover, conditions that limit excess capacity from inefficient, uncontrolled coal units are within the Commission's authority to meet the public interest and the public convenience and necessity. Wis. Admin. Code § PSC 112.07(2) ("The commission shall hold a public hearing on the application and grant or deny the application, in whole or in part, subject to any conditions the commission finds are necessary to protect the public interest or promote the public convenience or necessity."). A reasonable plan for retirement or mothballing units will reduce air pollution, including not only criteria pollutants like sulfur oxides and fine particulates that externalize costs of coal generation through health and welfare costs, but would also reduce greenhouse gases that similarly externalize costs, and provide a lower cost alternative to retrofitting the older, inefficient units. Reduction of air pollution and lower cost alternatives are in the public interest and promote the public convenience and necessity. Thus, the Commission has authority to condition CAs and CPCNs on retirement/mothballing of certain units in a utility-applicant's fleet.

4. <u>Violation of the Mandatory Duties Under the Energy Priorities Law for the Commission Not to Order Retirement/Mothballing of Inefficient Coal-Fired Units</u>

Pursuant to Wis. Stat. § 196.025(ar), "[t]o the extent cost-effective, technically feasible and environmentally sound, the commission shall implement the priorities under s. 1.12 (4) in making all energy-related decisions and orders, including strategic energy assessment, rate setting and rule-making orders. Section 1.12(4) sets the Energy Priorities as follows:

> In meeting energy demands, the policy of the state is that, to the extent cost-effective and technically feasible, options be considered based on the following priorities, in the order listed:
>
> (a) Energy conservation and efficiency.
> (b) Noncombustible renewable energy resources.
> (c) Combustible renewable energy resources.
> (d) Nonrenewable combustible energy resources, in the order listed:
>
> 1. Natural gas.
> 2. Oil or coal with a sulphur content of less than 1%.
> 3. All other carbon-based fuels.

Wis. Stat. § 1.12(4). Thus, when the Commission is considering any energy-related matters—investigatory dockets, future rate cases or construction cases—the Priorities mandate that the Commission order inefficient coal units to be retired and, if necessary, replaced with increased energy efficiency, renewable resources (wind, solar, biomass), and natural gas units to the extent cost-effective and technically feasible. The Priorities Law authorizes the Commission to order retirements of old, inefficient coal units to maximize those higher priority resources.

CONCLUSION

Once a determination is made as to what units create excess capacity that should be mothballed, retired or replaced with higher priority options under the Energy Priorities Law, the Commission has the authority to declare that certain units should be retired/mothballed and that costs from those units are no longer prudent, to take costs from those units out of the rate base and to order the retirement/mothballing of various units as a condition of receiving a certificate in any future construction cases. The Commission's authority is found in Wis. Stat. §§ 1.12(4), 196.02(1), 196.025, and 196.37(1), (2), 196.49(3), 196.491(3) and Wis. Admin. Code § PSC 112.07(2).

ISSUE 2: THE COMMISSION'S AUTHORITY TO ORDER THAT A PUBLIC UTILITY MOTHBALL OR RETIRE AN ELECTRIC GENERATING UNIT, BASED ON THE EXISTING CAPACITY AND CAPACITY NEEDS OF A MULTI-UTILITY AREA OR THE ENTIRE STATE OF WISCONSIN.

COMMENT: The Commission has the authority to investigate excess capacity on a multi-utility and statewide basis. While the planning and modeling of excess capacity and energy efficiency/replacement options should be considered on a multi-utility, statewide basis, the Commission's authority to order certain excess units out of rate recovery or setting conditions for construction approval will typically be exercised on a utility-specific basis.

ISSUE 4.A: WHAT POLLUTION CONTROLS, IF ANY, ARE ALREADY AT THE UNIT.

COMMENT: Sierra Club believes it is appropriate for the utilities to address this issue. To the extent the utilities' responses are inaccurate or incomplete, Sierra Club reserves the right to provide supplemental comments to correct the record.

ISSUE 4.B: WHAT AIR POLLUTION CONTROLS MUST STILL BE INSTALLED TO COMPLY WITH STATE OR FEDERAL REQUIREMENTS.

COMMENT: To the extent that this question seeks information from the utilities about what current regulations require, Sierra Club believes that it is appropriate to allow the respective utilities to furnish this information.

