

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-2, SUB 1249  
DOCKET NO. E-7, SUB 1237  
DOCKET NO. E-22, SUB 585

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Petition for Expedited Approval of )  
Temporary Adjustments to Electricity ) ORDER DISMISSING PETITION  
Billing Demand Charges )

BY THE COMMISSION: 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 summary, in response to the COVID-19 State of Emergency declared by Governor Cooper’s Executive Order 116, the Waiver Order directed all jurisdictional electric, natural gas, and water and wastewater public utilities to (1) immediately 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, (4) provide appropriate notice to customers of these changes, and (5) work with customers at the end of the State of Emergency to establish reasonable payment arrangements for billing arrearages.

On March 31, 2020, Carolina Utility Customers Association, Inc. (CUCA), filed a petition in Docket Nos. E-2, Sub 1249, E-7, Sub 1237, and E-22, Sub 585 requesting that the Commission grant expedited approval of temporary adjustments to minimum and maximum electricity billing demand charges under various commercial and industrial rate schedules of Duke Energy Carolinas, LLC (DEC), Duke Energy Progress, LLC (DEP, and together with DEC, Duke or Companies), and Virginia Electric and Power Company, Inc., d/b/a Dominion Energy North Carolina (DENC or Company; and together with Duke, electric utilities). In summary, CUCA stated that certain minimum and maximum monthly electricity demand charges are causing immediate and adverse economic ramifications for commercial and industrial (C&I) ratepayers who have temporarily curtailed their energy usage due to the COVID-19 State of Emergency. In addition, CUCA stated that some industries are ramping up production to meet additional needs related to COVID-19, which could cause those businesses to exceed their maximum contract demand charges. CUCA further stated that the electric utilities’ demand charges are set based on a range of 50% to 80% of a customer’s previous demands during prior billing months, or other tariff minimum demand levels. According to CUCA, many manufacturing and energy-intensive businesses will incur millions of dollars in liabilities due to minimum demand charges for energy and capacity that is not being used.

CUCA opined that the minimum and maximum monthly demand charges do not appear to be exempted from any waiver or force majeure provisions in the electric utilities' tariffs and related service contracts. CUCA also cited a docket pending before the Public Utilities Commission of Ohio regarding similar charges and tariff provisions impacted by the current COVID-19 pandemic. CUCA requested that the Commission take immediate action to temporarily eliminate the monthly minimum and maximum billing demand charges, prorate the current monthly demand charges to reflect a partial month of operation for sites that have significantly curtailed or expanded consumption, and review other tariff provisions to provide as much flexibility as possible while customers' normal operations are disrupted during the State of Emergency. Moreover, CUCA requested that such actions remain in force for the duration of North Carolina's State of Emergency and for 60 days afterwards for affected commercial sectors and six months for affected industrial sectors to allow for normal operations to resume. Finally, CUCA asserted that such actions are in the public interest.

On April 2, 2020, the Commission issued an order establishing an expedited schedule for persons having a direct interest in this matter to petition for intervention and to file comments. In addition, the Commission joined the jurisdictional natural gas utilities (LDCs) and the North Carolina Attorney General's Office as parties to this proceeding.

The Commission granted petitions to intervene filed by Nucor Steel–Hertford (Nucor) and Carolina Industrial Group for Fair Utility Rates I, II, and III. The Commission denied a petition to intervene filed by North Carolina Electric Membership Corporation but allowed it to participate in this proceeding as an amicus curiae.

Initial comments were filed on April 9, 2020, by DENC, Duke, Nucor, Public Service Company of North Carolina, Inc. (PSNC), and the Public Staff; reply comments were filed on April 15, 2020, by CUCA, Duke, and the Public Staff. The Commission received several consumer statements of position in support of the Petition.

## **COMMENTS OF THE PARTIES**

### **Summary of Initial Comments**

#### *DENC*

DENC stated that in response to the COVID-19 pandemic it voluntarily suspended all customer disconnections for nonpayment and obtained Commission approval to waive late charges and other fees during the emergency. DENC stated that it believes the Commission has already taken reasonable and responsive steps to fairly address the hardships facing DENC's customers during the State of Emergency. DENC further stated that for customers who are required to partially or fully shut down during the State of Emergency, DENC's tariffs provide the Company the ability to work with individual customers during force majeure events to adjust customer demands to address any extraordinary billing impacts, in addition to the relief already ordered by the Commission.

DENC also cited the Commission's Waiver Order and noted that the Waiver Order mandates that utilities provide customers a minimum period of six months to make payments on arrearages accrued during the State of Emergency, and further requires a waiver of late fees on unpaid bills for service rendered during the State of Emergency. The Company pointed out that the Commission's order did not intend to relieve customers of their obligations to pay their bills for utility service received during the State of Emergency.

