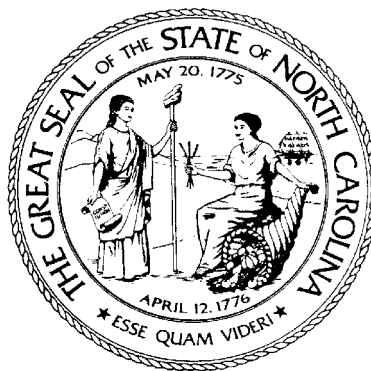


**REPORT OF THE
NORTH CAROLINA UTILITIES COMMISSION
TO
THE JOINT LEGISLATIVE
UTILITY REVIEW COMMITTEE
REGARDING
FUEL CHARGE ADJUSTMENT PROCEEDINGS
FOR ELECTRIC UTILITIES
(Pursuant To G.S. 62-133.2)**



July 2001

June 29, 2001

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

Representative Ronald L. Smith, Co-Chairman
Joint Legislative Utility Review Committee
2223 State Legislative Building
Raleigh, North Carolina 27601-1096

Dear Sirs:

The Utilities Commission hereby presents for your consideration its 2001 Report to the Joint Legislative Utility Review Committee regarding fuel charge adjustment proceedings for electric utilities. Copies are being distributed to each member of the Committee.

This report is being provided pursuant to the provisions of Chapter 15 of the 1995 Session Laws. This legislation 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 charge adjustments for electric utilities. In this report, the Commission summarizes the six proceedings conducted under this statute during the preceding two years.

Very truly yours,

Jo Anne Sanford, Chair

JAS/GTS/dph

cc: Members of the JLURC
Steven J. Rose, Committee Counsel
Esther Manheimer, Assistant Committee Counsel
Carolina Power & Light Company
Duke Power
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

INTRODUCTION

This report is being provided to the Joint Legislative Utility Review Committee pursuant to the provisions of Chapter 15 of the 1995 Session Laws. This legislation requires the Utilities Commission to provide biennial reports summarizing the proceedings conducted pursuant to G.S. 62-133.2, the statute providing for fuel charge adjustments for electric utilities.

G.S. 62-133.2 provides for two types of rate adjustments: fuel charge adjustments and “true-ups.” They both take place in the context of a single hearing, but they are separate and distinct, and it is important to distinguish them. A fuel 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 the fuel component of purchased power as set in the electric company’s last general rate case (the base fuel factor). A fuel charge adjustment is based on pro forma data and utilizes a historical test period. The test period data is used as a guide to what fuel costs will be in the future. No matter how carefully a fuel charge adjustment is set, it will never perfectly match the fuel 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 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 costs are collected by the utility or over-recovered fuel 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 1970's when the price of fuel was escalating rapidly as a result of the Arab oil embargo. The Utilities Commission first used its discretionary ratemaking power to establish formulas under which fuel charge factors were added to customers’ bills monthly, 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 and enacted the immediate 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 fuel to determine whether the fuel cost component of electric rates should be adjusted up or down to reflect actual changes in the utility’s cost of fuel and in the fuel cost component of the utility’s purchased power.

“True-ups” were first introduced in 1985. In a fuel charge adjustment proceeding for Carolina Power & Light Company (CP&L), the Utilities Commission added an “experience modification factor” to rates in order to allow CP&L to recover a portion of its previously under-recovered fuel expenses. 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.” However, on July 24, 1987, the General Assembly amended G.S. 62-133.2 in order to provide explicitly for “true-ups.”

By this same 1987 legislation, the General Assembly provided for repeal of the entire statute in two years, on July 1, 1989. In 1989, the General Assembly extended the sunset date until July 1, 1991. In 1991, the General Assembly again extended the sunset date, this time for six years until July 1, 1997, and also provided for the Utilities 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.” On March 22, 1995, the General Assembly ratified Senate Bill 271. This legislation, Chapter 15 of the 1995 Session Laws, removed the sunset provision from the statute. It also required the Utilities Commission to provide a report to the Joint Legislative Utility Review Committee summarizing the fuel cost adjustment procedures during the previous two years but eliminated the requirement for the report of the Utilities Commission to include a recommendation as to whether G.S. 62-133.2 should be continued, repealed, or amended. Thus, this is the report of the Utilities Commission summarizing the fuel cost adjustment procedures during the previous two years submitted pursuant to G.S. 62-133.2(g).