Generally, however, Sierra Club notes that it is likely that each existing coal-fired unit will require high-efficiency baghouses, scrubbers, selective catalytic reduction (SCR), and activated carbon injection (ACI) equipment—or pollution controls achieving similar reductions-- to meet current regulations and likely future regulations. Those likely future requirements will be addressed in the next comments due on August 9, 2010. Sierra Club notes at this time, however, that the U.S. EPA's schedule for upcoming air pollution regulations is as follows:

EPA United States Environmental Protection Agency

Upcoming Regulations

Action	*Schedule*
SO_2 NAAQS	Final June 2010
Transport Rule	Proposed June 2010/Final June 2011
Ozone NAAQS Reconsideration	Final Aug 2010
Utility Boiler NSPS and MACT	Propose March 2011/Final Nov 2011
Transport Rule II (NO_X)	Propose Summer 2011/Final Summer 2012
PM NAAQS	Propose Feb 2011/Final Oct 2011

Proposed Air Pollution Transport Rule, U.S. EPA, at p. 29 (posted July 6, 2010), available at http://www.epa.gov/airtransport/actions.html#jul10. There are also expected greenhouse gas, coal combustion waste, and water pollution regulations from U.S. EPA.

Sierra Club further notes that there are various Notices of Violations issued by the U.S. EPA to the Wisconsin utilities,[2] Notices of Intent to Sue issued by Sierra Club,[3] and one pending lawsuit filed by Sierra Club[4] alleging violations of the Clean Air Act. If these NOVs and NOIs/lawsuit are carried through to a judgment against the utilities, the violating units will be required to install controls sufficient to meet best available control technology (BACT) and/or lowest achievable emission rates (LAER). BACT may require pollution controls that meet stricter limits than the controls suggested by the utilities to comply with current regulations; however, without a BACT analysis, it is uncertain what pollution controls will be required at each of the units found in violation. Moreover, violating units will be required to obtain a permit and demonstrate compliance with then-effective air quality standards. These include the recently-promulgated stringent 1-hour SO2 and NOx standards and the more stringent fine particulate and carbon monoxide standards expected in the near future.

Under anticipated wastewater disposal rules for coal-fired power plants, certain units may be required to install wastewater treatment systems and/or dry ash handling to comply with Clean Water Act and Resource Conservation and Recovery Act requirements. These anticipated regulations will also be discussed in the second set of comments; however, additional coal waste stream treatment can be expected from some of the units.

Sierra Club respectfully asks the Commission include in its investigation under this question each of the expected costs necessary to continue operating each existing coal-fired unit. Those costs will include, at a minimum, those necessary to comply with U.S. EPA's CAIR replacement, RACT, BART, MACT, 1-hour SO_2, 1-hour NOx, expected new air standards for carbon monoxide, ozone and fine particulates, compliance with water quality standards (including toxics), waste disposal rules, CO_2 regulation and others.

Respectfully submitted this 8th day of July, 2010.

MCGILLIVRAY WESTERBERG & BENDER LLC

[2] *E.g.*, Notice of Violation issued to WPSC., dated Nov. 18, 2009, for violations at Pulliam and Weston power plants (Hr'g Ex. 448, Docket No. 05-CE-138, PSC Ref # 124501); Notice of Violation issued to WPL, MGE and WEPCO, dated Jan. 5, 2010, for violations at Nelson Dewey and Edgewater (Hr'g Ex. 4.15, Docket No. 05-CE-137, PSC Ref # 125652).

[3] *E.g.*, Notice of Intent to Sue to WPL, WPSC, and WEPCO, dated Dec. 1, 2009, for violations at the Edgewater power plant (Hr'g Ex. 4.16, Docket No. 05-CE-137, PSC Ref # 125653).

[4] *Sierra Club v. Dairyland Power Cooperative*, W.D. Wis. Case No. 3:10-cv-303 (filed June 8, 2010).

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Docket No. 05-EI-150

SIERRA CLUB COMMENTS

July 8, 2010

EXHIBIT A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 960

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Progress Energy Carolinas, Inc. for a Certificate of Public Convenience and Necessity to Construct a 950 Megawatt Combined Cycle Natural Gas Fueled Electric Generation Facility in Wayne County Near the City of Goldsboro and Motion for Waiver of Commission Rule R8-61	)	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY SUBJECT TO CONDITIONS

BY THE COMMISSION: On August 18, 2009, Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc. (PEC), filed an application for a certificate of public convenience and necessity to construct a 950-megawatt (MW) combined cycle natural gas-fired electric generating facility at a site (the Lee site) in Wayne County near the City of Goldsboro. PEC presently operates three coal-fired generating units, with a combined generating capacity of 397 MW (hereinafter cited as approximately 400 MW), at the Lee site, and PEC stated that it will cease operation of these units upon completion of the proposed facility. PEC requested waiver of the filing requirements of Commission Rule R8-61.

The application was filed pursuant to G.S. 62-110.1(h), which was recently enacted by the General Assembly effective July 31, 2009. G.S. 62-110.1(h) provides that for applications that come within the scope of that subsection, "the Commission shall render its decision on an application for a certificate within 45 days of the date the application is filed...." On August 24, 2009, the Commission entered an order requesting the Public Staff to investigate the application and to present its findings, conclusions, and recommendations at the Regular Commission Staff Conference of September 21, 2009. This order granted PEC's request for a waiver of the filing requirements in Commission Rule R8-61.

