

145 FERC ¶ 61,037
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Duke Energy Progress, Inc.
Carolina Power & Light company

Docket Nos. ER13-2186-000
ER13-1313-000
EL14-2-000
(Consolidated)

ORDER ACCEPTING PROPOSED DEPRECIATION RATES, ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES, CONSOLIDATING
PROCEEDINGS AND INSTITUTING A SECTION 206 PROCEEDING

(Issued October 15, 2013)

1. This order accepts for filing the proposed changes in the depreciation rates of Duke Energy Progress, Inc.'s (Duke Energy)¹ Power Supply and Coordination Agreement (Agreement) with the Public Works Commission of the City of Fayetteville, North Carolina (Fayetteville),² and suspends them for a nominal period, to become effective April 1, 2013, subject to the outcome of Docket No. ER13-1313-000. Therefore, as discussed below, we will set this proceeding for hearing and settlement judge procedures, and consolidate it with the ongoing proceeding established in Docket No. ER13-1313-000.³ Additionally, because Duke Energy is proposing a rate decrease and a further decrease may be warranted, we will institute an investigation pursuant to section 206 of the Federal Power Act (FPA)⁴ in Docket No. EL14-2-000 to determine whether Duke Energy's proposed rate decrease is just and reasonable.

¹ Duke Energy filed a Notice of Succession in Docket No. ER13-1357-000 notifying the Commission that it would be succeeding to all of the tariffs, rate schedules and service agreements of Carolina Power & Light Company (Carolina Power & Light) d/b/a/ Progress Energy Carolinas, Inc., effective April 29, 2013.

² Fayetteville is the only wholesale customer that currently takes service from Duke Energy under a production formula rate.

³ *Carolina Power & Light Co.*, 143 FERC ¶ 61,237 (2013).

⁴ 16 U.S.C. § 824e (2006).

I. Background

2. On April 19, 2013, as amended on April 25, 2013, in Docket No. ER13-1313-000, Carolina Power & Light filed proposed changes in the depreciation rates in the Agreement (April 19 Filing). The proposed changes, reflecting a depreciation study (Initial Study), resulted in an increase in the total production depreciation expense of 34.79 percent and a total general depreciation expense decrease of 0.89 percent, for a net increase of 3.9 percent in Fayetteville's charges on an annual basis. On June 18, 2013, the Commission accepted the proposed changes for filing, suspended them for a nominal period, to become effective July 1, 2012, subject to refund, and established hearing and settlement judge procedures.⁵

3. On August 16, 2013, as amended on August 22, 2013,⁶ Duke Energy filed the instant proposed changes in depreciation rates pursuant to section 205 of the FPA⁷ and Part 35 of the Commission's regulations.⁸ According to Duke Energy, the new proposed depreciation rates set forth in the revised depreciation study (Revised Study) reflect revisions to the Initial Study resulting from an agreement between Duke Energy and the North Carolina Utility Commission (North Carolina Commission) as part of a settlement of Duke Energy's general retail rate case in North Carolina (Settlement).⁹

4. Duke Energy states that, if approved, the instant depreciation rate changes will result in a decrease in the annual accrual amount of approximately \$0.07/kW-Month, as compared to the annual accrual amounts submitted in the April 19 Filing.¹⁰ According to Duke Energy, the Revised Study results in a \$9.7 million system-wide decrease in annual depreciation expenses for production facilities.¹¹ Duke Energy explains that the reduced annual accrual amount reflects a net decrease of 0.4 percent (\$306,810) in Fayetteville's

⁵ *Id.*

⁶ On August 22, 2013 Duke Energy filed an errata correcting two typographical errors in Exhibit C of the August 16, 2013 filing.

⁷ 16 U.S.C. § 824d (2006).

⁸ 18 C.F.R. pt. 35 (2013).

⁹ August 16, 2013 Transmittal Letter at 1.

