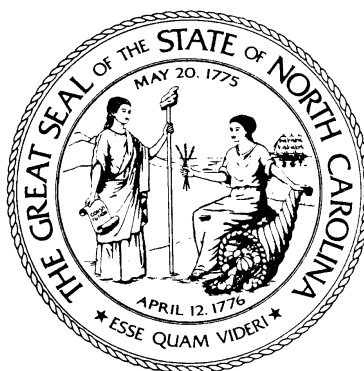


**REPORT OF THE
NORTH CAROLINA UTILITIES COMMISSION
TO
THE JOINT LEGISLATIVE
UTILITY REVIEW COMMITTEE**

REGARDING

**FUEL AND FUEL-RELATED CHARGE ADJUSTMENT
PROCEEDINGS FOR ELECTRIC UTILITIES
(Pursuant To G.S. 62-133.2)**



July 2009

July 1, 2009

Senator David W. Hoyle, Co-Chairman
Joint Legislative Utility Review Committee
300-A Legislative Office Building
Raleigh, North Carolina 27601-2808

Dear Senator Hoyle:

The Utilities Commission hereby presents for your consideration its 2009 Report to the Joint Legislative Utility Review Committee regarding fuel and fuel-related charge adjustment proceedings for electric utilities. Copies are being distributed to each current member of the Committee from the Senate and copies will be provided to members of the Committee from the House when such appointments are announced.

This report is being provided pursuant to the provisions of G.S. 62-133.2(g). Subsection (g) requires the Utilities Commission to provide biennial reports summarizing the procedures conducted pursuant to G.S. 62-133.2, which is the statute providing for fuel and fuel-related charge adjustments for electric utilities. In this report, the Utilities Commission summarizes the five proceedings conducted under this statute during the preceding two years.

Sincerely,

Edward S. Finley, Jr., Chairman

ESFjr/GTS/mmr

cc: Members of the JLURC
Steven J. Rose, Committee Counsel
Heather Fennell, Assistant Committee Counsel
Mariah Matheson, Research Assistant
Progress Energy Carolinas, Inc.
Duke Energy Carolinas, LLC
Dominion North Carolina Power
Robert P. Gruber, Executive Director, Public Staff
The Honorable Roy Cooper, Attorney General
Carolina Utility Customers Association, Inc.
Carolina Industrial Group for Fair Utility Rates
NC State Publications Clearinghouse
State Environmental Review Clearinghouse

INTRODUCTION

This report is being provided to the Joint Legislative Utility Review Committee pursuant to the provisions of G.S. 62-133.2(g), which requires the Utilities Commission (Commission) to provide reports on July 1 of every odd-numbered year summarizing the proceedings conducted during the preceding two years pursuant to G.S. 62-133.2, the statute providing for fuel and fuel-related charge adjustments for electric utilities.

G.S. 62-133.2 provides for two types of rate adjustments: fuel and fuel-related charge adjustments and “true-ups.” Both types of adjustments take place in the context of a single hearing, but they are separate and distinct, and it is important to distinguish between them. A fuel and fuel-related charge adjustment is a prospective adjustment to the fuel cost component of electric rates (the fuel factor) designed to account for changes in the cost of fuel and certain fuel-related cost items as set in the electric company’s last general rate case (the base fuel factor). This adjustment is based on pro forma data and utilizes an historical 12-month test period. The test period data are used as a guide to what these fuel and fuel-related costs will be in the future. No matter how carefully this adjustment is set, it will never perfectly match the costs that the utility actually incurs in the future, and that is why a “true-up” is allowed. The “true-up” looks at data to determine whether the reasonable fuel and fuel-related expenses prudently incurred by the utility were more or less than what had been provided for in the rates collected during that period. A “true-up” is an adjustment to rates by which under-recovered fuel and fuel-related costs are collected by the utility or over-recovered fuel and fuel-related costs are returned to customers. The “true-up” adjustment is referred to as an experience modification factor (or EMF) rider.

Fuel charge adjustments first began in North Carolina during the 1970s, when the price of fuel was escalating rapidly as a result of the Arab oil embargo. The Commission first used its traditional ratemaking powers to establish formulas under which fuel charge factors were added to customers’ bills each month based upon ongoing changes in the cost of fuel. This procedure was challenged in court and was upheld by the Supreme Court in 1976. Meanwhile, in 1975, the General Assembly amended G.S. 62-134 in order to provide a statutory basis for fuel charge adjustment proceedings. In 1982, based upon the recommendation of the Utility Review Committee (the predecessor of the Joint Legislative Utility Review Committee), the General Assembly repealed the fuel charge adjustment provisions of G.S. 62-134(e) and enacted the predecessor of the present fuel charge adjustment statute, G.S. 62-133.2. Under this statute, fuel charge adjustment proceedings are held once each year for each electric utility that generates electricity by fossil or nuclear fuels to determine whether the fuel and fuel-related cost component of electric rates should be adjusted up (increment rider) or down (decrement rider).

“True-ups” were first introduced in 1985. In a fuel charge adjustment proceeding for Carolina Power & Light Company, the Commission added an “experience modification factor” to rates in order to allow CP&L to recover a portion of its previously

under-recovered fuel expense. This Order was challenged in court, and in 1987 the Court of Appeals held that G.S. 62-133.2, as then written, did not authorize such a “true-up.” On July 24, 1987, the General Assembly amended G.S. 62-133.2 to provide explicitly for “true-ups.”

By this same 1987 legislation, the General Assembly provided for repeal of the entire fuel charge adjustment statute in 1989. In 1989, the General Assembly extended the sunset date until 1991. In 1991, the General Assembly extended the sunset date until 1997 and provided for the Commission to report every two years to the Joint Legislative Utility Review Committee “summarizing the procedures conducted pursuant to G.S. 62-133.2 during the preceding two years and recommending whether this section should be continued, repealed, or amended.” In 1995, the General Assembly removed the sunset provision altogether and eliminated the requirement that the Commission recommend in its reports whether G.S. 62-133.2 should be continued, repealed, or amended.

On August 20, 2007, Session Law 2007-397 (Senate Bill 3) was signed into law. This comprehensive legislation, among other things, established a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) for North Carolina and provided for REPS cost recovery through a rate rider; provided for cost recovery of demand-side management and energy efficiency expenditures through a separate rate rider; and amended the fuel charge adjustment statute. Originally, the fuel charge adjustment statute, G.S. 62-133.2, provided for a uniform rider to reflect actual changes in the utility’s cost of fuel and in the fuel cost component of the electric utility’s purchased power. Senate Bill 3 amended G.S. 62-133.2 to remove the requirement that fuel and fuel-related costs be recovered by a rider that is uniform as to all customer classes. Senate Bill 3 also amended G.S. 62-133.2 to allow electric utilities to recover additional costs through the annual fuel charge adjustment. The fuel and fuel-related costs that are now recoverable under G.S. 62-133.2 are:

- The cost of fuel burned;
- The cost of fuel transportation;
- The cost of ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating emissions (reagents);
- The total delivered non-capacity related costs, including all related transmission charges, of all purchases of electric power by the electric public utility, that are subject to economic dispatch or economic curtailment;
- The capacity costs associated with all purchases of electric power from qualifying cogeneration facilities and qualifying small power production facilities that are subject to economic dispatch;
- Except for those costs recovered pursuant to the REPS rate rider, the total delivered costs of purchases of power from renewable energy facilities and new renewable energy facilities pursuant to the REPS requirement or any similar federal requirement; and
- The fuel cost component of other purchased power.

These amendments to G.S. 62-133.2 became effective as of January 1, 2008; they apply to the costs of reagents incurred on and after August 20, 2007, and to other fuel and fuel-related costs incurred on and after January 1, 2008.

SUMMARY OF FUEL CHARGE ADJUSTMENT PROCEEDINGS

Before summarizing the individual proceedings conducted pursuant to G.S. 62-133.2 during the preceding two years, the Commission will provide a brief background on the way the statute is administered.