DENC cited the following language from Section X.F. of DENC's Terms and Conditions regarding the Company's ability to work with individual customers during force majeure events:

If, during the term of agreement for furnishing electricity to a Customer, the Customer is unable to operate his facilities, in whole or in part, because of accident, act of God, fire, or strike of the Customer's employees occurring at the location where electricity is supplied, the charge for electricity used during the period reasonably necessary to correct any such conditions will, in the discretion of the Company, be reasonably adjusted in accordance with all pertinent facts and conditions.

DENC Comments at 5 n.9.

DENC additionally stated that "the Company is committed to working with customers during the State of Emergency to ensure that they remain on the most cost-effective rate schedule available if their operating conditions change."

In response to the assertion by CUCA in its Petition that some industrial customers may have expanded their electricity consumption during the State of Emergency due to ramped up production to produce items needed to combat COVID-19 and, therefore, should not be subjected to "excess demand" charges, DENC noted that it is not aware of any of its customers that have significantly increased demand during the period of the State of Emergency. DENC further noted that should any customer show a significant increase in demand the Company is committed to working with the customer to adjust demand charges when their business returns to normal operations.

DENC stated that CUCA did not address the fairness and reasonableness of its request. DENC asserted that fair and reasonable rates are a fundamental aspect of the Public Utilities Act (Act) under which the Commission is obligated to set rates. The Company opined that its rates as established by the Commission in its most recent general rate case are just and reasonable and designed to allow the Company a reasonable opportunity to recover its ongoing costs of providing regulated electric service. DENC further stated that the question arises in reviewing the CUCA Petition under the Act of whether the broad relief requested by CUCA will result in rates that are just and reasonable to DENC and for all of the Company's customers.

DENC stated that demand charges are primarily designed to recover the fixed costs of building and maintaining each utility’s systems, which DENC noted will continue to be incurred during the State of Emergency. DENC commented:

A generic Commission order directing DENC to uniformly adjust or eliminate the minimum demand charge component of Commission-approved industrial and commercial rate schedules could affect DENC’s ability to recover its cost of providing electric service, thereby resulting in DENC not being able to recover its Commission-approved just and reasonable rates or shifting costs to other customer classes.

DENC Comments at 8.

DENC stated that if CUCA’s Petition is approved it will experience the following estimated revenue losses with the corresponding demand reduction:

<u>Demand Reduction</u>	<u>Revenue Losses</u>
25%	\$840,000 to \$1,260,000
50%	\$2,100,000 to \$3,150,000
75%	\$3,360,000 to \$5,025,000

DENC commented that this is not the first time the Commission has addressed issues related to rate relief from Commission-approved rate schedules due to extraordinary circumstances. DENC specifically noted the polar vortex of January 2014, where PSNC and Piedmont individually petitioned the Commission for limited modifications to their tariffs to mitigate the extreme cost impacts for certain interruptible customers associated with unauthorized usage of natural gas during curtailment periods called during the polar vortex. DENC stated that despite the extraordinary conditions of the polar vortex and the perceived unfairness of charging the significantly higher cost of gas required under approved tariffs, the Commission denied the gas companies’ requests to reduce the cost of gas component charged to interruptible customers during the polar vortex because doing so would result in the gas companies billing interruptible customers that failed to curtail their usage less than it would bill those customers under the rate schedules approved by the Commission. DENC commented that the Commission noted that granting the petitions to adjust rates during extraordinary circumstances would “set a precedent of questionable legality and one that should be avoided as poor practice” as other utility customers could be adversely impacted by deviating from the Commission-approved rates while the utility would lose confidence that it can plan its system based upon the ability to charge the rates approved by the Commission. Order on Petition for Limited Modification of Rider A and Request for Expedited Decision, *Petition of Public Service Co. of N.C., Inc. for Limited Modification of Rider A and Request for Expedited Decision*, No. G-5. Sub 545 (N.C.U.C. Sept. 9, 2014); Order on Petition for Limited Waiver of Rate Schedule 106 Billing Procedures, *Petition of Piedmont Natural Gas Co., Inc., for a Limited Waiver of Rate Schedule 106 Billing Procedures*, No. G-9. Sub 649 (N.C.U.C. Oct. 29, 2014) (Polar Vortex Orders). DENC opined that most importantly in that decision the Commission’s order afforded customers impacted by the extraordinary circumstances of the polar vortex some relief by providing them additional time to pay their January 2014

bills without incurring late fees or interest on arrearages. DENC pointed out that similar to the relief granted by the Commission in the Polar Vortex Orders, the Commission's Waiver Order already waives late fees and provides significant potential relief where customers are unable to pay their bills during the State of Emergency.