¹⁰ *Id.*

¹¹ *Id.* at 4.

charges on an annual basis as compared to the proposed changes submitted in the April 19 Filing.¹²

5. Duke Energy requests that these revised depreciation rates be made effective on April 1, 2013.¹³ According to Duke Energy, pursuant to the terms of the Agreement, the depreciation rates will be reflected in Fayetteville's charges beginning on June 1, 2014, when the charges under its formula rate are updated based on the FERC Form No.1 data for 2013.

6. Duke Energy advises that the Revised Study reflects early retirement of a number of coal-fired generation units with a total capacity of 1,620 MW, and replacement of those units with gas-fired units.¹⁴ Duke Energy explains that its coal generation strategy changed in recent years as a result of a number of factors, including the additional environmental controls necessary to continue compliance with legislation in North Carolina, current and anticipated environmental regulations, and allowance costs.¹⁵ Duke Energy states that its Revised Study reflects a 10-year amortization period for its retired units. Duke Energy contends that its proposed rate treatment is consistent with Commission policy that, where a plant has already been operational, a utility is entitled to seek full recovery of its investment in depreciable assets.¹⁶

7. Duke Energy states that the depreciation rates for nuclear units do not include the costs of end-of-life terminal decommissioning and that costs in the Revised Study for interim replacements and net salvage are not duplicative of terminal decommissioning.¹⁷

8. Duke Energy also explains that it received approval from the North Carolina Commission and South Carolina Public Service Commission to accelerate the cost recovery of its nuclear generating assets beginning January 1, 2000.¹⁸ Duke Energy explains that the Revised Study utilized its depreciation reserves, including the accumulated depreciation reserve amounts related to Harris Accelerated Depreciation for

¹² *Id.* at 8.

¹³ *Id.* at 2.

¹⁴ *Id.* at 4-5.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 5 (citing, *e.g.*, *Town of Norwood v. FERC*, 80 F.3d 526, 532 (D.C. Cir. 1996) (*Town of Norwood*)).

¹⁷ *Id.* at 6.

¹⁸ *Id.* (citing Affidavit of David B. Pistole, Exhibit C, at 6).

both the North Carolina and South Carolina jurisdictions. According to Duke Energy, accelerated amounts totaling \$402.8 million were in the accumulated reserve as of December 31, 2002, and this additional reserve reduced the overall Harris Accelerated Depreciation rate from 2.85 percent to 1.97 percent.¹⁹ Duke Energy contends that, as a result, the wholesale jurisdiction received the benefit of retail accelerated depreciation, for which they had not yet paid their *pro rata* share. Duke Energy also contends that the accelerated reserve balances were included in the 2010 study balances. Duke Energy further advises it has agreed with the North Carolina Commission that it was now appropriate to ratably begin the unwinding process necessary to redistribute the Harris Accelerated Depreciation across all jurisdictions.²⁰

9. Duke Energy states that the Financial Accounting Standards Board guidelines require that it implement the revised depreciation rates in the second quarter of 2013, or April 1, 2013, corresponding to the time that Duke Energy implemented and filed its updates with the North Carolina Commission.²¹ To the extent necessary, Duke Energy requests waiver of the prior notice requirement to permit this effective date.²² Duke Energy explains that the Agreement requires it to use the depreciation rates reflected in the 2013 FERC Form No. 1 and file the annual update in April 2014. Accordingly, Duke Energy explains that it has implemented the change in depreciation rates consistent with the terms of the formula rate and that the resulting rates will go into effect on June 1, 2014. In support, Duke Energy notes that the Commission has granted waiver of its prior notice requirements in similar cases that implement revised depreciation rates in transmission formula rates.²³

10. Duke Energy also requests waiver of the revenue comparison data required by section 35.13(c) of the Commission's regulations for the 12 months preceding and succeeding the proposed effective date because, according to Duke Energy, this two-

¹⁹ *Id.* Duke Energy received approval from the North Carolina Commission and the South Carolina Public Service Commission to accelerate the cost recovery of its nuclear generating assets beginning January 1, 2000. Although applicable to all nuclear generating assets, Duke Energy accelerated cost recovery on only the Shearon Harris Nuclear Power Plant. Such treatment is referred to as the Harris Accelerated Depreciation. Affidavit of David B. Pistole, Exhibit C, at 6.