The statute applies to Duke Power Company LLC d/b/a Duke Energy Carolinas, LLC, a subsidiary of Duke Energy Corporation (Duke); Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., a subsidiary of Progress Energy, Inc. (PEC); and Virginia Electric and Power Company d/b/a Dominion North Carolina Power, a subsidiary of Dominion Resources, Inc. (Dominion NC Power). The Commission, following lengthy rulemaking proceedings, adopted Commission Rule R8-55 to implement the statute. A copy of this Rule is attached to this report as Appendix A. The rule establishes a date certain for each company's annual fuel charge adjustment hearing. The hearing for Duke is held on the first Tuesday of June of each year, the hearing for PEC is held on the third Tuesday of September of each year, and the hearing for Dominion NC Power is held on the second Tuesday of November of each year. If a company has a general rate case hearing scheduled close to the date for its annual fuel and fuel-related charge adjustment hearing, the two hearings may be consolidated. However, the issues in the fuel and fuel-related charge adjustment proceeding will be decided separately from the issues in the general rate case. Rule R8-55 establishes a test period for each company that is uniform from year to year. The test period for Duke is the calendar year, the test period for PEC is the 12-month period ending March 31, and the test period for Dominion NC Power is the 12-month period ending June 30.

The burden of proof is on the utility to show that its fuel and fuel-related costs were reasonable and prudently incurred. As previously noted, fuel charge adjustments were originally prompted by fluctuating fuel prices resulting from the Arab oil embargo. More recent fluctuations in fuel expenses have generally been due to the availability of nuclear generating units, a heavier reliance on generating units using fossil fuels to serve the growth in electric load even when all existing nuclear generating units perform at high capacity factors and, most recently, increased fossil fuel costs. The cost of nuclear fuel is far less than the cost of coal and other fossil fuels, and the level of total fuel expense is, therefore, significantly affected by how well a utility's nuclear power plants operate. Thus, the capacity factors for nuclear plants are important considerations in fuel charge adjustment proceedings. Appropriate nuclear capacity factors are crucial both in setting rates for the future and in determining the amount of the "true-up." Only "reasonable fuel and fuel-related costs prudently incurred" are trued-up, and the Commission uses nuclear capacity factors as indications of management efficiency and prudence. In that regard, Rule R8-55(k) specifically provides:

The burden of proof as to the correctness and reasonableness of any charge and as to whether the test year fuel expenses were reasonable and prudently incurred shall be on the utility. For purposes of determining the EMF rider, a utility must achieve either (a) an actual systemwide nuclear capacity factor in the test year that is at least equal to the national average capacity factor for nuclear production facilities based on the most recent 5-year period available as reflected in the most recent North American Electric Reliability Council's Equipment Availability Report, appropriately weighted for size and type of plant or (b) an average systemwide nuclear capacity factor, based on a two-year simple average of the systemwide capacity factors actually experienced in the test year and the preceding year, that is at least equal to the national average capacity factor for nuclear production facilities based on the most recent 5-year period available as reflected in the most recent North American Electric Reliability Council's Equipment Availability Report, appropriately weighted for size and type of plant, or a presumption will be created that the utility incurred the increased fuel expense resulting therefrom imprudently and that disallowance thereof is appropriate. The utility shall have the opportunity to rebut this presumption at the hearing and to prove that its test year fuel costs were reasonable and prudently incurred. To the extent that the utility rebuts the presumption by the preponderance of the evidence, no disallowance will result.

While nuclear capacity factors remain an important consideration in fuel charge adjustment proceedings, nuclear plant performance has improved and the nuclear capacity factors have tended to stabilize over the years. However, the existing nuclear units are not capable of generating enough electric energy to meet the total demand for electric energy, even at the highest possible levels of performance. Since the demand for electric energy in North Carolina has grown, the reliance on generating units using more expensive fossil fuels to produce additional energy has also increased, and this is another factor that has contributed to higher fuel expenses and fuel factors. Finally, in more recent years, the unit prices of fossil fuels have increased, which has also impacted utility fuel costs.

The following sections of this report present a summary of each of the five fuel and fuel-related charge adjustment proceedings conducted during the preceding two years in chronological order.¹ Following the summaries, a table showing summary

¹ The implementation of Senate Bill 3 resulted in a one-time schedule change and resulted in five, rather than six, such proceedings being conducted during the preceding two years.

information for each of these five fuel and fuel-related charge adjustment proceedings is also attached.

1. PEC - Docket No. E-2, Sub 903

This fuel charge adjustment proceeding for PEC employed a 12-month test period of the year-ending March 31, 2007. PEC filed its Application and testimony on June 8, 2007. The evidentiary hearing was held on August 7, 2007, and the Commission issued its Order in this matter on September 25, 2007.

In its Application and pre-filed testimony and exhibits, PEC requested approval of an increment of 1.011¢^2 per kWh to the base fuel factor of 1.276¢ per kWh approved in PEC's last general rate case in 1988, or a requested fuel factor of 2.287¢ per kWh. PEC also requested approval of an EMF increment of 0.388¢ per kWh to collect approximately \$144.4 million of under-recovered fuel costs. Therefore, the total fuel factor requested by PEC, including the EMF, equaled 2.675¢ per kWh. PEC submitted that its request in this proceeding was consistent with the provisions of a Settlement Agreement and the Commission's Order approving that Settlement Agreement in its prior fuel charge adjustment proceeding, Docket No. E-2, Sub 889.

By way of background, in PEC's prior fuel charge adjustment proceeding, PEC originally requested a fuel charge adjustment that would have resulted in an increase of over \$8.00 per month for a typical residential customer. After its investigation, the Public Staff determined that PEC was entitled to such an increase. In addition, the Public Staff stated in its testimony in that case that by the time the fuel factor approved in that proceeding would be placed into effect, the under-recovery of PEC's fuel costs was expected to be in excess of \$300 million. As a result, PEC, the Public Staff, and another party to that proceeding entered into a Settlement Agreement that was designed to phase-in the rate increase to which PEC was entitled under G.S. 62-133.2 and moderate the impact of the increase in the fuel factors necessary to recover PEC's fuel costs over the next three years. The proposed Settlement Agreement set forth the total fuel factors, including the EMF, to be effective for PEC's next three fuel cases as: 2.550¢ per kWh, effective October 1, 2006; 2.675¢ per kWh, effective October 1, 2007; and 2.750¢ per kWh effective October 1, 2008. The proposed Settlement Agreement also contemplated that the fuel factor would be equal to the total fuel factor minus the EMF. In addition, PEC would also be allowed to charge and collect interest on an amount equal to the under-recovery resulting from a total fuel factor or 2.550¢ per kWh, rather than the total fuel factor to which it was entitled, according to the evidence in that proceeding. In its Order in that prior proceeding, the Commission concluded that the Settlement Agreement offered a fair and reasonable method to phase-in the fuel factor to which PEC was entitled, addressed recovery of the large fuel cost under-recovery that was expected to occur, and mitigated the sudden rate impact to PEC's customers of the drastically increasing cost of coal and natural gas. In approving the Settlement Agreement, the Commission set the total fuel factor that PEC should be allowed to charge for the following three years. However, the Commission also noted in the Order

² This and all subsequent fuel factors and EMFs exclude gross receipts tax and the regulatory fee.

that it would conduct a prudence review of PEC's test year fuel costs in each year, as required by law, and decide whether the fuel factors set forth in the Settlement Agreement continued to be appropriate based upon the evidence in those proceedings.

As noted above, PEC recommended a total fuel factor in this proceeding equal to 2.675¢ per kWh and this total fuel factor was to become effective October 1, 2007, consistent with the provisions of Settlement Agreement approved by the Commission in the prior fuel case. As also contemplated by the Settlement Agreement, the total fuel factor of 2.675¢ per kWh, less the 0.388¢ per kWh EMF increment derived by PEC, resulted in a requested fuel factor in this proceeding equal to 2.287¢ per kWh.

In support of the reasonableness of the requested 2.287¢ per kWh fuel factor, PEC furnished evidence that showed the calculation of a higher fuel factor equal to 2.339¢ per kWh using data from the historical test period. Such data was normalized in a manner consistent with that used in previous fuel cases. For example, the 2.339¢ per kWh fuel factor was based on normalized capacity factors for PEC's nuclear units using the national average capacity factors for nuclear production facilities over the most recent five years as reflected in the North American Electric Reliability Council's (NERC) Equipment Reliability Report, in accordance with Commission Rule R8-55(i). The normalized nuclear capacity factor for PEC's nuclear units equaled 87.51% using this data. In comparison, PEC achieved an actual system nuclear capacity factor of 91.84% during the test period. The higher 2.339¢ per kWh fuel factor was also based on normalization adjustments to unit fuel prices for coal, nuclear, oil, and natural gas, and to test period kWh sales and generation to account for customer growth and weather. To further support the requested 2.287¢ per kWh, PEC provided additional evidence that showed the calculation of a 2.358¢ per kWh fuel factor based on forecasted nuclear generation performance, kWh sales, and fuel costs during the period that the fuel factor established in this proceeding would be in effect. More specifically, the 2.358¢ per kWh fuel factor was derived by dividing the system projected fuel expense of \$1,360,890,437 by the system projected kWh sales level of 57,703,629,000 kWhs. After conducting its investigation, the Public Staff filed testimony in which it agreed that PEC would be entitled to a fuel factor equal to 2.358¢ per kWh absent the Settlement Agreement.