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, a division of Duke Energy Corporation (Duke), Carolina Power & Light Company (CP&L), and Virginia Electric and Power Company, d/b/a Dominion North Carolina Power, (Dominion North Carolina 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 the first Tuesday of May each year, the hearing for CP&L is held the first Tuesday of August each year, and the hearing for Dominion North Carolina Power is held on the second Tuesday of November each year. If a company has a general rate case hearing scheduled close to the date for its annual fuel charge adjustment hearing, the two hearings may be consolidated. However, the issues in the fuel 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 CP&L is the 12-month period ending March 31, and the test period for Dominion North Carolina Power is the 12-month period ending June 30.

The burden of proof is on the utility to show that its fuel expenses were reasonable and prudently incurred. Although fuel charge adjustments were originally prompted by fluctuating fuel prices resulting from the Arab oil embargo, today the main reason why fuel expenses fluctuate is the availability of nuclear generating units. 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 largely dependent upon 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 also in determining the “true-up.” Only “reasonable fuel expenses 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(i) 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.

The following sections of this report present a summary of each of the six fuel charge adjustment proceedings conducted during the preceding two years in chronological order. A chart showing summary statistics of these six fuel charge proceedings is also attached following the summaries.

1. CP&L - Docket No. E-2, Sub 748

This fuel adjustment proceeding employed a 12-month test period ended March 31, 1999. The Commission held the hearing on August 3, 1999, and issued an Order on September 9, 1999, approving a fuel factor of 1.057¢¹ per kWh. This fuel factor was 0.219¢ per kWh lower than the base fuel factor of 1.276¢ per kWh approved by the Commission in CP&L’s last general rate case in 1988.

¹ This and all subsequent fuel factors exclude gross receipts tax.

The CP&L testimony and exhibits filed on June 3, 1999 in support of its Application showed the calculation of a fuel factor of 1.314¢ per kWh. This factor was based on normalized capacity factors for CP&L's nuclear units in accordance with Commission Rule R8-55(c)(1) by using the North American Electric Reliability Council (NERC) Equipment Availability Report 1993-1997 average for boiling water reactors (BWRs) and pressurized water reactors (PWRs). The NERC five-year average capacity factors for Brunswick Unit Nos. 1 and 2, both BWRs, were normalized at 66.31% and the capacity factors of the Robinson and Harris Units, both PWRs, were normalized at 76.00%. The Company's NERC normalized calculations resulted in a system nuclear capacity factor of 71.02% using this data. The calculation of the 1.314¢ per kWh fuel factor also included normalization adjustments to test period kWh sales and generation to account for customer growth, weather and usage. Fuel prices used for coal, nuclear, internal combustion turbines, purchases and sales were based on the end of the test period prices. However, rather than the 1.314¢ per kWh fuel factor, CP&L requested that the Commission approve a lower fuel factor of 1.057¢ per kWh. CP&L proposed the lower fuel factor for two reasons. First, the lower fuel factor proposed by CP&L promoted rate stability because it resulted in no change in the net fuel factor charged to its customers. Second, CP&L was confident that its nuclear units would outperform the NERC averages which were used to calculate the fuel factor of 1.314¢ per kWh. CP&L's actual nuclear capacity factor during the test year equaled 92.21%. Therefore, CP&L recommended the lower fuel factor of 1.057¢ per kWh in order to avoid rate changes and promote rate stability. The Public Staff agreed with CP&L's proposed fuel factor of 1.057¢ per kWh and although one party objected due to the lack of evidentiary support for CP&L's proposed fuel factor, no party recommended a different fuel factor. The Commission found that the proper fuel factor equaled 1.057¢ per kWh and ordered the Company to adjust the base fuel component in its North Carolina retail rates by a decrement of 0.219¢ per kWh from the base fuel component of 1.276¢ per kWh approved in CP&L's last general rate case.