The Attorney General filed notice of intervention on August 25, 2009. On September 3, 2009, EPCOR USA North Carolina, LLC (EPCOR), filed a petition to intervene. PEC filed a motion to deny EPCOR's intervention on September 8, 2009, and EPCOR filed a reply on September 11, 2009. On September 15, 2009, the Carolina Utility Customers Association, Inc. (CUCA), filed a petition to intervene. Both CUCA and EPCOR were allowed to intervene by orders issued on September 18, 2009. EPCOR's motion for limited admission to practice for its out-of-state counsel was allowed by order of the same date.

On September 18, 2009, EPCOR filed Proposed Additional Language to Order Issuing Certificate, asking that any order allowing a certificate in this docket include the additional language set forth in its filing. On September 21, 2009, the Commission issued an order requesting comments on the language proposed by EPCOR, and on

September 25, 2009, such comments were filed by EPCOR, PEC, and the Public Staff.

Meanwhile, the Public Staff presented the application at the Regular Commission Staff Conference (Commission Conference) of September 21, 2009. The Public Staff stated its conclusion that the application meets the requirements of G.S. 62-110.1(h) and recommended that the Commission issue the certificate as requested subject to four conditions set forth hereinafter.

On October 1, 2009, the Commission issued a Notice of Decision stating that a full order with discussions and conclusions regarding all issues would follow.

Based upon the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Section 1 of Session Law 2009-390 was enacted effective July 31, 2009. In Section 1.(a) of Session Law 2009-390, the General Assembly makes several legislative findings, including the following:

> (5) The retirement of coal-fired generating units and installation of generating units that use natural gas as the primary fuel will reduce emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) more than would the installation of sulfur dioxide (SO2) emissions controls on the coal-fired generating units.
> (6) The retirement of coal-fired generating units and installation of generating units that use natural gas as the primary fuel will reduce emissions of carbon dioxide (CO2) and mercury (Hg) significantly more than would the installation of sulfur dioxide (SO2) emissions controls on the coal-fired generating units.
> (7) The retirement of coal-fired generating units that are owned and operated by Progress Energy and located in eastern North Carolina and the installation of generating units that use natural gas as their primary fuel to replace them will reduce emissions of oxides of nitrogen (NOx), sulfur dioxide (SO2), carbon dioxide (CO2), and mercury (Hg) more than would the installation of sulfur dioxide (SO2) emissions controls on the older coal-fired generating units.

2. Section 1.(b) of Session Law 2009-390 adds subsection (h) to G.S. 62-110.1. G.S. 62-110.1(h) provides as follows:

> (h) Notwithstanding any other subsections of this section to the contrary, the Commission shall render its decision on an application for a certificate within 45 days of the date the application is filed if (i) the public utility that has applied for the certificate is subject to the provisions of subsection (e) of G.S. 143-215.107D; (ii) the application involves a request by the public utility to construct a generating unit that uses natural gas as the primary fuel at a specific coal-fired generating site that the public utility owns or operates on July 1, 2009;

(iii) the coal-fired generating units at the site are not operated with flue gas desulfurization devices; (iv) the public utility will permanently cease operations of all of the coal-fired generating units at the site on or before the completion of the generating unit that is the subject of the certificate application; and (v) the installation of the generating unit that uses natural gas as the primary fuel allows the public utility to meet the requirements of subsection (e) of G.S. 143-215.107D. When the public utility applies for a certificate as provided in this subsection, it shall submit to the Commission and the Department of Environment and Natural Resources a revised verified statement required pursuant to subsection (i) of G.S. 62-133.6 and to the Commission an estimate of the costs of construction of the generating unit that uses natural gas as the primary fuel in such detail as the Commission may require. The provisions of G.S. 62-82 and subsection (e) of this section shall not apply to a certificate applied for pursuant to this subsection. The authority granted pursuant to this subsection expires January 1, 2011.

3. PEC is a corporation existing under the laws of the State of North Carolina and is engaged in the business of generating, transmitting, distributing, and selling electric power to the public in its franchised service territory in North Carolina.

4. PEC presently operates three coal-fired electric generating units with a combined generating capacity of approximately 400 MW at its Lee site in Wayne County. None of the Wayne County coal-fired units have any form of flue gas desulfurization device. According to Appendix A of Attachment 1 of its application, PEC operates a total of eighteen coal-fired units at seven electric generating plants in its North Carolina service area.

5. PEC is subject to the Clean Smokestacks Act (CSA). Pursuant to G.S. 143-215.107D(e) of the CSA, beginning in calendar year 2013, PEC must reduce its annual emissions of sulfur dioxide from its North Carolina coal-fired generating units from 100,000 tons to 50,000 tons.