²⁰ *Id.* at 7.

²¹ *Id.* at 8.

²² *Id.* at 9.

²³ *Id.*

period analysis would not provide meaningful information due to the mid-year change in charges pursuant to the annual update under the formula rate.²⁴

11. Finally, Duke Energy requests that the Commission consolidate this proceeding with the ongoing proceeding in Docket No. ER13-1313-000.²⁵ Duke Energy states that the Initial Study and the Revised Study are identical with the exception of two updated assumptions that were used to calculate the terminal net salvage percentage. According to Duke Energy, while the Revised Study results in a decrease in the depreciation rates affecting the Agreement with Fayetteville as compared to the Docket No. ER13-1313-000 rates, the issues in both proceedings are otherwise identical.

II. Notice of Filing and Responsive Pleadings

12. Notice of Duke Energy's filing was published in the *Federal Register*, 78 Fed. Reg. 52765 (2013) with protests and interventions due on or before September 6, 2013. North Carolina Electric Membership Corporation (NCEMC)²⁶ filed a motion to intervene. North Carolina Eastern Municipal Power Agency (NCEMPA)²⁷ filed a motion to intervene, protest, motion for suspension and a statement in support of Duke Energy's consolidation request. Fayetteville filed a motion to intervene and protest. On September 24, 2013, French Broad Electric Membership Corporation, (French Broad) filed an out-of-time motion to intervene.

13. According to NCEMPA, an examination of the instant filing in conjunction with the intervenor submittals in Docket No. ER13-1313-000 brings to light a number of issues that bear on Duke Energy's development of its proposed depreciation rates.²⁸ NCEMPA states that such issues include, but are not necessarily limited to, the prudence of Duke Energy's early retirement of 12 coal-fired generating units; the reasonableness of Duke Energy's proposal to recover its undepreciated investment in those units from wholesale customers; the validity of the starting assumptions for Duke Energy's filed depreciation study (including the accumulated depreciation reserve balance assumed in

²⁴ *Id.* at 8.

²⁵ *Id.* at 9.

²⁶ NCEMC is a generation and transmission cooperative responsible for the full or partial power supply requirements of its 25 members throughout the State of North Carolina.

²⁷ NCEMPA is a municipal joint action agency serving as the all-requirements bulk power supplier to 32 cities and towns in eastern North Carolina.

²⁸ NCEMPA Protest at 5.

the study) in light of the fact that, between 1988 and the date of the filing in Docket No. ER13-1313-000, Duke Energy did not request or obtain Commission approval of the production depreciation rates it has used for wholesale rate purposes; and other inconsistencies in the depreciation study.²⁹

14. NCEMPA supports Duke Energy's consolidation request because the depreciation studies filed in the instant docket and in Docket No. ER13-1313-000 are largely identical.³⁰ Accordingly, NCEMPA requests that the Commission impose at least a nominal suspension on the revised depreciation rates and consolidate the proceedings.

15. Fayetteville states that, prior to the Agreement, for the period from July 1, 2003 through June 30, 2012, it took deliveries from Duke Energy pursuant to a 2002 contract resulting from a competitive solicitation.³¹ According to Fayetteville, the contract was not filed with the Commission and the market-based contract negotiation occurred during a period in which Duke Energy had obtained market-based rate authority.³²

16. Fayetteville states that the Initial Study and Revised Study result in a significant rate increase for Fayetteville.³³ Fayetteville estimates that about \$900,000 (about 35 percent of the requested \$2.6 million increase) of the annual increase relates to the early retirement treatment under the Initial Study.³⁴ Fayetteville maintains that a full rate case is needed to analyze the rate impacts from the Revised Study.³⁵ Fayetteville acknowledges that the reason for the revisions to the Initial Study is the Settlement.³⁶ However, Fayetteville complains that a global retail rate settlement is insufficient justification for Commission approval of a single aspect of that rate compromise and that the retail rates include benefits and other characteristics that are not provided to the wholesale customers in Docket No. ER13-1313-000.

²⁹ *Id.*

³⁰ *Id.* at 6.