In this proceeding, one intervenor challenged the reasonableness of CP&L's coal purchasing procedures and the resulting coal costs for the test period. As described in the Order, CP&L first entered into three coal contracts during the late 1960s and early 1970s and re-negotiated the terms of these contracts in the mid-1990s. This intervenor contended that CP&L's coal costs were excessive by approximately \$50 million because the re-negotiated contracts provided for the payment of large lump sums during the test year in exchange for lower fuel costs in the future. CP&L explained that it had successfully re-negotiated each of the three coal contracts in question to either shorten the term of contract so that CP&L could take advantage of new coal purchasing opportunities; or achieve a lower cost of coal to CP&L over the remaining term of the contract; or both. CP&L also testified that, in every re-negotiation, the net present value cost of coal during the term of the contract was reduced, thereby reducing CP&L's fuel cost for its customers over the life of the contract. The Commission concluded that the re-negotiations of the coal contracts and the resulting costs were reasonable. CP&L's fuel procurement and power purchasing practices were also found to have been reasonable during the test period.

In its Application and testimony, CP&L also proposed an EMF increment rider equal to 0.057¢ per kWh in order to collect \$19,238,268 of under-recovered fuel cost from its ratepayers.

This EMF rider was determined by dividing the under-recovered amount by the adjusted North Carolina retail kWh sales of 33,676,567,783. CP&L asked that this EMF rider remain in effect for a 12-month period. The Public Staff reviewed CP&L's under-recovery and EMF rider calculations and recommended approval of the Company's request.

During the test year, CP&L purchased power from a number of power marketers and other suppliers that did not provide it with the actual fuel costs associated with those purchases. G.S. 62-133.2(d) requires that purchased power-related costs recovered through fuel proceedings consist of only the fuel cost component of those purchases.

To address this situation, on June 4, 1999, CP&L filed a Stipulation reached by the Public Staff, the Attorney General, CP&L, Duke and Dominion North Carolina Power regarding the proper methodology for determining the fuel costs associated with power purchases from power marketers and other suppliers (Marketer Stipulation). The Marketer Stipulation generally provides that for fuel cases held during 1999, 2000, and 2001, the parties to the Stipulation agreed that if a utility cannot obtain accurate fuel cost for such power purchases, the utility shall assume that the fuel cost was 70% of the energy portion of the purchase price. The 70% factor was chosen because it was representative of the utilities' (CP&L, Duke, and North Carolina Power) own fuel cost for off-system sales. The Marketer Stipulation is not binding on the Commission, nor parties who did not sign it, and the Commission considers the Marketer Stipulation in cases in which it is submitted in the context of the entire record. CP&L and the Public Staff recommended that the Commission approve the Marketer Stipulation for the purpose of determining CP&L's fuel cost associated with power purchases from power marketers and other suppliers during the test year.

In its Order in Duke's 1996 fuel proceeding, the Commission stated, "When faced with a utility's reliance upon such form or proof [i.e., a reasonable and reliable proxy for the fuel cost component of such purchases] in a future fuel adjustment proceeding, the considerations will be whether the proof can be accepted under the statute, whether the proffered information seems reasonably reliable, and whether or not alternative information is reasonably available. Applying this standard to the evidence in this case, the Commission concluded that the methodology for determining the fuel cost component of purchases from marketers and certain other suppliers as set forth in the Marketer Stipulation was reasonable and accepted for purposes of this proceeding. Further, no evidence was introduced in this case to suggest that the Commission's reliance on the Marketer Stipulation was unreasonable.

After considering all the evidence in this proceeding, the Commission approved the under-recovery amount of approximately \$19.2 million and the EMF increment factor of 0.057¢ per kWh as proposed by CP&L and the Public Staff. Therefore, the Commission authorized CP&L to establish this EMF increment rider in its rates for the 12-month period beginning September 15, 1999.

The effect of the Commission's Order resulted in no net change in CP&L's revenues or rates for CP&L's North Carolina retail customers.

2. Dominion North Carolina Power - Docket No. E-22, Sub 382

This fuel proceeding for Dominion North Carolina Power utilized the 12-month test period ended June 30, 1999. The Application was filed by the Company on September 17, 1999, and the Commission held the hearing on November 16, 1999. In the Commission Order issued on December 17, 1999, the Commission approved a fuel factor of 1.013¢ per kWh which was 0.078¢ per kWh lower than the base fuel factor approved by the Commission in Dominion North Carolina Power's last general rate case in 1993.