6. On August 18, 2009, PEC filed an application for a certificate of public convenience and necessity to construct a 950-MW combined cycle natural gas-fired electric generating facility at the Lee site. PEC stated in its application that upon completion of the proposed facility, it will permanently cease operation of the three existing coal-fired generating units at the site. The application was filed pursuant to the provisions of G.S. 62-110.1(h).

7. PEC stated in its application that it had initially planned to meet the 2013 CSA requirements by scrubbing approximately 400 MW of its existing uncontrolled coal-fired generation, but that further evaluation led it to consider ceasing operation of the three coal-fired generating units (approximately 400 MW) at its Lee site in Wayne County and replacing them with a natural gas-fired combined cycle unit as a means to meet its 2013 CSA requirements and any potential new environmental regulations.

8. PEC stated in its application that it could replace the coal-fired generating units at the Lee site with two simple cycle combustion turbines (CTs), but that the existing units are used as an intermediate resource and combined cycle (CC) facilities are more efficient and cost-effective than CTs for intermediate load operation. PEC stated that the Lee site can support either a 2x1 CC facility, with a total generating capacity of approximately 650 MW, or a 3x1 CC facility, with a total generating capacity of approximately 950 MW,[1] and that a 3x1 CC facility would produce electricity at a lower levelized busbar cost and would optimize the existing plant's main condenser cooling water supply and transmission infrastructure.

9. The Public Staff recommended that the Commission issue the certificate as requested by PEC subject to the following four conditions:

> 1. Require that the facility be constructed and operated in strict accordance with all applicable laws and regulations, including the provisions of all permits issued by the North Carolina Department of Environment and Natural Resources.
> 2. Require that PEC file with the Commission in this docket a progress report and any revisions in the cost estimates for this facility on an annual basis, with the first such report due no later than one year from the date of issuance of the certificate.
> 3. Require that immediately upon completion and placement into service of the facility, PEC shall permanently cease operation of the three coal-fueled generating units at its Wayne County facility and file with the Commission in this docket a notice that operation of the three coal-fueled generating units has been terminated.
> 4. Clarify that issuance of this certificate does not constitute approval of the final costs associated with the construction of the Lee Facility for ratemaking purposes and this order is without prejudice to the right of any party to take issue with the ratemaking treatment of the final costs in a future proceeding.

10. The Commission concludes that a certificate of public convenience and necessity to construct the proposed 950-MW combined cycle natural gas-fired electric generating facility at the Lee site in Wayne County should be issued subject to the conditions recommended by the Public Staff and subject to a further condition that within 60 days PEC shall submit, for Commission approval following opportunity for comments by parties, a plan to retire additional unscrubbed coal-fired generating capacity reasonably proportionate to the amount of incremental generating capacity authorized by the certificate above 400 MW.

11. EPCOR owns two coal-fired electric generating plants in North Carolina, one in Roxboro and one in Southport. These plants were constructed as qualifying cogeneration facilities (QFs) under the Public Utility Regulatory Policies Act of 1978 (PURPA). PEC has had power purchase agreements as to the plants now owned by EPCOR since they first came online in the late 1980s, but the current agreements

[1] A 2x1 CC facility consists of two CTs connected to two heat recovery steam generators and a steam turbine. A 3x1 CC facility consists of three CTs connected to three heat recovery steam generators and a steam turbine.

expire December 31, 2009. One plant remains a QF, and EPCOR is trying to reestablish the other as a QF. EPCOR is upgrading and refurbishing both plants to burn a blend of biomass, tire-derived fuel, and coal (instead of coal alone) in order to earn renewable energy certificates (RECs). PEC is required to purchase electricity from QFs under PURPA at prices that equal its own avoided costs, and EPCOR has been trying to negotiate new power purchase agreements with PEC. The certificate issued herein is without prejudice to the right of any party to assert its relative rights and obligations under PURPA in any future arbitration or other proceeding relating to the EPCOR plants.

DISCUSSION OF FINDINGS AND CONCLUSIONS

The above findings of fact are based upon matters of record and matters as to which there appears to be no dispute. The conclusions of law are based upon the findings and upon the Commission's assessment of the comments, the arguments, and the applicable law.

The Commission is acting in this docket upon an unverified application with no supporting testimony and the presentations of the Public Staff and PEC at Commission Conference. The Commission asked the Public Staff to investigate the application and to present its findings, conclusions, and recommendations to the Commission. The Public Staff presented this matter at Commission Conference and stated that it believes the application meets the requirements of G.S. 62-110.1(h). The Public Staff stated that it had reviewed the application and had held discussions with PEC to review the cost assumptions and considerations that led to PEC's decision to apply for a certificate to construct the proposed facility, and that it appears that PEC's analysis used methodologies consistent with previous evaluations of generation additions. The Public Staff also stated that it appears, based upon PEC's assumptions, that the estimated cost of the proposed facility is comparable on a per-KW basis to other recent additions of combined cycle units by PEC and Duke Energy Carolinas, LLC (Duke). Finally, the Public Staff stated that, based on its review and discussions with a representative of the Department of Environment and Natural Resources (DENR), if PEC constructs the proposed facility and permanently ceases operation of the coal-fired units at the Lee site, PEC will be able to meet its 2013 CSA requirements.