Further, no other party presented any evidence regarding PEC's forecasted fuel costs during the period that the rate set in this proceeding would be in effect, nor challenged the forecasted fuel factor. Therefore, the Commission concluded that, in the absence of the Settlement Agreement approved in PEC's prior fuel case, PEC would be entitled to a fuel factor of 2.358¢ per kWh based upon the evidence in this proceeding and pursuant to the provisions of G.S. 62-133.2.

PEC's requested EMF increment of 0.388¢ per kWh was calculated by dividing \$144,378,411 of under-recovered fuel cost by the projected NC retail kWh sales of 37,240,057,920 kWhs. PEC testified that the under-recovered fuel cost of \$144,378,411 consisted of three components.

The first component was the test period under-recovery of \$135,824,352.

The second component consisted of an adjustment of \$147,484 added to the test period under-recovered fuel cost for the following reasons. Prior to the enactment of Senate Bill 3, G.S. 62-133.2(d) required that purchased power-related costs recovered through fuel charge adjustment proceedings be limited to the fuel cost component of these purchases. During the test period, PEC purchased power from a number of power marketers and other suppliers that were unwilling or unable to provide PEC with the actual fuel costs associated with such power purchases. PEC's calculation of its test period under-recovered fuel costs used 50% of the energy costs of such purchases as the fuel costs. PEC added \$147,484 to the test period under-recovered fuel costs to increase the fuel-to-energy ratio from 50% to 58%. In its pre-filed testimony, the Public Staff also recommended that the Commission use a 58% ratio to determine the fuel costs of such purchases. To develop the 58% ratio, the Public Staff performed an analysis of the fuel-to-energy cost ratio for the off-system sales made by PEC and Duke for the 12-months ending December 31, 2006. The Public Staff testimony explained that it was reasonable to utilize the fuel-to-energy cost ratio for the sales made by these utilities to determine the proxy fuel costs of such purchases because the sales made by power marketers and other suppliers utilize the same types of generation resources that are utilized by PEC and Duke. The Public Staff also noted that such an analysis was the underlying support for stipulations (Marketer Stipulations) between the utilities and certain parties which addressed this issue in earlier proceedings and had been accepted by the Commission as reasonable in each fuel case since the beginning of 1997. No party elicited evidence suggesting that the 58% ratio was unreasonable, and the Commission approved the use of the 58% ratio to determine the fuel costs of such purchases during the test period.

The third component included by PEC in its total under-recovered fuel costs was \$8,406,575 of interest. PEC's methodology to calculate this amount of interest was consistent with its interpretation of a provision regarding interest in a Settlement Agreement approved by the Commission in an earlier fuel charge adjustment proceeding, Docket No. E-2, Sub 868. The Public Staff testimony agreed with PEC that it was appropriate to include interest in the under-recovered fuel cost and in the determination of the EMF to be approved for PEC in this proceeding to enable PEC to begin collecting interest that had accrued. However, the Public Staff calculated that the appropriate amount of interest was equal to \$8,217,000. This was the only contested issue in this proceeding. Based upon its interpretation of the provision regarding interest in the Settlement Agreement as well as the evidence in this proceeding, the Commission found and concluded that the appropriate amount of interest to include in the test period fuel cost under-recovery was \$8,217,000. This amount of interest was added to the test period under-recovery equal to \$135,824,352 and the purchased power fuel cost adjustment equal to \$147,484 and resulted in a total under-recovery of fuel costs equal to \$144,188,836.

In its Order, the Commission concluded that PEC's fuel procurement and power purchasing practices were fair and reasonable during the test period. The Commission found that the total amount of under-recovered fuel costs that PEC should be allowed to

recover for purposes of this proceeding was \$144,188,836. This amount was divided by PEC's projected NC retail kWh sales of 37,240,057,920 kWhs to produce an EMF increment rate rider equal to 0.387¢ per kWh. In addition, the Commission also found that the appropriate fuel factor was 2.288¢ per kWh. This fuel factor was determined by subtracting the 0.387¢ per kWh EMF from the 2.675¢ per kWh total fuel factor as contemplated in the Settlement Agreement and the Commission's Order in Docket No. E-2, Sub 889. Therefore, the Commission required PEC to establish the 0.387¢ per kWh EMF increment and the 2.288¢ per kWh fuel factor in its rates for the twelve month period beginning October 1, 2007.

The result of the Commission's decision and Order in this proceeding was an increase of approximately \$48 million in revenue on an annual basis and a net rate increase of \$1.30 per month for a typical residential customer using 1,000 kWh per month.

2. Dominion NC Power – Docket No. E-22, Sub 444

This fuel charge adjustment proceeding for Dominion NC Power utilized the 12-month test period consisting of the year ending June 30, 2007. The Application and supporting testimony and exhibits were filed on September 14, 2007. The evidentiary hearing was held on November 8, 2007. At the hearing, the pre-filed testimony and exhibits of the Company, the Public Staff, and another intervenor representing a large industrial customer, were admitted into the record and all the parties waived cross-examination. The Commission issued its Order on December 20, 2007.

In its Application and testimony, Dominion NC Power requested approval of an increment of 0.429¢ per kWh to the base fuel factor of 1.647¢ per kWh approved in the Company's most recent general rate case in 2005, or a requested fuel factor equal to 2.076¢ per kWh. The requested fuel factor was calculated using an adjusted test period system fuel expense of \$1,719,504,873 by the adjusted test period system sales of 82,809,227 MWh. The requested fuel factor was also based on a 93.60% nuclear capacity factor, which was the expected nuclear capacity factor for the period that the rates established in this proceeding would be in effect. During the test year, Dominion NC Power achieved a system nuclear capacity factor of 93.75%, which exceeded the most recent NERC five-year average nuclear capacity factor for pressurized water reactor units of 87.68%. Normalization adjustments were also made to test period data for weather, usage, customer growth, and fuel prices. No party expressed any opposition to the fuel factor proposed by the Company and, based upon the evidence in this proceeding, the Commission approved a fuel factor of 2.076¢ per kWh in its Order. The Commission also found that Dominion NC Power's fuel procurement and power purchasing practices were reasonable and prudent during the test period.

Dominion NC Power also requested approval of an EMF increment rate rider of 0.079¢ per kWh to collect \$3,343,462 of under-recovered fuel costs during the test period. For the purpose of determining the amount of the under-recovered fuel costs, the Company used a 58% fuel-to-energy cost ratio to determine the fuel costs of

purchases from power marketers and other suppliers that did not provide the actual fuel costs associated with such purchases. The 58% ratio was determined using the same general methodology underlying the Marketer Stipulation as approved by the Commission in several prior fuel charge adjustment proceedings. After investigation of the Company's proposed EMF, the Public Staff recommended that the fuel cost under-recovery for the test period should be reduced from \$3,343,462 to \$3,150,194 and the Company voiced no opposition to this reduction and no other party presented any evidence to the contrary. In its Order, the Commission found that Dominion NC Power under-recovered its North Carolina retail fuel expense by \$3,150,194. This amount was divided by the adjusted test year North Carolina retail sales of 4,238,954 MWhs to arrive at an EMF increment rate rider equal to 0.074¢ per kWh. Therefore, the Commission authorized Dominion NC Power to implement the 0.074¢ per kWh EMF increment rider in its rates for the 12-month period beginning January 1, 2008 in order to collect the \$3,150,194 of under-recovered fuel cost.

The Company also submitted a study in this proceeding showing the impact of the Company's integration into PJM Interconnection, LLC (PJM) on its North Carolina retail fuel cost during the test year (the PJM study). The Commission allowed the Company to join PJM, a regional transmission organization approved by the Federal Energy Regulatory Commission, by Order dated April 19, 2005 in Docket No. E-22, Sub 418 (the PJM Order), subject to several conditions. The Commission included such conditions in the PJM Order to ensure that Dominion NC Power's ratepayers are held harmless from any adverse effects of joining PJM, including higher fuel charge adjustments. Therefore, the purpose of the PJM study is to demonstrate that the Company has complied with the relevant conditions contained in the PJM Order. The PJM study has been addressed by Commission Orders in the Company's two most recent fuel charge adjustment proceedings, Docket No. E-22, Sub 428 and Docket No. E-22, Sub 436.