The Commission derived the 1.013¢ per kWh fuel factor by dividing the Company's adjusted test period system fuel expense of \$717,768,916 by the adjusted test period system sales level of 70,866,146 MWh. In determining the system fuel expense, the Commission approved and employed a normalized system nuclear capacity factor equal to 89.01%. This nuclear capacity factor was based on the estimated nuclear capacity factor for the year ending December 31, 2000 and was recommended by the Company and agreed to by the Public Staff. The Company achieved a system nuclear capacity factor of 93.0% for the test period. The Company and the Public Staff also agreed on all other elements included in the calculation of the appropriate fuel factor and the Commission concurred. The total North Carolina jurisdictional fuel expense resulting from the approved 1.013¢ per kWh fuel factor and the adjusted North Carolina jurisdictional test period sales of 3,149,713 MWh equaled approximately \$32 million, or approximately 5% of the system fuel expense. The Commission also found that the Company's fuel and power purchasing practices were reasonable and prudent during the test period.

Dominion North Carolina Power and the Public Staff agreed that the Company under-collected its jurisdictional fuel expense by \$1,849,947 during the test period. To determine the fuel costs associated with purchases from power marketers during the test period, both the Company and the Public Staff relied upon the methodology set forth in the Marketer Stipulation and no party expressed an objection to its use in this proceeding. Therefore, the Commission found that Dominion North Carolina Power under-collected its jurisdictional fuel expense by a total of \$1,849,947 during the test period and approved the Company's request to implement an EMF increment rate rider equal to 0.059¢ per kWh during the 12-month period beginning January 1, 2000.

The result of the Commission's decision in this proceeding was a net rate increase of approximately \$5,228,524 on an annual basis or \$1.66 per month for a typical residential customer using 1,000 kWh per month.

3. Duke - Docket No. E-7, Sub 661

This fuel adjustment proceeding for Duke utilized a 12-month test period ended December 31, 1999, and the Commission hearing was held on May 10, 2000. On June 26, 2000, the Commission issued an Order approving a fuel factor of 0.9709¢ per kWh. The approved fuel factor

in this proceeding was 0.1323¢ per kWh lower than the base fuel factor approved by the Commission in Duke's last general rate case in 1991.

The approved fuel factor of 0.9709¢ per kWh was based on Duke's adjusted test period system fuel expense of \$739,308,000 and an adjusted test period system sales level of 76,147,231 MWh. In making the determination of the system fuel expense, the Commission utilized a system nuclear capacity factor of 85% as recommended by Duke and the Public Staff. Duke submitted that the 85% capacity factor was based upon Duke's historic nuclear performance, expected outages and refuelings necessary in the year 2000, reasonable expected performance in the year 2000 and the industry averages for nuclear generation facility performance. Duke achieved a system nuclear capacity factor of 89.66% for the test period which was above the NERC 1994-1998 average nuclear capacity factor for all PWRs of 78.24%. One intervenor advocated the use of an 88% nuclear capacity factor. However, the Commission rejected the 88% factor, citing that Duke's test year nuclear capacity factor of 89.66% was the highest Duke had ever achieved as of that date and that Duke's nuclear capacity factor equaled 73% in 1997, 75% in 1996, and 88% in 1995. This same intervenor also objected to the inclusion of the Department of Energy (DOE) assessment for decontamination and decommissioning of uranium enrichment facilities and the nuclear fuel disposal cost paid to DOE in the Company's cost of nuclear fuel. In an Order dated October 31, 1986, in Docket No. E-7, Sub 408, the Commission concluded that the nuclear fuel disposal costs should be included in the fuel cost for fuel charge adjustment proceedings held pursuant to G.S. 62-133.2. The Federal Energy Regulatory Commission, in Docket No. RM 93-18-000, Order No. 557 dated September 24, 1993, issued a fuel rule with respect to accounting and ratemaking treatment of special assessments under the Atomic Energy Act in which it ruled that the DOE assessment constitutes fuel cost. Therefore, the Commission concluded that these costs constituted fuel costs for purposes of this proceeding. The total North Carolina jurisdictional fuel expense resulting from the approved fuel factor and the adjusted North Carolina jurisdictional test year sales level of 51,625,145 MWh equaled approximately \$501.2 million, or approximately 68% of Duke's system fuel expense. Duke's fuel procurement and power purchasing practices during the test period were found to have been reasonable and prudent by the Commission.

