

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-2, SUB 1219

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Energy Progress,	)	
LLC, for Adjustment of Rates and	)	ORDER DENYING
Charges Applicable to Electric Utility	)	DEFERRAL OF REVENUE
Service in North Carolina	)	

BY THE COMMISSION: On October 30, 2019, Duke Energy Progress, LLC (DEP), filed its application for a general rate case in the above-captioned docket.

On December 6, 2019, the Commission issued an Order Establishing General Rate Case, Suspending Rates, Scheduling Hearings, and Requiring Public Notice (Scheduling Order). Among other things, the Scheduling Order suspended DEP's proposed rates for up to 270 days, pursuant to N.C.G.S. § 62-134, scheduled several public witness hearings in locations throughout the state, and scheduled an expert witness hearing to begin in Raleigh on Monday, May 4, 2020.

On March 10, 2020, Governor Roy Cooper issued Executive Order No. 116 declaring a State of Emergency in North Carolina to coordinate response and protective actions to prevent the spread of coronavirus (COVID-19). In so doing, the Governor ordered state agencies to cooperate in the implementation of the provisions of the Executive Order. By subsequent executive orders, the Governor restricted non-essential movement of the State's residents and, ultimately, prohibited mass gatherings of more than 10 persons to limit the spread of COVID-19.

On March 17, 2020, the North Carolina Attorney General's Office and the Public Staff filed a joint motion requesting that the Commission postpone or suspend the requirement that parties file paper copies of their testimony and exhibits at this time.

On March 19, 2020, the Presiding Commissioner issued an Order finding good cause to postpone, but not to completely suspend the requirement that paper copies of the direct testimony and exhibits of the Public Staff and other intervenors be provided to the Commission, and that the procedural schedule would otherwise remain the same.

Also on March 19, 2020, the Commission issued an Order Suspending Utility Disconnections for Non-Payment, Allowing Reconnection, and Waiving Certain Fees (Waiver Order), in Docket No. M-100, Sub 158. In response to the COVID-19 pandemic and Governor Cooper's declaration of a State of Emergency, the Waiver Order directed all jurisdictional electric, natural gas, and water and wastewater public utilities to immediately (1) cease customer disconnections for non-payment of bills, (2) waive the

application of late fees, (3) suspend individual regulations and tariff provisions that prevent or condition reconnections of disconnected customers, and (4) provide appropriate notice to customers of these changes.

Also on March 19, 2020, Duke Energy Carolinas, LLC (DEC), DEP, and Piedmont Natural Gas Company, Inc. (collectively, Duke Utilities) filed a letter in Docket Nos. E-7, Sub 1236, E-2, Sub 1228, and G-9, Sub 767, requesting Commission approval to (1) suspend as of March 13, 2020, the disconnection of electric and natural gas service to the Companies' residential and non-residential customers who are unable to pay their bills, (2) waive for both residential and non-residential customers the application of late-payment charges provided for in the Commission's rules and the Companies' rate schedules, (3) allow reconnection of residential and non-residential customers who had recently been disconnected, without assessment of a reconnection fee, (4) waive for both residential and non-residential customers the application of fees for checks returned due to insufficient funds, (5) waive for residential customers the transaction fees associated with the payment of electric and gas bills by credit card or debit card, and (6) use flexibility in applying other requirements for restoration of electric and gas services, including the guidelines for re-establishment of credit pursuant to Commission Rules R12-2 and R12-3.

On March 20, 2020, the Commission issued an Order granting the Duke Utilities the relief requested in their March 19, 2020 letter that was in addition to the directives of the Waiver Order.

On March 24, 2020, the Public Staff filed a motion in the above-captioned docket requesting that the time for filing intervenors' direct testimony be extended to March 27, 2020.

Also on March 24, 2020, the Commission issued an Order Postponing Hearing and Addressing Procedural Matters (Postponement Order). The Postponement Order postponed the expert witness hearing until further order by the Commission.

On March 27, 2020, in Docket No. M-100, Sub 158, the Commission issued an Order Suspending Requirement for Filing Paper Copies suspending in all other cases the requirement to file additional paper copies of electronically filed documents until April 16, 2020, unless further extended by a subsequent order of the Commission. On March 30, 2020, the Commission issued an order extending that date until April 30, 2020.

On April 3, 2020, DEP filed a motion requesting that the Commission issue an order addressing several procedural issues, including ordering the partial resumption of the procedural schedule. Among other things, DEP stated that, subject to its right to implement temporary rates under N.C.G.S. § 62-135 and to seek appropriate accounting treatment relief, its motion included notice of its prospective waiver of its right to seek to implement its original proposed rates by operation of N.C.G.S. § 62-134(b) in the event that the postponement of the hearing rendered it infeasible for the Commission to issue an order prior to the rate suspension period under N.C.G.S. § 62-134.

On 7 April 2020, the Commission issued an Order Addressing Procedural Matters. Among other things, the Commission accepted DEP's prospective waiver of its right to seek to implement its original proposed rates by operation of N.C.G.S. § 62-134(b) in the event that the postponement of the hearing rendered it infeasible for the Commission to issue an order prior to the end of the rate suspension period under N.C.G.S. § 62-134.

On June 17, 2020, the Commission issued an Order Adopting Procedures for Expert Witness Hearings in the present docket and in Docket No. E-7, Sub 1214, the general rate case application of DEC. Among other things, the Order scheduled a consolidated expert witness hearing to commence on July 27, 2020, for the purpose of considering testimony on topics for which the evidence is identical in both the DEC and DEP cases, to be followed by a separate DEC hearing commencing on August 4, 2020, to consider the remaining DEC issues, to be immediately followed by a separate hearing in DEP's rate case to consider the remaining DEP issues.