According to the testimony of the Company, the PJM study submitted in this proceeding by the Company compared the Company's total energy costs and fuel costs currently associated with operating in PJM versus the hypothetical case of the Company operating as a stand-alone entity during the test period. The Company testimony also noted that it had made changes to the study methodology in response to the comments of the parties in its previous fuel charge proceeding. According to the Company's testimony, the results of the PJM study submitted in this proceeding demonstrated that joining PJM had provided fuel cost savings or benefits to Dominion NC Power's North Carolina retail ratepayers in the range of approximately \$9 million to \$11 million during the test period and that no adjustments were necessary to comply with conditions contained in the Commission's PJM Order. An intervenor representing a large industrial customer testified that it had conducted an alternative study and the results showed a fuel cost savings of approximately \$4 million during the test period as a result of the Company joining PJM. However, this intervenor also stated that there was a serious methodological problem with the PJM study submitted by the Company that rendered it unreliable for purposes of determining the extent to which Dominion NC Power's fuel costs were affected by its integration into PJM. In rebuttal testimony, the Company

testified that the alternative study of the intervenor ignored some physical transmission limitations and disregarded reliability requirements, in addition to other concerns, that should be addressed before it should be considered as a serious alternative to the PJM study filed by the Company.

In a further Order dated April 4, 2008 addressing only the PJM study, the Commission concluded that Dominion NC Power should be required to perform and file a PJM study, using an approach as generally advocated in the intervenor's testimony, subject to appropriate assumptions used to reflect certain constraints as generally outlined in the rebuttal testimony of the Company, in its next fuel charge adjustment proceeding. The Commission also required the Company to work with the intervenors in a collaborative process on the study methodology. However, the Commission stated that its decision was without prejudice to the right of the Company and any intervenor to advocate that any different study methodology, inputs, or assumptions would be appropriate in the Company's next fuel charge adjustment proceeding. Further, the Commission stated that it would decide on any issues raised in that proceeding concerning the PJM study on the basis of the record in that proceeding.

The result of the Commission's decision and Order dated December 20, 2007 in this proceeding was a decrease of approximately \$14.9 million in revenue on an annual basis and a net rate decrease of \$3.52 per month for a typical residential customer using 1,000 kWh per month.

3. Duke - Docket No. E-7, Sub 847

This fuel and fuel-related charge adjustment proceeding for Duke utilized a 12-month test period ending December 31, 2007. Duke filed its Application and supporting testimony and exhibits on March 12, 2008. This was the first such Application filed by Duke after the amendments to G.S. 62-133.2 enacted in Senate Bill 3 and changes to Rule R8-55 by the Commission. The evidentiary hearing was held on June 5, 2008 and the Commission issued its Order on August 8, 2008.

In its Application, Duke first noted that as a result of the amendments to G.S. 62-133.2, the Commission amended Rule R8-55 to move the filing date of its Application, the hearing, and the effective date of the rate change as a result of this proceeding such that new rates would become effective on September 1, 2008. However, under the Order issued in Duke's previous fuel charge adjustment proceeding, Docket No. E-7, Sub 825, the EMF placed into effect would only remain in effect for service rendered through June 30, 2008. Therefore, Duke proposed to continue the EMF that was then in effect for two additional months until the EMF established in this proceeding would become effective on September 1, 2008. Duke added that its proposal would avoid the customer confusion and reduce the administrative costs of implementing rate changes on July 1, 2008 and September 1, 2008 and allow it to begin to collect the under-recovered fuel and fuel-related costs that it experienced during the test period for this proceeding. After requesting and considering comments from the parties regarding Duke's proposal, the

Commission issued an Order on April 23, 2008, stating that this EMF proposal by Duke addressed a one-time procedural and transitional anomaly created by the statutory change and the rule changes adopted by the Commission. The Commission found good cause to approve Duke's proposal to continue the EMF that was then in effect until the new EMF approved in this proceeding could be placed into effect on September 1, 2008. The Commission also required Duke to file a tariff extending the effective date of the EMF that was then in effect for service rendered through August 31, 2008.

In its Application and pre-filed testimony, Duke requested approval of a composite increment of 0.3819¢ per kWh to the base fuel factor established in Duke's last general rate case in 2007, as adjusted in this proceeding to equal 1.7370¢ per kWh, or a requested composite fuel and fuel-related cost factor of 2.1189¢ per kWh. Duke explained that it was necessary to adjust the base fuel factor established in its most recent general rate case because certain costs that had been included in base rates now constituted fuel and fuel-related costs as a result of the amendments to G.S. 62-133.2 enacted by Senate Bill 3. The requested composite fuel and fuel-related cost factor of 2.1189¢ per kWh was based upon Duke's adjusted test period system fuel and fuel-related costs of \$1,720,316,000 divided by the adjusted test period sales of 81,189,090 MWh. The proposed adjusted system fuel cost was based on a normalized system nuclear capacity factor of 92.0%, which was the anticipated nuclear capacity factor for the period that the rates established in this proceeding would be in effect. During the test period, Duke achieved a system nuclear capacity factor of 92.36%. In comparison, the most recent NERC five-year average nuclear capacity factor equaled 89.0%. The calculation of the fuel and fuel-related costs also included adjustments to test period kWh sales and generation to normalize for weather, customer growth, the transition and consolidation of Duke's Nantahala Area customers to Duke's rates and into Duke's accounting, and line losses. In addition, Duke included a representative level for certain fuel and fuel-related costs that became effective on January 1, 2008 under the amendments to G.S. 62-133.2 by Senate Bill 3 in calculating the requested fuel and fuel-related costs. According to Duke's testimony, the amendments to G.S. 62-133.2 by Senate Bill 3 were projected to result in approximately \$37 million in additional expenses recovered through the fuel clause during the time that the rates established in this proceeding would be in effect. After its investigation, the Public Staff recommended approval of Duke's requested composite fuel and fuel-related cost factor. Based upon the evidence and the agreement between Duke and the Public Staff, the Commission found and concluded in its Order that the adjusted test period system fuel and fuel-related costs of \$1,720,316,000 and a composite fuel and fuel-related cost factor of 2.1189¢ per kWh was reasonable and appropriate for use in this proceeding.

Senate Bill 3 eliminated the former requirement that the rate rider for changes in the cost of fuel be uniform and added G.S. 62-133.2(a2). In part, G.S. 62-133.2(a2) requires that noncapacity purchased power costs, qualifying facility capacity costs, and renewable energy costs be allocated to each customer class and recovered through a specific component in the fuel and fuel-related cost factor. Duke testified that it calculated a noncapacity purchased power component for each of the customer classes

in accordance with the statutory provisions of G.S. 62-133.2(a2). Duke's recommended fuel and fuel-related cost factors were 2.1185¢ per kWh for the residential class, 2.1182¢ per kWh for the general service/lighting class, and 2.1205¢ per kWh for the industrial class. Additionally, Duke provided evidence that demonstrated that the annual increase in the aggregate amount of the requested noncapacity purchased power cost did not exceed two percent of Duke's total North Carolina retail jurisdictional revenue in 2007 consistent with the provisions of G.S. 62-133.2(a2). In its Order, the Commission found that the fuel and fuel-related cost factors requested by Duke for each of the Company's customer classes were proper.

In its Application and pre-filed testimony, Duke originally requested approval of an EMF increment equal to 0.0553¢ to collect \$30,449,000 of under-recovered fuel costs. This under-recovery amount consisted of the under-recovery during the test period of \$41,508,000 and a reduction of \$11,059,000 based on the Company's proposal to continue the EMF that was then in effect for an additional two months and apply the revenues collected during the months of July and August against the test period under-recovery. In determining the test period fuel and fuel-related costs and under-recovery amount of \$41,508,000, Duke originally employed a 58% fuel-to-energy cost ratio to determine the fuel costs for purchases from power marketers and other suppliers that did not provide Duke with the actual fuel costs of such purchases. After performing an analysis of the fuel costs as a percentage of the energy costs for the off-system sales made by Duke and Progress for the 12-months ended December 31, 2007, generally consistent with the methodology set forth in the Marketer Stipulation, the Public Staff recommended that a 61% fuel-to-energy ratio should be used to determine the fuel costs of such purchases. In supplemental testimony, Duke accepted the adjustments proposed by the Public Staff and revised the amount of the under-recovered fuel costs from \$30,449,000 to \$32,033,000. The revised over-recovery divided by the projected North Carolina retail sales of 55,014,640 MWh produced a revised EMF increment rider equal to 0.0582¢ per kWh.

