STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 73

In the Matter of Investigation of Changes Occurring in the Electric Utility Industry and the Regulatory and Policy Implications of Such Changes, Including Proposals for Innovative Rates and Mechanisms, and Proposed Interim Guidelines for Self-Generation Deferral Rates	Reply Comments of the Commercial Group

The Commercial Group, composed of some of the largest commercial customers of Duke Energy Progress, Inc. ("DEP") and Duke Energy Carolina, LLC ("DEC"), hereby respectfully submits its reply comments in the above-captioned proceeding. In its initial set of comments, the Commercial Group recommended that any job retention tariff 1) should not unreasonably prefer or advantage any one set of ratepayers over other ratepayers, and 2) should be narrowly tailored to meet job retention objectives. A number of commenting parties likewise urged the North Carolina Utilities Commission (the "Commission") to create guidelines that avoid discriminatory rate subsidies and that require demonstrations that any ratepayer funds would only be used to achieve specific, targeted job retention goals.

In these reply comments, the Commercial Group responds to various proposals that were submitted in initial comments and proposes the following specific guidelines:

1. Eligibility should not be based on any unreasonable classification or distinction among ratepayers, such as an SIC code.
2. The utility should first demonstrate that the ratepayer(s) targeted to receive an electric rate discount needs the discount to preserve jobs, and will use that discount to preserve jobs.
3. The utility proposing a job retention tariff should self-fund at least 50 percent of the tariff discount.

I. REPLY COMMENTS

A. **Job retention tariffs should not unreasonably prefer or advantage any one set of ratepayers over other ratepayers** – Guideline: Eligibility should not be based on any unreasonable classification or distinction among ratepayers such as an SIC code.

The utilities and industrial groups continue to argue in their initial comments that being "industrial" should be a fundamental eligibility requirement for a job retention tariff. This is the wrong approach, and one that could harm the North Carolina economy and ratepayers. And because N.C.G.S. §62-140(a) prohibits all unreasonable preferences of one ratepayer group over another, it is also an unlawful approach. A utility could not lawfully grant a discount only to red-haired customers and it likewise could not lawfully grant a discount only to customers simply classified as industrials.

It is the wrong approach because, as the Commercial Group pointed out in its initial comments, all aspects of the North Carolina economy are important and all jobs are needed. The U.S. Department of Defense ("DOD") concurred in its initial comments (p.2) stating that an industrial-only rider could be counterproductive and lead to job losses by increasing the rates of non-industrial major employers. The DOD recommended that any Commission-authorized program to benefit large electric users instead should focus on creating rate mechanisms that encourage large users to save on electric bills (and thereby become more competitive) via demand response reductions instead of through broad, poorly-targeted subsidies. *Id.* at 3-5. The Commercial Group made a similar proposal in DEC's 2011 rate case, requesting that DEC create a critical peak pricing tariff that would encourage customers to lower peak demand during the highest demand hours thereby benefiting customers that make those reductions as well as other customers that benefit from reduced utility capital expense. E-7 Sub 989 Direct

Testimony of Chriss/Rosa, pp. 12-14. This type of rate mechanism incentive for reducing demand or conserving energy is a better approach for making North Carolina businesses more competitive.

But DEC/DEP in its initial comments yet again recommends an approach that is based, directly or indirectly, on the SIC code classification that the Commission previously found to be discriminatory[1]:

> [A] utility could draft eligibility to focus on nonresidential establishments receiving service … under rates typically subscribed to by large industrial customers provided that the establishment is not classified as Retail Trade or Public Administration by the Standard Industrial Classification (SIC) Manual….

DEC/DEP Initial Comments, p.5. This is simply the reverse side of the same coin. Whether an eligibility guideline includes only ratepayers that fall within an industrial SIC code or excludes all customers that do not fall within that same industrial SIC code obviously amounts to the same thing – an unlawful rate discrimination. Nor would undue discrimination against customers without an industrial code classification (or without red hair) become lawful by replacing it with some method that is non-discriminatory on its face but that still would result in only industrial customers (or only red-haired customers) being selected for the subsidy. *Id.* at 5-6. Indeed, it is a fundamental legal axiom that a government entity cannot do indirectly what it is not authorized to do directly. *E.g., State v. Griffin*, 154 N.C. 611, 70 S.E. 292, 293 (NC 1911).