### **PETITION FOR ACCOUNTING ORDER**

On June 22, 2020, DEP filed a Petition for Accounting Order to Defer Impacts of Its Suspended Rate Case in Lieu of Implementing Temporary Rates Under Bond (Petition). In summary, DEP states that due to health and safety concerns arising from the pandemic it agrees that postponing the originally scheduled expert witness hearing was entirely appropriate. DEP states that, nonetheless, the delay in its opportunity to place new, permanent rates into effect impairs its ability to begin collecting sufficient revenues to recover its costs to provide safe and reliable electric service to its customers, thereby potentially causing material financial harm to DEP. In addition, DEP maintains that the longer the regulatory lag in granting the Company's requested rate increase, the more detrimental the impact will be on DEP's financial condition. DEP notes that one mechanism to address the negative financial consequences is provided by N.C.G.S. § 62-135, which authorizes a utility to implement temporary rates under bond, subject to refund. DEP states, however, that because of COVID-19 and its economic impacts DEP views temporary rates as a last resort. In lieu of instituting temporary rates, DEP requests that the Commission allow it to establish a regulatory asset/liability account to record the difference between revenues under present rates and those that would be collected from implementing temporary rates under bond. DEP contends that this approach is an alternative that would benefit customers and serve the public interest. Moreover, DEP submits that the Commission has used deferral methodologies akin to its proposal to address unusual and unique situations in a manner that balances ultimate fairness for ratepayers with the financial needs of the utility.

According to DEP, the requested deferral would permit it to accrue the difference as of September 1, 2020 (the date the Commission-suspended rates would have otherwise gone into effect absent the Postponement Order), between revenues under present rates and revenues under the rates ultimately approved by the Commission in this docket. Further, DEP states that the deferral would include revenues associated with the components of its proposed Excess Deferred Income Tax rider, as well as other typical cost adjustments allowed in general rate cases. DEP states that the resulting accrued revenue, along with a return at the weighted average cost of capital, would either

be collected from or flowed back to customers during a one-year period starting within 90 days from when its new rates become effective after the Commission issues its final order. Moreover, DEP contends that its proposal meets the general criteria for deferral because it is proposing to defer an amount that will be known and measurable and to recover from or return to customers that fixed amount over a one-year period. Moreover, DEP maintains that the proposal does not constitute retroactive ratemaking, and that it is a lawful and appropriate alternative to implementing temporary rates.

In addition, DEP cites and discusses the similar Petition for Approval of an Order Allowing Deferral of Revenues In Lieu of Rates Under Bond, or, Alternatively, Notice of Intent to Place Temporary Rates in Effect Subject to An Undertaking to Refund Pursuant to G.S. 62-135 (Aqua Deferral Petition), filed by Aqua North Carolina, Inc., in Docket No. W-218, Sub 526 on June 11, 2020. DEP notes that the Public Staff and North Carolina Attorney General's Office (AGO) filed comments opposing the Aqua Deferral Petition. DEP submits that the reasons stated by the Public Staff and AGO for their opposition were without merit, and that despite their opposition the Public Staff and AGO seemed to agree that implementing temporary rates subject to refund in the midst of a pandemic should be avoided. Further, DEP submits that nothing in the temporary rates statute, N.C.G.S. § 62-135, indicates that the utility's sole remedy is to implement temporary rates under bond, and that the Commission has ample authority to fashion an alternate remedy that balances the interests of customers and the utility.

With respect to the financial consequences of the pandemic, DEP states that it is experiencing a reduction in demand and associated revenues and other adverse financial effects due to many reasons, including commercial and industrial customers closing or scaling back operations, volatility in the debt and equity markets, and pressure on liquidity for most industries, including utilities. DEP states that, absent Commission action, it will face additional earnings degradation arising from the inability to put permanent rates into effect on September 1, 2020, the effects of which could materially impair DEP's financial stability and ability to attract capital on reasonable terms. Further, DEP states that it had presented its financial information and demonstrated the need for a change in rates in Smith Rebuttal Exhibit 1 filed herein, and contends that the exhibit shows that DEP's adjusted return on equity at present rates is 3.01%. According to DEP, if the Commission denies its Petition DEP will be denied the opportunity to earn the return authorized in its last rate case and will be denied the opportunity to earn even the lowest recommended return on equity in the present case. Finally, DEP states that it seeks expedited treatment of its Petition so that it can further assess its need to file notice to issue temporary rates under bond if its Petition is denied.

## **DISCUSSION AND CONCLUSION**

On June 23, 2020, the Commission issued an Order Denying Revenue Deferral Mechanism, Approving Financial Undertaking and Customer Notice (Aqua Order) in response to the Aqua Deferral Petition. The Aqua Order, among other things, denied Aqua's request to establish a regulatory asset/liability account to record the difference between revenues under Aqua's present rates and those that would be collected by Aqua by implementing temporary rates under bond.

Based on the foregoing and the record, the Commission is not persuaded that there is good cause to approve DEP's use of deferral accounting, an exception to the generally accepted ratemaking principles that are applied by the Commission. DEP's proposal is outside the historical parameters of deferral accounting used by the Commission to date. Further, the legislature has provided a mechanism for utilities to temporarily adjust rates during the pendency of a general rate case pursuant to N.C.G.S. § 62-135. The Commission is not persuaded that the use of the alternate method proposed by DEP is prudent or in the public interest. Aqua Order, at 3. As a result, DEP's request for authority to establish a regulatory asset/liability account to record deferred revenues is denied.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of July, 2020.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, appearing to read "Janice H. Fulmore", is written over a faint, larger version of the same signature.

Janice H. Fulmore, Deputy Clerk