In its Order, the Commission found that the Company's North Carolina retail jurisdictional fuel and fuel-related expense under-recovery was \$32,033,000 and required Duke to implement an EMF increment rider of 0.0582¢ per kWh in its rates for a 12-month period beginning September 1, 2008 to collect the under-recovered fuel costs. Accordingly, the Commission also found that the net fuel and fuel-rated costs factors to be billed to Duke's North Carolina retail customers during the 12-month billing period beginning September 1, 2008 were 2.1767¢ per kWh for the residential class, 2.1764¢ per kWh for the general service/lighting class, and 2.1787¢ per kWh for the industrial class. These net fuel and fuel-related cost factors consisted of the prospective fuel and fuel-related cost factors for each class as discussed previously herein and the EMF increment.

Finally, Duke's testimony noted that in the Commission's Order dated December 20, 2007, in Duke's last general rate case, Docket No. E-7, Sub 828, the Commission approved the transition of the Company's Nantahala Area customers to Duke's rates. The Order provided that Duke's Nantahala Area customers would pay

fuel costs based on Duke's fuel charge adjustment. In addition, the transition resulted in the termination of the Interconnection Agreement between Duke and Nantahala Power & Light Company. Duke's testimony explained that the Interconnection Agreement contained a contractual feature called the Energy Bank in recognition of the fact that the electricity generated from the resources owned by Nantahala varied with experienced rainfall. The Energy Bank was established as a mechanism to smooth the effects of weather on retail customer bills as Nantahala supplemented its generation requirements by purchasing power from Duke at higher costs. Upon termination, the Interconnection Agreement provided for the entire balance to be included as a charge or credit to purchased power expense for Nantahala customers. Duke testified that the net Energy Bank balance as of December 31, 2007, as reduced by certain adjustments, was equal to \$7,414,854. Duke proposed to recover the net adjusted fuel cost balance of the Energy Bank by implementing a Nantahala Rider applicable to Nantahala Area customers. This rider as designed to collect additional revenue equal to two percent of the revenues Duke received from its Nantahala Area customers for the 2007 calendar year. Duke testified that the Nantahala Rider would continue to be billed to the Nantahala Area customers until Duke is reimbursed for the net deferred fuel cost balance. Duke did not propose to charge its Nantahala Area customers interest on the outstanding deferred balance subsequent to December 31, 2007. In its Order, the Commission found it appropriate for Duke to institute an annual rider that collects an additional two percent of revenues from its Nantahala Area customers to collect the net unrecovered Energy Balance balance. The Commission further found that the proper Nantahala Area Customer Rider for a 12-month period beginning September 1, 2008 equaled 0.1539¢ per kWh.

The result of the Commission decisions and Order in this fuel and fuel-related charge adjustment proceeding for Duke was an increase of approximately \$191.5 million in revenue on an annual basis. The rate increases were \$3.48 for the residential customer class, \$3.47 for the general service/lighting customer class, and \$3.50 for the industrial class, for each 1,000 kWh of usage per month. The additional rate increase for Nantahala Area customers was \$1.59 for each 1,000 kWh of usage per month.

4. PEC - Docket No. E-2, Sub 929

PEC's most recent fuel and fuel-related charge adjustment proceeding employed a 12-month test period consisting of the year ending March 31, 2008. PEC filed its Application and testimony on June 6, 2008. This was the first such Application filed by PEC after the amendments to G.S. 62-133.2 enacted in Senate Bill 3 and changes to Rule R8-55 by the Commission. The evidentiary hearing was held on September 16, 2008 and the Commission issued its Order on November 14, 2008.

As preliminary matters, PEC noted that, as a result of amendments to G.S. 62-133.2, the Commission had amended Rule R8-55 which moved the filing date of its Application, the hearing, and the effective date of the rate change as a result of this proceeding such that the new rates would become effective on December 1, 2008. However, under the Order issued in PEC's most recent fuel charge adjustment

proceeding, Docket No. E-2, Sub 903, the EMF that was then in effect would expire on September 30, 2008. Therefore, PEC proposed to continue the EMF that was then in effect for two additional months until the new EMF established in this proceeding could become effective on December 1, 2008. PEC added that this proposal would avoid the customer confusion and costs associated with changing rates on October 1, 2008 and December 1, 2008 and allow it to begin to collect the under-recovered fuel costs which it experienced during the test year. In an Order issued on June 13, 2008, the Commission approved PEC's request to extend the EMF that was then in effect for an additional two months and required PEC to file a tariff implementing the extension.

In addition, in Docket No. E-2, Sub 889, PEC and certain other parties to that proceeding entered into a Settlement Agreement which was approved by the Commission. That Settlement Agreement set forth the total fuel factors that would be placed into effect for PEC in its next three fuel charge adjustment proceedings, including this proceeding. However, one provision of that Settlement Agreement allowed any party to terminate the Agreement with a thirty day written notice if the actual cumulative amount of PEC's under-recovered fuel costs varied by more than \$30 million from the projected amounts of such costs in any month during the period covered by the Settlement Agreement. Since PEC was experiencing an under-recovery of fuel costs that was greater than the \$30 million variance, PEC gave notice that it was exiting that Settlement Agreement and proposing fuel factors in this proceeding that did not follow the Settlement Agreement.

In its pre-filed testimony and exhibits, PEC submitted that its total system forecasted fuel and fuel-related costs for the period that the rates established in this proceeding would be in effect equaled \$1,908,279,468. The nuclear capacity factor used in the forecasted costs was 94.0%. PEC's actual nuclear capacity factor for the test year was 92.78%. In comparison, the most recent NERC five year average nuclear capacity factor equaled 87.81%. PEC then allocated the total system forecasted cost to the North Carolina jurisdiction. The total amount allocated to the North Carolina retail jurisdiction was \$1,252,013,048. This amount included \$139,370,127 of noncapacity purchased power costs subject to economic dispatch or curtailment that were allocated to North Carolina retail based upon energy usage in 2007. The total North Carolina amount also included \$15,539,260 for capacity costs of purchases from qualifying cogeneration facilities and small power production facilities, subject to economic dispatch, and the fuel and fuel-related costs of purchases from renewable energy facilities that were allocated to North Carolina retail based upon peak demand in 2007. PEC also used the \$139,370,127 and \$15,539,260 amounts to calculate specific components for each customer class in its fuel and fuel-related cost factors to recover the noncapacity purchased power costs and the qualifying cogeneration capacity and renewable energy costs as required by G.S. 62-133.2(a2). Finally, the total amount allocated to North Carolina included all other fuel and fuel-related costs of \$1,097,103,361. No other party objected to or otherwise challenged PEC's forecasted fuel and fuel-related costs.

In its testimony, PEC also submitted that the total North Carolina fuel and fuel-related cost under-recovery appropriate for purposes of this proceeding was \$203,363,040. The total amount of the under-recovery consisted of (1) PEC's test year under-recovery of \$114,780,934, that was adjusted to equal \$191,559,700 to reflect the under-recovery through July 2008 as allowed under G.S. 62-133.2(d) and Rule R8-55(d)(3); (2) \$188,735 to adjust the fuel-to-energy cost ratio from 58% to 61% for purchases from suppliers that did not furnish PEC the actual fuel cost of such purchases during the 2007 portion of the test year; (3) \$13,314,859 of interest associated with prior under-recovered fuel costs as authorized by the Commission Orders in previous fuel charge adjustment proceedings; (4) an adjustment of \$954,226 to remove certain transmission costs; and (5) an adjustment of \$746,028 to recognize that certain purchased power costs had been included in base rates but were now recoverable as fuel and fuel-related costs. The total under-recovery amount of \$203,363,040 divided by PEC's adjusted test year North Carolina retail sales of 37,619,054 MWh produced an EMF increment equal to 0.541¢ per kWh.

PEC testified that its fuel and fuel-related procurement and power purchasing practices were reasonable and prudent during the test period. In addition, PEC testified that the annual increase in the aggregate amount of noncapacity purchased power costs, qualifying facility capacity costs, and renewable energy costs requested for recovery did not exceed two percent of PEC's total North Carolina jurisdictional revenues for 2007 consistent with the requirement of G.S. 62-133.2(a2). According to information filed by PEC, the amendments to G.S. 62-133.2 by Senate Bill 3 added approximately \$94 million to the Company's request in this proceeding.