Duke and the Public Staff ultimately agreed that it had over-collected its North Carolina retail fuel expense by \$13,049,000 during the test period and that the interest expense associated with this over-collection amounted to \$2,355,000, based upon an interest rate of 10% per annum. The over-collected amount plus the associated interest was divided by Duke's adjusted North Carolina retail sales of 51,625,145 MWh to arrive at an EMF decrement including interest of 0.0299¢ per kWh. Based upon the evidence, the Commission concluded that the proposed EMF decrement rate rider was reasonable and appropriate and required Duke to refund the over-collection with interest to its North Carolina retail customers over the 12-month period beginning July 1, 2000.

During the test year, Duke purchased power from 28 power marketers and other suppliers that did not provide Duke with the actual fuel costs associated with such purchases. Duke's proposed fuel factor and EMF rider in this case reflected use of the 70% ratio to determine the fuel cost associated with these purchased power transactions pursuant to the terms of the Marketer Stipulation.

The Public Staff also recommended that the Commission adopt the Marketer Stipulation for determining the fuel cost associated with such purchases.

One intervenor urged the Commission to reject the Marketer Stipulation and to deny Duke the recovery of any fuel cost associated with such purchases. This intervenor cited a provision of the Marketer Stipulation which states that, "The 70% ratio may be adjusted if a review of power sales reported to the Commission by the utilities (CP&L, Duke, and Dominion North Carolina Power) during the most recent 12 months indicates that the total fuel cost to total energy ratio for such sales falls outside the range of 63% to 77%. If such ratio falls outside this range, the parties agree they will meet and negotiate the appropriate ratio." The intervenor then argued that no party had established a sufficient evidentiary basis to support the use of the average fuel cost of the three utilities' sales as a proxy for the fuel cost of such power purchases, that 70% was not an appropriate factor for Duke's purchases, and that the average fuel cost ratio for off-system sales by the three utilities was less than the 63% lower limit of the range.

In its Order, the Commission agreed with the parties to the Marketer Stipulation that the methodology of using the three utilities' own off-system sales to determine the proxy fuel cost for purchases from entities that do not provide actual fuel costs was reasonable for purposes of this proceeding. After considering all of the evidence, including the results of several analyses and the testimony of the Public Staff concerning these analyses, the Commission also concluded that the 70% fuel ratio was reasonable for determining the fuel costs for purchases from power marketers and other suppliers that do not provide actual fuel costs.

The result of the Commission's decision in this proceeding was a net rate increase of approximately \$19.8 million on an annual basis or 38¢ per month for a typical residential customer using 1,000 kWh per month.

4. CP&L - Docket No. E-2, Sub 765

CP&L's most recent fuel charge adjustment proceeding was heard on August 8, 2000, and employed a 12-month test period ended March 31, 2000.

In its Application and testimony, CP&L proposed a decrement of 0.078¢ per kWh to the base fuel factor of 1.276¢ per kWh approved in CP&L's last general rate case in 1988, or a recommended fuel factor of 1.198¢ per kWh. CP&L also originally requested an EMF increment rate rider of 0.147¢ per kWh to collect approximately \$49.7 million of under-collected fuel expense experienced during the test period.

CP&L's evidence furnished calculations which demonstrated that a fuel factor of 1.362¢ per kWh would result from using the adjusted test period data and a NERC normalized system nuclear capacity factor of 72.79%. CP&L's actual system nuclear capacity factor equaled 92.95% for the test year. Since CP&L believed that its nuclear units would significantly outperform the NERC average during the period that rates established in this proceeding would be in effect, CP&L

recommended adoption of the 1.198¢ per kWh fuel factor based on a projected nuclear capacity factor of 90.84%.

At the hearing held on August 8, 2000, the parties advised the Commission that they had entered into a settlement agreement pursuant to which CP&L had amended its Application in this docket to forego recovery of \$10 million of under-recovered fuel expense experienced during the test period and to recover the remaining balance of under-recovered fuel expense, up to \$39.7 million, in equal installments over a three-year period beginning with the 2001 fuel case, if the Commission found such costs to be reasonable and prudently incurred. No interest will be recoverable by CP&L in connection with this deferral of fuel cost recovery.