³¹ Fayetteville Protest at 4.

³² *Id.*

³³ *Id.* at 5.

³⁴ *Id.*

³⁵ *Id.* at 7.

³⁶ *Id.*

17. Fayetteville disputes Duke Energy's primary legal justification for its Revised Study, i.e., *Town of Norwood*.³⁷ Fayetteville explains the court remanded the matter to the Commission to reduce the rate of return on equity to reflect the decreased risk associated with allowing rate base treatment for the early retired plant.³⁸ Fayetteville contends that the Commission should, at a minimum, review the rate of return here, to analyze the full rate impacts of Duke Energy's early retirement decision. Fayetteville claims that Duke Energy is trying to isolate itself from a true just and reasonable assessment of Fayetteville's rates by compartmentalizing the individual Commission approvals required to effectuate its early retirement decision.³⁹ According to Fayetteville, a single element of a retail rate case settlement is not justification for the Revised Study. Fayetteville contends that Duke Energy is asking the Commission to decide on the depreciation rates without a full understanding of the company's intention with respect to the total rate impact on Fayetteville.⁴⁰

18. Fayetteville states that in Docket No. ER13-1313-000, it protested the Initial Filing and moved for rejection of the Initial Filing as patently deficient.⁴¹ Fayetteville requests the Commission give those arguments due consideration.

19. Fayetteville maintains that Duke Energy's beefed up efforts here to explain the accounting associated with the Harris Accelerated Depreciation and the nuclear decommissioning expense do not accomplish their objective.⁴² Fayetteville contends that the accounting associated with these items must be tracked through a regular rate case to determine whether they were handled properly on Duke Energy's books and that relying on disjointed and detached entries attached to one witness' affidavit does little to inspire confidence that the accounting treatment is correct.

20. Fayetteville states it has the same concerns with the nuclear decommissioning cost in the Revised Study as it expressed in Docket No. ER13-1313-000. Fayetteville claims that it is unable to discern whether the nuclear decommissioning expense in the formula rate is duplicative of costs reflected in the Revised Study.⁴³ Fayetteville notes that the

³⁷ *Id.* at 9 (citing *Town of Norwood*, 80 F.3d 526).

³⁸ *Id.* at 9-10 (citing *Town of Norwood*, 80 F.3d at 535).

³⁹ *Id.* at 10.

⁴⁰ *Id.* at 11.

⁴¹ *Id.* at 11-12.

⁴² *Id.* at 12.

⁴³ *Id.*

formula rate provides that decommissioning expense is derived, not from FERC Form No. 1 data, but from “the most recent decommissioning study approved by FERC.” Thus, Fayetteville contends that Duke Energy has not shown whether the nuclear decommissioning expense is properly accounted for in the Revised Study.⁴⁴

21. Fayetteville notes that the North Carolina Commission required Duke Energy to keep Harris Accelerated Depreciation separately identified and quantified and to distinguish those amounts from depreciation expense.⁴⁵ Fayetteville states that, to its knowledge, Duke Energy has never requested to include Harris Accelerated Depreciation in Commission approved depreciation rates. Fayetteville contends that, if Duke Energy complied with the North Carolina Commission’s 1998 Order,⁴⁶ Duke Energy should not have included any Harris Accelerated Depreciation in the Initial Study and no formula rate adjustment would be justified. Fayetteville further contends that, if Harris Accelerated Depreciation is in the FERC Form No. 1’s data without prior Commission approval, and if this filing is Duke Energy’s attempt to include it in the depreciation rates, then the Revised Study fails to justify inclusion of Harris Accelerated Depreciation. On the other hand, if Harris Accelerated Depreciation is not in the proposed depreciation rates, then Fayetteville argues that the Harris Accelerated Depreciation adjustment in the formula rate is a double recovery. In any case, Fayetteville contends the adjustments in expense and rate base in the formula rate are not justified.⁴⁷

22. Fayetteville surmises that the Revised Study relies on information that is not in FERC Form No. 1 and is not publicly available.⁴⁸ Fayetteville contends that Duke Energy does not provide sufficient evidence, support or rationale for the negative salvage value estimates, the large contingency allowances used in the Revised Study or the ten year amortization period for the unamortized balances of the retired plant. Fayetteville contends that, when formula rates inputs are based on company records not available to parties or the Commission, the Commission has insisted on upon compliance with full filing requirements.⁴⁹ Accordingly, Fayetteville requests that the Commission reject the

⁴⁴ *Id.* at 13.