After its investigation of PEC's forecasted fuel and fuel-related costs and PEC's under-recovery, the Public Staff testified that it concurred with PEC's under-recovery calculation and did not express any concern with regard to PEC's forecasted fuel and fuel-related costs. Further, no other party offered any evidence regarding PEC's under-recovered fuel and fuel-related costs of the Company's forecasted costs. In its Order, the Commission found that the fuel and fuel-related costs appropriate for use in this proceeding were \$1,252,013,048 and that PEC's North Carolina retail jurisdiction fuel and fuel-related cost under-recovery was \$203,363,040.

Prior to the enactment of Senate Bill 3, G.S. 62-133.2(a) required the Commission to apply a "uniform increment or decrement" to electric rates for the recovery of fuel costs. In other words, all customers in all customer classes paid the same fuel rider for each kWh consumed. However, Section 5 of Senate Bill 3 removed the word "uniform" from the statute.

In this case, for the first time, PEC developed and proposed individual fuel and fuel-related cost factors for each rate class such that each rate class would experience the same percentage increase in its average monthly bill. Initially, PEC proposed fuel and fuel-related cost factors that would have increased the average monthly bill of each rate class by 13.61% to recover a total North Carolina fuel and fuel-related cost increase equal to \$414,185,785. PEC testified that it was proposing the new uniform bill

increase methodology in order to treat all rate classes equitably in recovering its fuel and fuel-related costs. The traditional uniform cents per kWh methodology would have resulted in an approximately 18% increase to PEC's large industrial customers. PEC stated that such a large percentage increase could negatively impact industrial operations and could result in job losses, shifts in production to other states or countries, and plant closings. PEC added that PEC's industrial sales have declined each year since 1999.

In supplemental testimony, PEC presented and supported a Settlement Agreement entered into by PEC, the Public Staff, and two parties representing large industrial customers. In the Settlement Agreement, these parties agreed to spread the collection of PEC's under-recovered fuel and fuel-related cost amount of \$203,363,040 equally over a three year period. The settling parties also agreed that the amounts that PEC would be entitled to recover during the rate period December 1, 2008 through November 30, 2009, but would not be recovered until the second and third years of the Settlement Agreement, would bear interest at a specified formula rate. In accordance with the terms of the Settlement Agreement, PEC revised its requested EMF to equal 0.180¢ per kWh. By spreading the collection of the \$203,363,040 amount over a period of three years, the requested increase by PEC was reduced from 13.61% to 9.05%. This also reduced the typical residential customer's monthly bill increase from \$13.28 to \$8.79.

The Public Staff testified that the revised total North Carolina fuel and fuel-related cost increase was \$275,371,476, including the phased-in collection of the under-recovery amount of \$203,363,040, and agreed with PEC that this increase was largely attributable to a dramatic increase in coal prices during 2008. The Public Staff also stated that it supported PEC's proposed uniform bill increase methodology, provided that the impact of the cost increase was moderated by spreading the collection of the under-recovery as set forth in the Settlement Agreement. The Attorney General did not oppose spreading the impact of the under-recovery over the next three years in order to avoid rate shock. However, the Attorney General argued against PEC's uniform bill methodology and did not join in the Settlement Agreement. In a brief, the Attorney General argued against the uniform bill methodology for two reasons. First, citing certain language in Section 16 of Senate Bill 3, the Attorney General argued that any fuel costs that PEC incurred prior to January 1, 2008 could only be recovered by a traditional, uniform increment on a per-kWh basis. In its Order, the Commission stated that the proposed EMF of 0.180¢ per kWh was calculated on a cent per kWh basis and that each of the non-uniform fuel and fuel-related cost factors proposed by PEC for the different rate classes included that uniform EMF increment of 0.180¢ per kWh. Second, the Attorney General argued that PEC's proposed uniform bill increase methodology shifted \$38.7 million from industrial and medium general service customers to the remaining customers and that PEC presented insufficient evidence to support such a shift in costs. The Commission rejected this argument by the Attorney General. In so doing, the Commission cited Supreme Court decisions addressing factors the Commission may consider in designing rates. The Commission stated that although PEC did not present evidence as to all of the factors that might appropriately be

considered, PEC did present evidence as to some of the factors, and therefore, the issue was a matter of the weight and credibility of the evidence. After weighing the evidence, the Commission concluded that PEC's proposed methodology was just and reasonable and not unreasonably discriminatory.

In its Order, the Commission found and concluded that the rates proposed by the settling parties were just and reasonable and should be approved. In doing so, the Commission adopted the uniform bill increase methodology and the recovery of PEC's under-recovered fuel and fuel-related costs as described in the Settlement Agreement for the limited purpose of setting rates in this proceeding. Accordingly, the Commission found that the total fuel and fuel-related cost factors to be billed to PEC's North Carolina retail customers during the 12-month period beginning December 1, 2008 were 3.530¢ per kWh for the residential class; 3.599¢ per kWh for the small general service class; 3.334¢ per kWh for the medium general service class; 3.220¢ per kWh for the large general service class; and 4.499¢ per kWh for the lighting class.

The result of the Commission decisions and Order in this proceeding for PEC was an increase of approximately \$285.0 million in revenue on an annual basis. The rate increases for each rate class were as follows: \$8.82 for residential, \$9.53 for small general service, \$6.79 for medium general service, \$5.61 for large general service, and \$18.84 for lighting, for each 1,000 kWh of usage per month.

5. Dominion NC Power - Docket No. E-22, Sub 451

Dominion NC Power's most recent fuel charge adjustment proceeding utilized a test period consisting of the 12-months ending June 30, 2008. The Company filed its Application and supporting testimony and exhibits on September 3, 2008. The evidentiary hearing was held on November 14, 2008 and the Commission issued its Order on December 19, 2008.

In its Application and pre-filed direct testimony, Dominion NC Power originally requested approval of an increment equal to 1.486¢ per kWh to the base fuel factor of 1.647¢ per kWh approved in the Company's most recent general rate case in 2005, or a requested fuel factor equal to 3.133¢ per kWh. Dominion NC Power also originally requested approval of an EMF increment equal to 0.570¢ per kWh. Therefore, the total fuel factor originally requested by the Company, including the EMF, was equal to 3.703¢ per kWh.

According to the Company's pre-filed direct testimony, the fuel factor of 3.133¢ per kWh was calculated by dividing an adjusted test period system fuel expense of \$2,618,266,204 by the adjusted test period system sales of 83,563,301 MWh. The requested fuel factor and fuel expense were based on 92.2% nuclear capacity factor, which was the Company's anticipated nuclear capacity factor for the period that the rates established in this proceeding would be in effect. The actual nuclear capacity factor achieved by the Company during the test year was 91.5%. In comparison, the most recent NERC five year average nuclear capacity factor was 87.48%. The fuel

factor of 3.133¢ per kWh was also based on fuel prices for coal, nuclear, oil and natural gas at the end of the test period during June of 2008, the test year average fuel price for purchased power, as well as a 78% fuel-to-energy cost ratio to determine the fuel costs of power purchases from suppliers that did not provide the Company with the actual fuel costs associated with such purchases. The EMF increment of 0.570¢ per kWh originally requested by the Company was calculated by dividing a North Carolina test period fuel cost under-recovery of \$24,553,955 by the adjusted North Carolina retail sales of 4,304,276 MWh. This EMF increment and the under-recovery amount were also based upon a 78% fuel-to-energy cost ratio to determine the fuel costs of purchases from suppliers that did not provide the actual fuel costs.

After conducting its investigation, the Public Staff testified that it had been in settlement discussions with the Company and recommended that the fuel factor established in this proceeding should be based upon test year average fuel prices for coal, nuclear, oil, natural gas, and purchased power, rather than the fuel prices at the end of the test year. Further, the Public Staff also recommended that a 70% fuel-to-energy cost ratio be used to determine the fuel costs of the Company's power purchases from the power markets administered by PJM Interconnection, LLC, its primary supplier, in this case and in the 2009 proceeding. According to the Public Staff's testimony, use of the test year average fuel prices and the 70% fuel-to-energy cost ratio, in combination with a miscellaneous adjustment recommended by the Public Staff, also reduced the North Carolina test period under-recovery of fuel costs to \$20,335,525 and reduced the EMF increment to equal 0.472¢ per kWh.