The better approach is to set a guideline that complies with the law, i.e., that proposed retention tariffs may not unreasonably discriminate among groups of ratepayers.

B. Any job retention tariff should be narrowly tailored to meet job retention objectives – guideline: the utility should first demonstrate that the ratepayer(s) targeted to receive an electric rate discount needs the

[1] Dominion North Carolina Power likewise recommends in its initial comments (p.5) that retention tariffs should apply only to industrials.

> discount to preserve jobs, and the ratepayer(s) will use that discount to preserve jobs.

The second point the Commercial Group made in its initial comments was that job retention tariffs should not only be fair and non-discriminatory, the tariffs should also be narrowly tailored. The Public Staff proposes a reasonable guideline to do just that. Under this guideline, which the Commercial Group supports, a utility should demonstrate that "a particular customer or group of like customers is in need of an electric rate discount to preserve jobs <u>and will use that discount to do so</u>." Public Staff Initial Comments, p.4 (emphasis added). Such a guideline would go a long way toward making sure that a job retention tariff would accomplish its goal of retaining jobs, instead of merely creating a subsidy in favor of one group of customers.

In rejecting the proposed $150 million DEP IER, the Commission determined that there was no demonstrated link between the proposed broad IER subsidy and the perceived problem (job or load retention). Thus, on pages 110-111 of the DEP Final Order, the Commission determined:

> There is no substantial evidence that DEP's industrial rates were a significant factor in any industrial customer having reduced the level of its operations or departed North Carolina, or that Rider IER would in fact cause industrial customers to maintain current employment levels or operation levels in North Carolina. Thus, the Commission is unable to determine that Rider IER's primary purpose of shifting a portion of the rate increase from industrial customers to commercial and residential customers will be achieved.
>
> Further, the eligibility requirements for Rider IER are inadequate and are likely to result in an unacceptable level of free ridership.... Rider IER is devoid of any meaningful qualifications or requirements to verify that a particular customer or group of like customers is in need of an electric rate discount or will use that discount to preserve jobs in North Carolina.

Accordingly, before ratepayer funds are collected and spent on a job retention tariff, the utility should demonstrate that the proposed benefit will actually retain (or create) jobs.

In their initial comments, however, the pro-industrial advocates simply repeat the same general information that was submitted to support the DEP and DEC IER proposals that the Commission already rejected. This information covers the same broad points – that the industrial/manufacturing sector in the state has gone through significant changes as technology and the world economy has changed, that electric usage is large for an undefined subset of industrial/ manufacturing ratepayers, and that an undefined subset of this sector may have an ability to move operations elsewhere. But of particular note, no evidence has yet been presented that the type of broad subsidies proposed for all industrials (or all or most large industrials) would save even one job.

In light of the hopelessly broad proposals that have repeatedly been submitted to this Commission that would waste valuable ratepayer funds, the Commercial Group supports Staff's proposed guideline that the utility must first demonstrate that any proposed job retention tariff will actually save jobs.

C. **The Appropriate Method of Cost Recovery** – Guideline: The utility proposing a job retention tariff should self-fund at least 50 percent of the tariff.

The Commercial Group suggested in the last Progress Energy rate case that the utility fund at least part of the $150 million IER, but Progress Energy officials refused to do so. E-2, Sub 1023 Tr. Vol. 1 pp. 134-135. Therefore, the Commercial Group is heartened with the proposal by DEC/DER (p.10) potentially to self-fund job retention tariffs. The Commercial Group agrees that

> [I]f a utility funds the program, the[] utility bears the risk of the program not working, and the Commission need not judge the program on the same merits because … there is no "harm" to protect other customers from since they are not bearing the costs.

Id. Requiring significant self-funding by the utility for any job retention tariff likewise would provide the utility a significant incentive to limit the scope of any such tariff to what is necessary to achieve the retention goal. This could also help alleviate the concern of ratepayers who are repeatedly asked by the utility to subsidize other ratepayers that happen to be more favored by the utility.

II. CONCLUSION

WHEREFORE, the Commercial Group respectfully requests that the Commission grant the relief requested herein.

Respectfully submitted, this 13th day of June, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served upon all parties of record by electronic mail, or depositing the same in the United States mail, postage prepaid.

This 13th day of June, 2014.

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