The Commission issued its Order on August 29, 2000. In its Order, the Commission determined that the proper fuel factor in this case was 1.198¢ per kWh based on a nuclear capacity factor of 90.84% and required CP&L to adjust the base fuel component in its North Carolina retail rates by a decrement equal to 0.078¢ per kWh. The Commission also concluded that CP&L's test year fuel cost, including the \$49,661,065 under-recovery experienced by CP&L during the test period, was a reasonable and prudent fuel expense. Finally, the Commission found that the settlement agreement was a fair and equitable means of allowing CP&L to recover its just, reasonable and prudent fuel costs for the test period and noted that no party challenged the prudence of CP&L's fuel costs or the settlement agreement. The settlement agreement meant that the EMF applicable to this case was zero.

The result of the Commission's decision in this proceeding was a net rate increase of approximately \$29 million on an annual basis or 86¢ per month for a typical residential customer using 1,000 kWh per month.

5. Dominion North Carolina Power - Docket No. E-22, Sub 388

Dominion North Carolina Power's most recent fuel adjustment proceeding utilized a 12-month test period ended June 30, 2000, and the hearing was held on November 7, 2000. The Commission's Order in this docket was issued on December 13, 2000, and approved a fuel factor of 1.138¢ per kWh which was 0.047¢ per kWh higher than the base fuel factor set in Dominion North Carolina Power's last general rate case in 1993.

The fuel factor approved by the Commission was based on an adjusted test period system fuel expense equal to \$842,294,969 and an adjusted test period system sales level of 74,015,367 MWh. A normalized system nuclear capacity factor of 89.02% was approved by the Commission and employed to determine the fuel factor. Dominion North Carolina Power achieved a system nuclear capacity factor of 93.8% during the test year. The North Carolina jurisdictional fuel expense based on the approved fuel factor and an adjusted North Carolina jurisdictional sales level of 3,369,633 MWh equaled approximately \$38.3 million. Further, the Commission concluded that the Company's fuel and power purchasing practices were reasonable and prudent.

Dominion North Carolina Power initially submitted that the Company under-collected its fuel expense by \$1,076,092 during the test period. However, in its review of the Company's filing, the Public Staff discovered an error which reduced the under-collected amount to \$1,017,927. Dominion North Carolina Power agreed with this adjustment. The \$1,017,927 under-collected fuel revenue was divided by the adjusted North Carolina retail sales of 3,369,633 MWh to arrive at a proposed EMF increment rate rider of 0.030¢ per kWh. North Carolina Power proposed to recover the under-collection from its North Carolina retail customers over a 12-month period beginning January 1, 2001. The Public Staff also recommended that the Commission approve the Marketer Stipulation which was applied by the Company in this case to determine the fuel cost associated with power purchases from power marketers and other suppliers. The Commission approved the use of the Marketer Stipulation and noted in its Order in this proceeding that no evidence was produced in this case which suggested that the Commission's reliance upon the Marketer Stipulation was unreasonable or otherwise unjustified. Based upon the evidence, the Commission concluded that the methodology for determining the fuel cost component of purchases from marketers and certain other suppliers as set forth in the Marketer Stipulation was reasonable and should be accepted for purposes of this proceeding. The Commission also approved the adjusted amount of the under-collection and the EMF increment rate rider agreed upon by the Company and the Public Staff. Therefore, North Carolina Power was authorized to recover the under-collection from its North Carolina retail customers through the 0.030¢ per kWh EMF increment rate rider over the 12-month period beginning January 1, 2001.

The overall impact of the Commission decision in this docket resulted in a net rate increase of approximately \$3.4 million on an annual basis or \$1.00 per month for a typical residential customer using 1,000 kWh per month.