In rebuttal testimony, the Company indicated that it had reached agreement with the Public Staff concerning the use of average fuel prices and the 70% fuel-to-energy cost ratio. A Settlement Agreement between those parties, containing the agreement described above, among other things, was also filed on the day prior to the hearing. At the hearing, the other parties notified the Commission that they were in accord with this settlement, with the exception that two parties opposed the allocation of the fuel cost increase on a uniform cents per kWh basis.

In its Order, the Commission found and concluded that the adjusted test period system fuel expense appropriate for use in this proceeding was \$2,198,335,166 and that the resulting fuel factor was equal to 2.631¢ per kWh. Therefore, the Commission required the Company to adjust the base fuel factor of 1.647¢ per kWh in its rates by an increment equal to 0.984¢ per kWh. Further, the Commission found that the appropriate North Carolina retail fuel expense under-recovery during the test period was \$20,335,525 and required the Company to implement an EMF increment rider of 0.472¢ per kWh in its rates for a 12-month period beginning January 1, 2009 to collect the under-recovered fuel expense. The Commission also found that the Company's fuel procurement and power purchasing practices during the test period were reasonable and prudent. The final net fuel factor was equal to 3.103¢ per kWh, consisting of the fuel factor of 2.631¢ per kWh and the EMF increment of 0.472¢ per kWh.

The fuel factor recommended by the Company and the Public Staff and approved by the Commission was a uniform rate applied to all kWh sales to all customers. As noted above, two parties to this proceeding representing certain, but not all, industrial customers opposed the recovery of the higher fuel costs and proposed revenue increase through a uniform fuel factor. A witness for one of these intervenors testified that a uniform fuel factor over-allocated fuel costs to high load factor customers and resulted in a wide variation in the proposed revenue increase, on a percentage basis, for the different customers classes. In pre-filed testimony, the witness for this party originally recommended that the fuel cost increase should be distributed to customer classes on an equal percent revenue increase basis that would result in a different fuel factor for each customer class. However, through cross-examination during the hearing, this party presented an alternative proposal for the allocation of the increased fuel costs that would mitigate the increase for the customers represented by these two parties by allocating more of the increase to all other customers, but not by as much as the equal percent revenue increase method that these parties originally proposed. In its Order, the Commission rejected the alternative rate design proposal of these two parties. In so doing, the Commission noted that the proposed uniform fuel factor produced an increase of \$9.85 per 1,000 kWh for all customers and stated that the alternative rate design would add to this increase for customers in the residential, small general service, large general service, public authority, and outside lighting customer classes. In addition, the alternative rate design proposal would have resulted in customers in the large general service class, that were also employers, to shoulder larger revenue increases on a percentage basis than the customers represented by these two parties. For these reasons, among others, the Commission rejected the alternative rate design proposal.

Finally, the Company testified that, consistent with the direction provided by the Commission's Order in its previous fuel charge adjustment proceeding, it had developed a new model for conducting the PJM Study and had submitted that study to the parties in this proceeding. According to the Company, the PJM study conducted for purposes of this proceeding indicated that the Company's North Carolina ratepayers received fuel charge adjustment benefits in the range of \$10 million to \$15 million during the test period as a result of the Company joining PJM. After reviewing this study, one intervenor testified that there were several problems with certain assumptions used in the implementation of the model used by the Company. This intervenor also conducted an independent comparative fuel cost study that produced lower estimates of the fuel cost benefits than claimed by the Company. Although the Company did not necessarily agree with the changes proposed by this intervenor, the Company and the intervenor entered into a Settlement Agreement that was filed in this proceeding. In this Settlement Agreement, the Company and the intervenor agreed to meet, along with other parties, to further discuss and undertake reasonable efforts to agree on the protocol for any fuel cost study conducted for the next fuel charge adjustment proceeding. No party took issue with the terms of this Settlement Agreement. In its Order, the Commission required the Company to meet with the intervenors and undertake reasonable efforts to reach mutual agreements on changes to the study protocol used in this proceeding that will govern the PJM study on a prospective basis.

The result of the Commission's decision and Order in this proceeding was an increase of approximately \$42.4 million in revenue on an annual basis and a net rate increase of \$9.85 per month for a typical residential customer using 1,000 kWh per month.

SUMMARY TABLE OF FIVE FUEL CHARGE PROCEEDINGS

Company and Docket No.	Date of Order	Nuclear Capacity Factor Achieved in Test Year	Approved Fuel Factor³	Test Year Over/(Under)-Recovery	EMF Increment or (Decrement)³	Increase/(Decrease) in Annual Revenue and in Rates per 1000 kWh Due To Fuel Charge Adjustment
1. PEC E-2, Sub 903	9/25/07	91.84%	2.288¢	(\$135.8 million)	0.387¢	\$48 million \$1.30
2. Dominion NC Power E-22, Sub 444	12/20/07	93.75%	2.076¢	(\$3.2 million)	0.074¢	(\$14.9 million) (\$3.52)
3. Duke E-7, Sub 847	8/8/08	92.36%	2.1185¢ ⁴	(\$43.1 million)	0.0582¢	\$191.5 million \$3.48 ⁴
4. PEC E-2, Sub 929	9/14/08	92.78%	3.350¢ ⁴	(\$114.8 million)	0.180¢	\$285.0 million \$8.82 ⁴
5. Dominion NC Power E-22, Sub 451	12/19/08	91.50%	2.631¢	(\$20.3 million)	0.472¢	\$42.4 million \$9.85

³Amounts shown are in cents per kWh excluding gross receipts tax and the regulatory fee.

⁴Amount shown in table is for residential customers and varies among customer classes.

Rule R8-55. Annual hearings to review changes in the cost of fuel and fuel-related costs.

(a) As used in this rule, “cost of fuel and fuel-related costs” means all of the following:

(1) The cost of fuel burned.

(2) The cost of fuel transportation.

(3) The cost of ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating emissions.

(4) The total delivered noncapacity related costs, including all related transmission charges, of all purchases of electric power by the electric public utility that are subject to economic dispatch or economic curtailment.

(5) The capacity costs associated with all purchases of electric power from qualifying cogeneration facilities and qualifying small power production facilities, as defined in 16 U.S.C. 796, that are subject to economic dispatch by the electric public utility.

(6) Except for those costs recovered pursuant to G.S. 62-133.7(h), the total delivered costs of all purchases of power from renewable energy facilities and new renewable energy facilities pursuant to G.S. 62-133.7 or to comply with any federal mandate that is similar to the requirements of subsections (b), (d), (e) and (f) of G.S. 62-133.7.

(7) All costs incurred to comply with the Swine Farm Methane Capture Pilot Program established in Section 4 of S.L. 2007-523.

(8) The fuel cost component of other purchased power.

Cost of fuel and fuel-related costs shall be adjusted for (a) any net gains or losses resulting from any sales by the electric public utility of fuel and other fuel-related costs components and (b) any net gains or losses resulting from any sales by the electric public utility of by-products produced in the generation process to the extent the costs of the inputs leading to that by-product are costs of fuel or fuel-related costs.

(b) For each electric public utility generating electric power by means of fossil and/or nuclear fuel for the purpose of furnishing North Carolina retail electric service, the Commission shall schedule an annual public hearing pursuant to G.S. 62-133.2(b) in order to review changes in the electric public utility’s cost of fuel and fuel-related costs. The annual cost of fuel and fuel-related cost adjustment hearing for Duke Energy Carolinas, LLC, will be scheduled for the first Tuesday of June each year; for Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc., the annual hearing will be scheduled for the third Tuesday of September each year; and for Virginia Electric and Power

Company, d/b/a Dominion North Carolina Power, the annual hearing will be scheduled for the second Tuesday of November each year.

(c) The test periods for the hearings to be held pursuant to paragraph (b) above will be uniform over time. The test period for Duke Energy Carolinas, LLC will be the calendar year; for Progress Energy Carolinas, Inc., the test period will be the 12-month period ending March 31; and for Dominion North Carolina Power, the test period will be the 12-month period ending June 30.