The Commission finds and concludes that, except for the incremental capacity issue discussed hereinafter, the application filed by PEC comes within the scope of G.S. 62-110.1(h). It appears to be without dispute that PEC is subject to the provisions of the CSA; that PEC has filed an application requesting a certificate to construct generating units that use natural gas as the primary fuel at a site in Wayne County where it owned coal-fired generating units on July 1, 2009; that the existing coal-fired generating units are not operated with flue gas desulfurization devices and will be retired when the proposed facility is completed; and that installation of the proposed facility will allow PEC to meet the requirements of subsection (e) of G.S. 143-215.107D. Acting pursuant to G.S. 62-110.1(h), the Commission made a decision on the application within 45 days after it was filed and issued its Notice of Decision on October 1, 2009. Certain issues have been presented by the application and parties, and these issues are fully discussed in this order.

An initial issue arises from the fact that PEC is planning to retire approximately 400 MW of existing coal-fired generating capacity at the Lee site and to construct 950 MW of new natural gas-fired generation at the site. The Commission is being asked to certificate an amount of new generating capacity over twice the amount being retired. The issue presented is whether the expedited procedures of G.S. 62-110.1(h) may be used to certificate such a significant amount of incremental capacity.

PEC argues that G.S. 62-110.1(h) does not require that the natural gas-fired generation constructed pursuant to that subsection be exactly equal to the amount of coal-fired generation retired. PEC stated both in its application and at Commission Conference that it could replace the 400 MW of existing coal-fired generating units with two simple cycle CTs, each with a generating capacity of 190 MW, but that this would not be the optimum replacement because the existing units are used as an intermediate resource and CC facilities are more efficient and cost-effective than CTs for intermediate load operation. PEC stated that the Lee site can support either a 2x1 CC facility, with a total generating capacity of approximately 650 MW, or a 3x1 CC facility, with a total generating capacity of approximately 950 MW. PEC has estimated that a 3x1 CC facility would produce electricity at a levelized busbar cost of approximately $147/MWh at a 40% capacity factor, compared to $161/MWh for a 2x1 CC facility at a 40% capacity factor. Further, PEC stated that construction of a 3x1 CC facility will optimize the existing plant's main condenser cooling water supply and transmission infrastructure. The Public Staff supports granting the full amount of generating capacity requested. Although PEC's capacity margin will be higher than its target for approximately two years,[2] the Public Staff believes that this "lumpiness" is not unusual and is not excessive under the circumstances. EPCOR, on the other hand, argues that G.S. 62-110.1(h)

> was not intended to create an expedited process for those utilities to substantially increase the capacity at the site without complying with the other requirements of N.C.Gen.Stat. §62-110.1 and Commission Rule R8-61. .... Allowing a public utility to more than double its capacity at the site without the type of scrutiny and public input applied to traditional [certificates of public convenience and necessity] overreaches the limits of the new statute and will lead to unintended consequences.

Preventing the overbuilding of generating capacity is the purpose of the certificate statute. State ex rel. Utilities Comm'n v. High Rock Lake Ass'n, 37 N.C.App. 138, appeal dismissed and rev. denied, 295 N.C. 646 (1978).[3] G.S. 62-110.1(h)

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[2] According to PEC, if it does not use the incremental capacity to close additional coal units, its capacity margin in 2013 is estimated to be 16% and to decline thereafter. PEC's target capacity margin is 11-13%.

[3] As stated in that case,

> [G.S. 62-110.1] was enacted in 1965 to help curb overexpansion of generating facilities beyond the needs of the service area. To this end, the General Assembly used the term "public convenience and necessity" to define the standard to be applied by the Utilities Commission to proposed facilities. In reviewing the Commission's application of the standard in other regulatory actions, the Court has held that public convenience and necessity is based on an "element of public need for the proposed service." State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 270, 148 S.E.2d 100, 110(1966); see also State ex rel. Utilities Comm'n v. Southern Coach Co., 19 N.C. App.