6. Duke - Docket No. E-7, Sub 685

Duke's most recent fuel adjustment proceeding employed a 12-month test period ended December 31, 2000. The Company filed its Application on March 2, 2001 and the hearing was held on May 9, 2001. The Commission's Order in this docket was issued on June 25, 2001 and approved a fuel factor equal to 1.0249¢ per kWh which was 0.0783¢ per kWh lower than the base fuel factor approved by the Commission in Duke's most recent general rate case in 1991. The approved factor was determined by using Duke's adjusted test period system fuel expense of \$807,624,000 divided by its adjusted test period system sales level of 78,797,963 MWh. Duke achieved a system nuclear capacity factor of 92.33% for the test period compared to the NERC 1995-1999 five-year average nuclear capacity factor for all PWRs equal to 79.06%. Duke recommended the use of an 85% nuclear capacity to determine the fuel factor in this proceeding which was based upon Duke's historic nuclear performance, expected outages and refuelings during the 12-month period that the fuel factor would be in effect, reasonable expected performance, and the industry averages for nuclear generation facility performance. No party contested the recommended 85% nuclear capacity factor and the Commission concluded that this factor was reasonable and appropriate to employ for purposes of this proceeding. Further, the Commission concluded that Duke's fuel procurement and power purchasing practices were reasonable and appropriate during the test period.

In its Application, Duke submitted that it had over-collected the North Carolina retail fuel expense by \$13,228,000 and the interest associated with this over-collection calculated at a rate of 10% per annum equaled \$1,984,000. Duke proposed an EMF decrement rate rider equal to 0.0290¢ per kWh, based on this amount of over-collected fuel expense and the associated interest divided by an adjusted North Carolina retail sales level of 52,575,121 MWh.

The over-collection and EMF rider which Duke originally proposed in this case used the 70% ratio contained in the Marketer Stipulation to determine the fuel cost associated with power purchased by Duke from power marketers and other suppliers that did not provide it with the actual fuel cost associated with such purchases. The Public Staff testified that it had performed a review of the utilities' off-system sales for the 12 months ended December 31, 2000, and concluded that the utilities' off-system sales fuel ratio had fallen below the 63-77% range. Therefore, pursuant to a provision in the Marketer Stipulation which contemplates the possibility of an update of the 70% ratio in such circumstances, the Public Staff recommended that a 60% ratio should be used in this proceeding to determine the fuel cost of power purchases. Duke agreed to this adjustment and revised its proposed over-collection to equal \$14,845,000. The revised interest and EMF rider including interest associated with this over-collection equaled \$2,227,000 and 0.0324¢ per kWh, respectively. One intervenor also recommended that Duke should not be allowed to recover any fuel cost associated with one power purchase, in particular. During the test year, Duke purchased power from the Tennessee Valley Authority (TVA). Duke testified that it had requested TVA to provide the actual fuel cost associated with this purchase but TVA had refused. This intervenor argued that because Duke was contractually entitled to receive the actual fuel cost from TVA but had not undertaken any legal action to enforce its rights, Duke should not be allowed to apply the Marketer Stipulation to determine the allowable fuel cost associated with this purchase transaction. The Commission concluded that Duke took adequate steps to obtain the fuel cost from TVA and that the Marketer Stipulation should also be used to determine the fuel cost associated with this TVA purchase.

A new issue in this proceeding was whether sulfur dioxide (SO₂) emission allowance expenses incurred by Duke in connection with compliance with the 1990 amendments to the Clean Air Act constitute fuel costs under G.S. 62-133.2. Duke included approximately \$3.5 million in its adjusted test period system fuel expense to recover the cost of SO₂ emission allowances which affected its proposed fuel factor and the amount of its over-collection in the North Carolina retail jurisdiction by approximately \$1.8 million. All intervenors to this case opposed the inclusion of SO₂ emission allowances as fuel costs. After considering all of the evidence, the Commission concluded that expenses related to the SO₂ emission allowances are not fuel costs and should not be included in the test period fuel expenses for purposes of this proceeding.

In its Order, the Commission found that Duke over-collected its North Carolina jurisdictional fuel expense by \$16,608,000 during the test period. The Commission required Duke to refund this amount plus associated interest of \$2,491,000 through an EMF decrement rate rider equal to 0.0363¢ per kWh over the 12-month period beginning July 1, 2000.

The result of the Commission's decision in this proceeding was a net rate increase of approximately \$25.9 million on an annual basis or 49¢ per month for a typical residential customer using 1,000 kWh per month.