⁴⁵ *Id.*

⁴⁶ *Id.* at 14 (citing *Carolina Power & Light, Order*, North Carolina Commission Docket No. E-2, Sub. 737 (December 22, 1998)).

⁴⁷ *Id.* at 14-15.

⁴⁸ *Id.* at 15.

⁴⁹ *Id.* (citing *Tampa Electric Co.*, 133 FERC ¶ 61,023 (2010)).

Harris Accelerated Depreciation inclusion and analyze Duke Energy's Revised Study only in the context of a complete rate case.⁵⁰

23. Fayetteville requests a full five-month suspension, subject to refund and settlement judge procedures and requests that the Commission consider consolidating this proceeding with the ongoing proceeding in Docket No. ER13-1313-000. In support of a five-month suspension, Fayetteville contends that the rate treatment Duke Energy proposes for its retired plants is complete recovery of the unamortized remaining plant balances, even though such plant will not be used and useful to Fayetteville.⁵¹ Based on all the deficiencies noted above, Fayetteville contends that the proposed Revised Study is likely to result in excessive charges of at least 10 percent of the requested increase and so the rate treatment should be suspended for the maximum five-month period.⁵²

24. On September 19, 2013, Duke Energy filed an answer. Duke Energy states that the Commission should reject Fayetteville's mischaracterization of the August 16 Filing as a rate increase.⁵³ Duke Energy maintains that the Initial and the Revised Studies are identical with the exception of the two updated assumptions; specifically, the Revised Study updated two assumptions used to calculate the terminal net salvage with all other components of the Revised Study remaining the same and resulting in a rate reduction.⁵⁴

25. Duke Energy argues that the Commission should reject Fayetteville's request for a "full rate case" as beyond the scope of this proceeding.⁵⁵ Duke Energy maintains that the fact that the proposed revisions arose from a retail rate Settlement has no bearing on whether those revisions are just and reasonable. According to Duke Energy, the retail rate-related issues addressed in the Settlement have no relevance to Duke Energy's Commission-jurisdictional rates and the discrete nature of the depreciation study.

⁵⁰ Fayetteville Protest at 16.

⁵¹ *Id.*

⁵² *Id.* at 16-17 (citing *Tampa Electric Co.* 133 FERC ¶ 61,023 at P 49).

⁵³ Duke Energy Answer at 4.

⁵⁴ As explained in the August 16, 2013 Transmittal Letter at 7, the Revised Study reflects: (1) a reduction in the contingency factor used in estimating the demolition costs from 20 percent to 10 percent of estimated costs; and (2) a change in the escalation index used in estimating demolition costs.

⁵⁵ Duke Energy Answer at 6.

26. Duke Energy maintains that it has not asked the Commission to accept, without evaluation, the changed components of the Revised Study based solely on the fact that the changes were approved by the North Carolina Commission.⁵⁶ In fact, according to Duke Energy, nowhere in the August 16 Filing did Duke Energy “rel[y] on a retail rate case settlement as its primary justification for the change in the Revised Depreciation Study” as Fayetteville claims.⁵⁷ Duke Energy states it simply described the origin of the changes to provide the Commission with context to explain why the depreciation study was being revised months after it had been filed with the Commission in Docket No. ER13-1313-000.

27. Additionally, Duke Energy maintains that it has not sought, in this proceeding, to revise the Agreement between Duke Energy and Fayetteville that is currently on file with the Commission but rather that it seeks only to implement the depreciation rates in accordance with Order No. 618⁵⁸ as inputs to the formula rate in the Agreement. Duke Energy argues that, to the extent that Fayetteville believes that the Agreement is no longer just and reasonable, Fayetteville should file a complaint with the Commission pursuant to section 206 of the FPA⁵⁹ and bear the burden to show that the existing terms and conditions of the Agreement are no longer just and reasonable. According to Duke Energy, Fayetteville has not done so here but rather merely asserts that the continued justness and reasonableness of unchanged components of the Agreement are general and unsupported and should be rejected.