prescribes expedited procedures that limit the way in which the Commission must consider and decide an application for a certificate of public convenience and necessity to construct an electric generating facility coming within the scope of the subsection. This short-lived legislation (it was enacted by the General Assembly effective July 31, 2009, and it will expire on January 1, 2011) provides that the "provisions of G.S. 62-82 and [G.S. 62-110.1(e)] shall not apply to a certificate applied for pursuant to this subsection." One requirement of G.S. 62-110.1(e) is that "no certificate shall be granted unless the Commission has ... made a finding that such construction will be consistent with the Commission's plan for expansion of electric generating capacity." This requirement is eliminated for an application coming within the scope of G.S. 62-110.1(h).[4] G.S. 62-110.1(e) provides that the Commission "shall hold a public hearing on each such application" for a certificate for a new generating facility; G.S. 62-82 provides a different procedure: that the applicant publish notice for four weeks in a daily newspaper local to the site of the proposed facility and that the Commission "upon complaint shall, or upon its own initiative may, upon reasonable notice, enter upon a hearing...."[5] The hearing requirements of G.S. 62-110.1(e) and G.S. 62-82 do not apply if an application comes within the scope of G.S. 62-110.1(h). If an application comes within the scope of G.S. 62-110.1(h), it must be decided within 45 days after it is filed, and the 45-day time limit allows for little in the way of a hearing.

> 597, 199 S.E. 2d 731 (1973), cert. den., 284 N.C. 623, 201 S.E. 2d 693 (1974); State ex rel. Utilities Comm'n v. Queen City Coach Co., 4 N.C. App. 116, 166 S.E.2d 441 (1969). Moreover in 1975, an "act to establish an expansion policy for electric utility plants in North Carolina, to promote greater efficiency in the use of all existing plants, and to reduce electricity costs by requiring greater conservation of electricity" was enacted by the General Assembly, 1975 Sess. Laws Ch. 780. This act, codified as G.S. 62-110.1(c)-(f), directs the Utilities Commission to consider the present and future needs for power in the area, the extent, size, mix and location of the utility's plants, arrangements for pooling or purchasing power, and the construction costs of the project before granting a certificate of public convenience and necessity for a new facility. From these statutes and the case law, it is clear that the purpose of requiring a certificate of public convenience and necessity before a generating facility can be built is to prevent costly overbuilding.

37 N.C.App. at 140-1.

[4] Eliminating this requirement is particularly significant here. PEC proposes approximately 550 MW of new, incremental generating capacity to come online in 2013, but no such block of new generating capacity has appeared in any PEC Integrated Resource Plan (IRP) until PEC recently filed its 2009 IRP update on September 1, 2009, in Docket No. E-100, Sub 124, which reflects the current proposal. PEC seeks to justify the proposed 550 MW of incremental generating capacity on the basis of economies of scale: the cost of building a 3x1 CC facility of 950 MW compares favorably to the cost of building a 2x1 CC facility of 650 MW and a 3x1 CC facility would optimize the existing support facilities. However, the Commission has stated in two recent orders that economies of scale, standing alone, cannot be used to establish need for new generation. Order Granting Certificate of Public Convenience and Necessity with Conditions, issued March 21, 2007, in Docket No. E-7, Sub 790 (the Cliffside order) ("a similar argument could be made for almost any construction project. Economies of scale, in and of themselves, do not establish a need for the capacity, and the need for the capacity is the Commission's initial consideration under G.S. 62-110.1.") and Order on Advance Notice and Joint Petition for Declaratory Ruling issued March 30, 2009, in Docket No. E-7, Sub 858 (the Orangeburg order).

[5] In practice, the Commission usually follows G.S. 62-110.1(e) and holds a hearing for each generation certificate application filed by a public utility. In this case, even if G.S. 62-82 had been followed, EPCOR's filing would have prompted the Commission to schedule a hearing.

These expedited procedures in G.S. 62-110.1(h) are understandable where the new generating facility is replacing the same (or approximately the same) amount of existing generating capacity that is being retired, since the retirement essentially establishes the need for the new capacity. One key legislative finding indicates that the General Assembly considered this in enacting G.S. 62-110.1(h).[6] Other legislative findings speak to meeting the requirements of the CSA and reducing emissions of nitrogen oxides, sulfur dioxide, carbon dioxide, and mercury. PEC argued at Commission Conference that G.S. 62-110.1(h) "was designed to facilitate compliance with the Clean Smokestacks Act and to reduce emissions of carbon dioxide." The retirement of the 400 MW of coal-fired generating capacity at the Lee site facilitates these purposes; the construction of 550 MW of incremental generating capacity does not facilitate compliance with the CSA and it does not reduce emissions except as it would allow PEC to retire additional coal-fired generation.