SUMMARY STATISTICS OF SIX FUEL CHARGE PROCEEDINGS

Company and Docket No.	Date of Order	Nuclear Capacity Factor Achieved in Test Year	Approved Fuel Factor ²	Test Year Over/(Under) Collection (Excludes Interest)	EMF Increment or (Decrement) ² (Includes Interest)	Net Change in Rates in Total \$ and Net Change in \$ per 1000 kWh Due To Fuel Charge Adjustments
1. CP&L E-2, Sub 748	9/9/99	92.21%	1.057	(\$19.2 million)	0.057	0 0
2. Dominion North Carolina Power E-22, Sub 382	12/17/99	93.0%	1.013	(\$1.8 million)	0.059	\$5.2 million \$1.66
3. Duke E-7, Sub 661	6/26/00	89.66%	0.9709	\$13.1 million	(0.0299)	\$19.8 million \$.38
4. CP&L E-2, Sub 765	8/29/00	92.95%	1.198	(\$49.7 million)	0	\$29 million \$.86
5. Dominion North Carolina Power E-22, Sub 388	12/13/00	93.8%	1.138	(\$1.0 million)	0.030	\$3.4 million \$1.00
6. Duke E-7, Sub 685	6/25/01	92.33%	1.0249	\$16.6 million	(0.0363)	\$25.9 million \$.49

²Figures shown are in cents per kWh excluding gross receipts tax.

RULE R8-55. Annual hearings to review changes in the cost of fuel and the fuel component of purchased power.

(a) For each 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 cost of fuel and the fuel component of purchased power. The annual fuel charge adjustment hearing for Duke Power Company will be scheduled for the first Tuesday of May each year; for Carolina Power & Light Company, the annual hearing will be scheduled for the first Tuesday of August each year; and, for Virginia Electric and Power Company, d/b/a North Carolina Power, the annual hearing will be scheduled for the second Tuesday of November each year.

(b) The test periods for the hearings to be held pursuant to paragraph (a) above will be uniform over time. The test period for Duke Power Company will be the calendar year; for Carolina Power & Light Company, the test period will be the 12-month period ending March 31; and, for North Carolina Power, the test period will be the 12-month period ending June 30.

(c) The general methodology and procedures to be used in establishing fuel costs, including the fuel cost component of purchased power, shall be as follows:

- (1) Fuel 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 Council's Equipment 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. A fuel cost rider will then be determined based upon the difference between the fuel costs thus established and the base fuel 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) The fuel cost as described above will be further modified through use of an experience modification factor (EMF) rider. The EMF rider will reflect the difference between reasonable and prudently incurred fuel cost and the fuel

related revenues that were actually realized during the test period under the fuel cost components of rates then in effect.

- (3) The fuel 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 utility's previous general rate case.
 - (4) 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 fuel costs, other than that being collected through operation of the EMF rider, in any intervening general rate case proceeding.
 - (5) Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently incurred fuel 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.
- (d) Each electric utility, as 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, 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 (c) (1)

above, additional pro forma calculations shall be presented incorporating the normalization methodology reflected in paragraph (c) (1).

- (4) Cost of fuel corresponding to the adjusted test period kWh generation, including a detailed explanation showing how such cost of fuel was 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) 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 NCUC 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 company to any intervenor upon request.
 - (6) All workpapers supporting the calculations, adjustments and normalizations described above.
 - (7) 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.
- (e) Each 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 respondent (if any), at least 60 days prior to the hearing. Nothing in this rule shall be construed to require the respondent utility to propose a change in rates or to utilize any particular methodology to calculate any change in rates proposed by the respondent utility in this proceeding.
- (f) The respondent 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.
- (g) 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.

(h) 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.

(i) 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 upon 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 five-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.

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

(k) If the Commission has not issued an order pursuant to G.S. 62-133.2 within 120 days after the date the respondent utility has filed any proposed changes in its rates and charges in this proceeding based solely on the cost of fuel and the fuel component of purchased power, then said utility may place such proposed changes into effect. If such changes in the rates and charges are finally determined to be excessive, said utility shall refund any excess plus interest to its customers in a manner directed by the Commission.

(1) Each company shall follow deferred accounting with respect to the difference between actual reasonable and prudently incurred fuel costs, including the fuel cost component of purchased power, and fuel related revenues realized under rates in effect.