28. Duke Energy also states that, since this proceeding is not a rate case in which Duke Energy sought to change the terms and conditions of the Agreement, Fayetteville’s reliance on *Town of Norwood* in support of its request that the Commission evaluate Duke Energy’s return on equity is misplaced.⁶⁰ According to Duke Energy, in *Town of Norwood*, Yankee Atomic Electric Company (Yankee) filed revisions to contracts together with a request to recover costs associated with early-retired plants. Duke Energy also asserts that Yankee’s filing involved changes to the contracts themselves and that the Commission evaluated Yankee’s proposed changes in the context of the other terms and conditions of the contracts and determined that other contract revisions were necessary. However, Duke Energy argues, this case is different. Duke Energy states it has not

⁵⁶ *Id.* at 7.

⁵⁷ *Id.* (citing Fayetteville Protest at 11-12).

⁵⁸ *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs. ¶ 31,104, at 31,694 (2000).

⁵⁹ 16 U.S.C. § 824e (2006).

⁶⁰ Duke Energy Answer at 8.

sought to revise the Agreement itself, but rather to revise an input to the formula rate contained in the Agreement. Duke Energy maintains that the issues in this case are properly limited to those associated with the depreciation rates and associated Revised Study.

29. Duke Energy states that Fayetteville provides no support for its arguments that Duke Energy needs to make additional filings with the Commission to effectuate its early retirement decision.⁶¹ Duke Energy agrees that additional filings will be necessary and those filings will be submitted to the Commission in due course, in accordance with the Commission's regulations pertaining to each issue. However, according to Duke Energy, future filings regarding accounting treatment and nuclear decommissioning have no relationship to the Commission's approval of the depreciation rates at issue here.

30. Duke Energy also argues that Fayetteville mischaracterizes the nature of the prior contract and erroneously suggests that the contract should have been filed with the Commission.⁶² According to Duke Energy, the preceding contract was a market-base rate contract, entered into pursuant to Duke Energy's market-based rate authority and thus Commission approval of the contract was not required.

31. Duke Energy asserts that Fayetteville's request for a five-month suspension of the revised rates underscores Fayetteville's misunderstanding of the effect of the depreciation rate revisions. Duke Energy states that a five-month suspension of the rate reduction is not in the best interest of either party. According to Duke Energy, the suspension would not result in Fayetteville's depreciation rates reverting to rates prior to the suspension date resulting from the April 19, 2013 filing in Docket No. ER13-1313-000, but rather would result in a five-month delay in implementation of the proposed reduction in Fayetteville's rate.

32. Duke Energy argues that, for the reasons described above, the Commission should reject Fayetteville's request that the Commission initiate a "full rate case" to evaluate other elements of the Agreement, which Duke Energy has not sought to revise in this proceeding.⁶³ Duke Energy states that it continues to believe that both its Initial Study and Revised Study are just and reasonable and, rather than repeat its response to the

⁶¹ *Id.*

⁶² *Id.* at 9.

⁶³ *Id.*

arguments in the April 19 Filing, Duke Energy incorporates by reference its responses to the arguments raised by Fayetteville and NCEMPA.⁶⁴

III. Discussion

A. Procedural Matters

33. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant French Broad's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding and the absence of undue prejudice or delay.

34. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Duke Energy's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

35. Duke Energy's proposed changes in depreciation rates raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Therefore, we will accept Duke Energy's proposed rates for filing, suspend them for a nominal period, and make them effective April 1, 2013, as requested, subject to the outcome of the Initial Study, and set them for hearing and settlement judge procedures.

36. In addition, while Duke Energy is proposing a rate decrease, our review indicates that a further decrease may be warranted. Therefore, we will also institute a section 206 investigation in Docket No. EL14-2-000 with respect to the justness and reasonableness of Duke Energy's proposed rate decrease.