The Commission concludes that the appropriate interpretation of Section 1 of Session Law 2009-390 is that the expedited procedures in G.S. 62-110.1(h) should be used to certificate new capacity reasonably proportionate to the capacity retired. This does not mean a strict one-for-one match, since electric generating capacity is never as exact as that, but it does mean that any new generating capacity certificated pursuant G.S. 62-110.1(h) should be in reasonable proportion to the generating capacity retired. This interpretation might lead to a conclusion that, to the extent PEC's application seeks a certificate for significantly more incremental generating capacity than the 400 MW being retired, standard certificate procedures should be followed as to the incremental capacity. However, the Commission believes that a more appropriate course of action is to allow a certificate for the full amount of generating capacity requested, but to condition the certificate upon PEC's retiring additional unscrubbed coal-fired capacity reasonably proportionate to the amount of incremental gas-fired capacity authorized by this certificate above 400 MW. This course of action serves the spirit of Section 1 of Session Law 2009-390 to replace coal-fired generation with cleaner gas-fired generation; it enables PEC to meet the 2013 CSA requirements; it accommodates the economies of scale claimed by PEC while also addressing the issue of overbuilding generating capacity; and it achieves even greater retirement of unscrubbed coal-fired plants with attendant benefits.[7]

Such a condition is suggested by PEC's own statements in its application and at Commission Conference. In its application, PEC states, "This incremental capacity [i.e., the 550 MW of capacity above that being retired at the Lee site] may be used for a number of purposes including the replacement and closure of some of the remaining older coal units owned by PEC in North Carolina that do not have any SO2 controls."[8] In

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[6] Section 1.(a)(7) of Session Law 2009-390 speaks to retiring coal-fired units and installing gas-fired units "to replace them."

[7] Note that the Commission recently required Duke to retire old coal-fired generation in connection with issuance of certificates for new generating capacity. Duke is being required to retire 198 MW of coal-fired generation (plus up to another 825 MW to match load reductions from DSM and EE "on a MW-for-MW basis") in connection with its March 2007 Cliffside certificate in Docket No. E-7, Sub 790 (and DENR required additional retirements in connection with its air permit), and Duke is being required to retire 247 MW of coal-fired generation in connection with its June 2008 certificates for the Buck and Dan River combined cycle projects in Docket No. E-7, Subs 791 and 832.

[8] PEC also stated in its application that the incremental capacity could be used to meet load growth and defer other generation additions and/or to displace coal-fired generation from time to time, depending

the economic analysis attached to the application, PEC states that the 550 MW of proposed incremental capacity "may be used to replace other existing uncontrolled coal units...." At Commission Conference, PEC's counsel stated that "we are in all probability going to be faced with shutting down the remaining under-controlled units." With respect to one of these unscrubbed coal-fired plants, PEC's counsel stated that if the plant is not retired "within the next several number of years, we will be faced with having to either go to dry ash storage for the ash produced by that plant or build another ash pond." The Commission believes that it is appropriate to follow up on these statements and to require that PEC focus on such additional retirements.

PEC's existing unscrubbed coal-fired generating units vary greatly as to their generating capacities and locations with respect to load and transmission facilities. As previously stated, the Commission recognizes that PEC cannot achieve a strict one-for-one match of additional retirements with the incremental capacity being certificated, and the Commission does not require an exact match. Many factors must necessarily be considered and, as always, reliability must be maintained. Only PEC has the knowledge of its system and the expertise as to these considerations. The Commission will allow PEC time and flexibility in submitting a plan for additional retirements and will approve the plan by further order following opportunity for comments by the parties.

A second issue was raised by intervenor EPCOR. EPCOR owns two electric generating plants in North Carolina, one in Roxboro and one in Southport.[9] These coal-fired plants were constructed as QFs under PURPA. Certificates of public convenience and necessity for construction of the plants were issued by the Commission in 1985. EPCOR states that it is now in the process of spending about $79 million to upgrade and refurbish the plants to burn a blend of biomass, tire-derived fuel, and coal (instead of coal alone). This upgrade is intended to allow the plants to earn RECs, and EPCOR plans to register the plants as new renewable energy facilities. PEC is required to purchase electricity from QFs under PURPA at prices that equal its own avoided costs, and PEC has had power purchase agreements with the plants now owned by EPCOR since they first came online in the 1980s. The current agreements expire December 31, 2009. EPCOR has been trying to negotiate new power purchase agreements with PEC, but EPCOR claims that PEC recently told it that capacity from the Roxboro and Southport plants is no longer "desirable" due to PEC's internal resource planning and reductions in demand projections.[10]

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upon the relative fuel costs. As discussed below, EPCOR fears that the incremental capacity will be used to displace QF capacity.

[9] EPCOR asserts that the Roxboro facility was originally a 56-MW coal-fired cogeneration plant that began operating in August 1987. It produced both electricity and steam, which gave it QF status under PURPA. The steam was originally sold to Collins & Aikman, but that facility closed, and the Roxboro plant lost its QF status. EPCOR is working to re-establish the Roxboro plant as a QF in 2010 based on its being refurbished to burn biomass and tire-derived fuel in addition to coal. EPCOR asserts that the Southport facility was originally a 112-MW coal-fired cogeneration plant that also began operating in August 1987. This facility continues to supply steam to Archer Daniels Midland, and its QF status remains intact.