(d) The Commission shall permit each electric public utility to charge an increment or decrement as a rider to its rates for changes in the cost of fuel and fuel-related costs used in providing its North Carolina customers with electricity from the cost of fuel and fuel-related costs established in the electric public utility's previous general rate case on the basis of cost per kilowatt-hour. The increment or decrement may be different among customer classes. The general methodology and procedures to be used in establishing the cost of fuel and fuel-related costs shall be as follows:

(1) Cost of fuel and fuel-related costs will be preliminarily established utilizing the methods and procedures approved in the utility's last general rate case, except that capacity factors for nuclear production facilities will be normalized based generally on the national average for nuclear production facilities as reflected in the most recent North American Electric Reliability Corporation's Generating Availability Report, adjusted to reflect unique, inherent characteristics of the utility, including, but not limited to, plants 2 years or less in age and unusual events. The national average capacity factor for nuclear production facilities shall be based on the most recent 5-year period available and shall be weighted, if appropriate, for both pressurized water reactors and boiling water reactors. The costs shall be allocated among customer classes in accordance with G.S. 62-133.2(a2), as applicable. A cost of fuel and fuel-related cost rider will then be determined based upon the difference between the cost of fuel and fuel-related costs thus established and the base cost of fuel and fuel-related cost component of the rates established in the utility's most recent general rate case. The foregoing normalization requirement assumes that the Commission finds that an abnormality having a probable impact on the utility's revenues and expenses existed during the test period.

(2) Cost of fuel and fuel-related costs will be modified as provided in G.S. 62-133.2(a3).

(3) The cost of fuel and fuel-related costs as described above will be further modified through use of an experience modification factor (EMF) rider, which may be different among customer classes. The EMF rider will reflect the difference between reasonable and prudently incurred cost of fuel and fuel-related costs and the fuel-related revenues that were actually realized during the test period under the cost of fuel and fuel-related cost components of rates then in effect. Upon request of the

electric public utility, the Commission shall also incorporate in this determination the experienced over-recovery or under-recovery of the cost of fuel and fuel-related costs up to thirty (30) days prior to the date of the hearing, provided that the reasonableness and prudence of these costs shall be subject to review in the utility's next annual fuel and fuel-related costs adjustment hearing.

(4) The cost of fuel and fuel-related cost rider and the EMF rider as described hereinabove will be charged as an increment or decrement to the base fuel cost component of rates established in the electric public utility's previous general rate case.

(5) The EMF rider will remain in effect for a fixed 12-month period following establishment and will carry through as a rider to rates established in any intervening general rate case proceedings; provided, however, that such carry-through provision will not relieve the Commission of its responsibility to determine the reasonableness of the cost of fuel and fuel-related costs, other than that being collected through operation of the EMF rider, in any intervening general rate case proceeding.

(6) Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently incurred cost of fuel and fuel-related costs to be refunded to a utility's customers through operation of the EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.

(e) Each electric public utility, at a minimum, shall submit to the Commission for purposes of investigation and hearing the information and data in the form and detail as set forth below:

(1) Actual test period kWh sales, peak demand by customer class, fuel-related revenues, and fuel-related expenses for the utility's total system and for its North Carolina retail operations.

(2) Test period kWh sales normalized for weather, customer growth and usage. Said normalized kWh sales shall be for the utility's total system and for its North Carolina retail operations. The methodology used for such normalization shall be the same methodology adopted by the Commission, if any, in the utility's last general rate case.

(3) Adjusted test period kWh generation corresponding to normalized test period kWh usage. The methodology for such adjustment shall be the same methodology adopted by the Commission in the utility's last general rate case, including adjustment by type of generation; i.e., nuclear, fossil, hydro, pumped storage, purchased power, etc. In the event that said methodology is inconsistent with the normalization methodology set forth in paragraph (d)(1) above, additional pro forma calculations shall be presented incorporating the normalization methodology reflected in paragraph (d)(1).

(4) Cost of fuel and applicable fuel-related costs corresponding to the adjusted test period kWh generation, including a detailed

explanation showing how such cost of fuel and fuel-related costs were derived. The cost of fuel shall be based on end-of-period unit fuel prices incurred during the test period, although the Commission may consider other fuel prices if test period fuel prices are demonstrated to be nonrepresentative on an on-going basis. Unit fuel prices shall include delivered fuel prices and burned fuel expense rates as appropriate.

(5) Procurement practices and inventories for fuel burned and for ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating emissions.

(6) The cost of fuel burned and of ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating emissions at each generating facility.

(7) Any net gains or losses resulting from any sales by the electric public utility of fuel or other fuel-related costs components.

(8) Any net gains or losses resulting from any sales by the electric public utility of by-products produced in the generation process to the extent the costs of the inputs leading to that by-product are costs of fuel or fuel-related costs.

(9) All costs incurred to comply with the Swine Farm Methane Capture Pilot Program established in Section 4 of S.L. 2007-523.

(10) The monthly fuel report and the monthly base load power plant performance report for the last month in the test period and any information required by Rules R8-52 and R8-53 for the test period which has not already been filed with the Commission. Further, such information for the complete 12-month test period shall be provided by the electric public utility to any intervenor upon request.

(11) All workpapers supporting the calculations, adjustments and normalizations described above.

(12) The nuclear capacity rating(s) in the last rate case and the rating(s) proposed in this proceeding. If they differ, supporting justification for the change in nuclear capacity rating(s) since the last rate case.

(13) The proposed rate design to recover the electric public utility's cost of fuel and fuel-related costs.

An electric public utility that is subject to G.S. 62-133.2(a3) is required to provide only the applicable information prescribed by subdivisions (5), (6) and (8) of this subsection.

(f) The electric public utility shall file the information required under this rule, accompanied by workpapers and direct testimony and exhibits of expert witnesses supporting the information filed herein, and any changes in rates proposed by the electric public utility (if any), according to the following schedule: Duke Energy Carolinas, LLC, and Progress Energy Carolinas, Inc., not less than 90 days prior to the hearing; Dominion North Carolina Power, not less than 75 days prior to the hearing. Nothing in this rule shall be construed to require the

electric public utility to propose a change in rates or to utilize any particular methodology to calculate any change in rates proposed by the utility in this proceeding.

(g) The electric public utility shall publish a notice for two (2) successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least 30 days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-133.2(b) and setting forth the time and place of the hearing.

(h) Persons having an interest in said hearing may file a petition to intervene setting forth such interest at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed in the discretion of the Commission for good cause shown.

(i) The Public Staff and other intervenors shall file direct testimony and exhibits of expert witnesses at least 15 days prior to the hearing date. If a petition to intervene is filed less than 15 days prior to the hearing date, it shall be accompanied by any direct testimony and exhibits of expert witnesses the intervenor intends to offer at the hearing.

(j) The electric public utility may file rebuttal testimony and exhibits of expert witnesses no later than 5 days prior to the hearing date.

(k) The burden of proof as to the correctness and reasonableness of any charge and as to whether the test year cost of fuel and fuel-related costs were reasonable and prudently incurred shall be on the utility. For purposes of determining the EMF rider, a utility must achieve either (a) an actual system-wide nuclear capacity factor in the test year that is at least equal to the national average capacity factor for nuclear production facilities based on the most recent 5-year period available as reflected in the most recent North American Electric Reliability Corporation's Generating Availability Report, appropriately weighted for size and type of plant or (b) an average system-wide nuclear capacity factor, based upon a two-year simple average of the system-wide capacity factors actually experienced in the test year and the preceding year, that is at least equal to the national average capacity factor for nuclear production facilities based on the most recent 5-year period available as reflected in the most recent North American Electric Reliability Corporation's Generating Availability Report, appropriately weighted for size and type of plant, or a presumption will be created that the utility incurred the increased cost of fuel and fuel-related costs resulting therefrom imprudently and that disallowance thereof is appropriate. The utility shall have the opportunity to rebut this presumption at the hearing and to prove that its test year cost of fuel and fuel-related costs were reasonable and prudently incurred. To the extent that the utility rebuts the presumption by the preponderance of the evidence, no disallowance will result.

(l) The hearing will generally be held in the Hearing Room of the Commission at its offices in Raleigh, North Carolina.

(m) Each electric public utility shall follow deferred accounting with respect to the difference between actual reasonable and prudently incurred cost of fuel and fuel-related costs and cost of fuel and fuel-related costs recovered under rates in effect.

(n) If the Commission has not issued an order pursuant to G.S. 62-133.2 within 180 days after the date the electric public utility has filed any proposed changes in its rates and charges in this proceeding based solely on the cost of fuel and fuel-related costs, then the utility may place such proposed changes into effect. If such changes in the rates and charges are finally determined to be excessive, the electric public utility shall refund any excess plus interest to its customers in a manner directed by the Commission.