37. Duke Energy requests waiver of the prior notice requirement to permit an effective date of April 1, 2013. Fayetteville notes that both the Initial Study and Revised Study result in a significant rate increase for Fayetteville. Fayetteville maintains that the Revised Study and Harris Accelerated Depreciation should only be analyzed in the

⁶⁴ These include, for example, Duke Energy's response to Fayetteville's arguments regarding the prudence of early plant retirement, whether Duke Energy should include in the depreciation study 100 percent of the costs associated with such retirements, the unwinding of costs associated with Harris Accelerated Depreciation, nuclear decommissioning costs, contingency allowances and negative salvage amounts.

context of full rate cases. Fayetteville contends that based on the deficiencies it has noted, the Revised Study is likely to be at least 10 percent excessive and requests a maximum five-month suspension. As noted by Duke Energy, the Commission generally grants waiver of the 60-day prior notice requirement when a filing reduces rates or charges.⁶⁵ Therefore, we will grant waiver of the prior notice requirement to allow the revised depreciation expenses to be included in the formula rate schedule, effective April 1, 2013 as requested.

38. We agree that an examination of the instant filing in conjunction with the intervenor submittals in Docket No. ER13-1313-000 will shed additional light on a number of issues that bear on Duke Energy's development of its proposed depreciation rates, including, but not limited to, the treatment of Harris Accelerated Depreciation, the nuclear decommissioning expense, negative salvage value estimates, the contingency allowances used, recovery of unamortized investments, and a review of the rate of return.

39. We will grant Duke Energy's request for a waiver of section 35.13(c). Section 35.13(c) requires the filing of information relating to the effect of the rate change.⁶⁶ The Commission has granted waivers of the requirements to provide such data previously in a series of cases involving transmission formula rates.⁶⁷ Nevertheless, to the extent that parties should show the relevance of additional information needed to evaluate Duke Energy's proposed depreciation rates, or necessary inputs to the formula rate, the settlement judge or presiding judge can provide for appropriate discovery of such information.

40. Because Docket Nos. ER13-2186-000 and ER13-1313-000 raise common issues of law and fact, we will consolidate the instant proceeding with the ongoing hearing and settlement judge procedures in Docket No. ER13-1313-000, for purposes of settlement, hearing and decision. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance. The previously-designated settlement judge or presiding

⁶⁵ See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,974 (1993); *Central Hudson Gas & Electric Corp., et al.*, 60 FERC ¶ 61,106, at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*).

⁶⁶ 18 C.F.R. § 35.13(c) (2013).

⁶⁷ *E.g.*, *PPL Elec. Utils., Corp.*, 125 FERC ¶ 61,121, at P 40-41 (2008); *Pub. Serv. Elec. & Gas Co.*, 124 FERC ¶ 61,303, at P 23 (2008); *Oklahoma Gas & Elec. Co.*, 122 FERC ¶ 61,071 (2008); *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 94 (2007).

judge shall determine the procedures best suited to accommodate the consolidation ordered herein.⁶⁸

The Commission orders:

(A) Duke Energy's filing is hereby accepted for filing, and suspended for a nominal period, to become effective April 1, 2013, as requested, subject to refund and subject to the outcome of Docket No. ER13-1313-000, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), a public hearing shall be held concerning Duke Energy's depreciation filing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Docket No. ER13-2186-000 is hereby consolidated with the ongoing proceeding in Docket No. ER13-1313-000 for the purposes of settlement, hearing and decision.

(D) The settlement judge or presiding judge, as appropriate, designated in Docket No. ER13-1313-000 shall determine the procedures best suited to accommodate the consolidation ordered herein.

(E) Duke Energy's request for a waiver of section 35.13(c) is hereby granted.

(F) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding in Docket No. EL14-2-000.

⁶⁸ 18 C.F.R. § 385.503 (2013).

(G) The refund effective date in Docket No. EL14-2-000, established pursuant to section 206(b) of the Federal Power Act, will be the date that the notice of the initiation of the investigation in that docket is published in the *Federal Register*.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.