[10] The Commission takes notice of PEC's recent IRP filings. PEC's 2008 IRP in Docket No. E-100, Sub 118, shows the Roxboro plant as an intermediate resource with 56 MW of summer capacity and the Southport plant as an intermediate resource with 103 MW of summer capacity. It states that the power purchase agreements for both plants expire at the end of 2009, but are "assumed to extend beyond expiration date in Resource Plan." See page C-1. PEC's 2008 IRP shows 179 MW of NUG QF – Cogen for years 2009 through 2023. Table 1 on page 18. In its 2009 IRP update in Docket No. E-100, Sub 124,

EPCOR is concerned that if the Commission grants the certificate as requested herein, PEC will assert that the avoided cost prices it must pay QFs such as EPCOR should be greatly reduced because it has more capacity than it needs. In order to address its concern, EPCOR proposes that any order allowing a certificate as requested by PEC include language as follows:

> That the issuance of this Certificate and the construction of the facility allowed hereby shall not interfere with or be used or cited to minimize, negate, diminish, or otherwise affect PEC's obligations or opportunities to purchase power and capacity from Renewable energy facilities or Qualifying Facilities in accordance with provisions of North Carolina Senate Bill 3 and the rules promulgated pursuant thereto, Section 210 of the Public Utility Regulatory Policies Act of 1978 and the rules promulgated pursuant thereto, the Commission's avoided cost orders, or any future federal renewable energy portfolio standards, nor shall it be used or cited to alter PEC's obligations under Section 210 of the Public Utility Regulatory Policies Act of 1978 or the Commission's avoided cost orders to freely and openly negotiate with qualifying facilities not eligible for standard avoided cost rates.

The Public Staff commented that it does not object to the inclusion of language in the Commission's order to the effect that the granting of the certificate and construction of the proposed facility is without prejudice to the right of any party to assert its relative rights and obligations under PURPA in any future arbitration or other proceeding. PEC interprets EPCOR's proposed language as "asking the Commission to pretend 550 MWs of generating capacity associated with PEC's proposed 950 MW natural gas fired generating facility does not exist when determining the avoided cost capacity rates PEC should pay EPCOR." PEC believes that EPCOR is asking the Commission "to assume that PEC has a capacity need when it does not."

The Commission does not read EPCOR's proposed language as PEC reads it. The Commission reads EPCOR's language as requiring only that the parties adhere to the obligations of PURPA and the Commission's avoided cost orders. As thus interpreted, the Commission approves such language. Avoided cost decisions specific to EPCOR's situation cannot be made in this docket. Such decisions must be made either through negotiations of the parties or in a future Commission proceeding, and the present decision is without prejudice to such decisions. The Commission urges the parties to renew their efforts to reach a negotiated agreement.

In summary, the Commission concludes that the public convenience and necessity require the construction of the facility as proposed in the application subject to (1) the four conditions proposed by the Public Staff and (2) a condition that Progress submit, for Commission approval following an opportunity for comments by parties, a plan to retire additional unscrubbed coal-fired capacity reasonably proportionate to the

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PEC shows the Roxboro and Southport power purchase agreements as simply expiring at the end of 2009, and there is no NUG QF – Cogen power listed for years 2010 through 2024. See the Firm Wholesale Purchased Power Contracts listed on page C-1 and Table 1 on page 22.

amount of incremental gas-fired capacity authorized by this certificate above 400 MW.

IT IS, THEREFORE, ORDERED as follows:

1. That PEC's application for a certificate of public convenience and necessity to construct a 950-MW combined cycle natural gas-fired electric generating facility in Wayne County near the City of Goldsboro is hereby approved and that this order shall constitute the certificate;

2. That the facility certificated in this order shall be constructed and operated in strict accordance with all applicable laws and regulations, including the provisions of all permits issued by the DENR;

3. That PEC shall file with the Commission in this docket a progress report and any revisions in the cost estimates for this facility on an annual basis, with the first such report due no later than one year from the date of this order;

4. That immediately upon completion of the facility, PEC shall permanently cease operation of the three coal-fired generating units at its Wayne County facility and shall file with the Commission in this docket a notice that operation of the three coal-fired generating units has been terminated;

5. That issuance of this order does not constitute approval of the final costs associated with the construction of the facility for ratemaking purposes and this order is without prejudice to the right of any party to take issue with the ratemaking treatment of the final costs in a future proceeding; and

6. That within 60 days PEC shall submit, for Commission approval after opportunity for comments by parties, a plan to retire additional unscrubbed coal-fired generating capacity reasonably proportionate to the amount of incremental generating capacity authorized by the certificate above 400 MW.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of October, 2009.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

Commissioners Bryan E. Beatty and ToNola D. Brown-Bland did not participate.

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