DENC also contended that CUCA's request is not supported by substantial facts and evidence. DENC asserted that CUCA's request is too general and noted that CUCA has not alleged that any of its claims are specific to any particular customers in DENC's service territory. DENC also maintained that CUCA's request that the rate modifications remain in force for the duration of the State of Emergency and for a recommended time period afterwards to allow for normal operations to be resumed was not supported by an explanation of the recommendation of time, and also provided no specifics on which customers would make up the under-recovery of costs that DENC would incur.

Based on the above, DENC stated that it does not believe that the Commission should approve CUCA's Petition because it is not in the public interest and it does not support fair and reasonable rates.

#### *DEC and DEP*

DEC and DEP stated that their Commission-approved tariffs already provide temporary relief from minimum demand charges or the ability to temporarily reset minimum demands under certain extreme circumstances such as the COVID-19 State of Emergency. The Companies contend that CUCA's Petition fails to acknowledge that DEC's and DEP's Service Regulations, approved by the Commission in the context of general rate cases, provide opportunities for certain C&I customers to have their minimum bill waived, or their billing demand reduced, under certain extreme conditions. For DEC's industrial customers, under the "Unavoidable Cessation of Consumption" provision of the Service Regulations, the Companies pointed out that if the operation of a customer's "plant" is shut down due to a "cause beyond the Customer's control," and there is a "complete cessation of service," then upon written notice by the customer within 30 days thereafter advising of the customer's intent to resume service as soon as possible, "any minimum charge, or guarantee for which the Customer may be liable will be waived during the period of such cessation."

For DEP's C&I customers, under the relevant paragraph of the "Suspension of Billing Under Agreement at Customer's Request" provision of its Service Regulations, the Companies noted that if a customer "will be using less than one-half of their contract demand during a period of suspended operations for at least three consecutive months but no longer than twelve consecutive months," and upon written request by the customer, the billing demand shall be the maximum kilowatt (kW) registered during the current billing month under the Schedules and Riders effective for the reduced usage. The Companies submitted that they are willing to review customers' circumstances on a case-by-case basis to determine if the provisions of their tariffs noted above are applicable. The Companies added that CUCA's request for relief from minimum demand charges also includes certain rate schedules that have no applicable minimum demand charges.

In addition, Duke stated that it, as well as the Commission, has already provided relief to C&I customers in response to the COVID-19 State of Emergency. The Companies noted that Duke suspended disconnections for all commercial, industrial, and residential customers on March 13, 2020, and that on March 19, 2020, the Companies, along with Piedmont Natural Gas Company, Inc., filed a request in Docket Nos. E-7, Sub 1236, E-2, Sub 1228, and G-9, Sub 767 for Commission approval to: (1) suspend as of March 31, 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 have 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 bill 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 reestablishment of credit pursuant to Commission Rules R12-2 and R12-3. The Commission approved the Companies' request in its March 20, 2020 Order Granting Additional Temporary Waivers of Specific Provisions of Commission Rule.

The Companies also contended that CUCA's request to allow all C&I customers to be relieved of their obligation to pay a portion of their bills is in contradiction to the Commission's holding that no provision in its Waiver Order shall be construed as relieving a customer of their obligation to pay bills for receipt of utility service covered by the Order. The Companies also noted that CUCA's Petition proposes no criteria to determine which customers qualify for the requested waiver of the obligation to pay a portion of their bills, nor any required showing of financial harm or inability to pay.

Duke also asserted that CUCA's request contradicts Commission precedent and exceeds the Commission's legal authority. Duke stated that CUCA cites no legal authority in support of its Petition and that the Commission's authority to alter rates outside of a general rate case is limited under *State ex rel. Utilities Commission v. Carolina Utility Customers Association*, 142 N.C. App. 127, 130, 542 S.E.2d 247, 249 (2002). Duke further stated that rate changes must be prospective, not retroactive, and based on a finding, supported by evidence that the established rates to be adjusted are unjust, unreasonable, discriminatory, or preferential. N.C.G.S. § 62-132. Duke further stated that N.C.G.S. § 62-131(a) requires that all utility rates must be just and reasonable, and that once approved they are presumptively just and reasonable and can only be changed by order of the Commission. N.C.G.S. § 62-132. In addition, the Companies noted that in *State ex rel. Utilities Commission v. Public Staff—N.C. Utilities Commission*, 323 N.C. 481, 374 S.E.2d 361 (1988), the Supreme Court stated, "Once fixed by the Commission, the rates are deemed prima facie just and reasonable. The party attacking rates established by the Commission bears the burden of proving that they are improper." *Id.* at 491, 374 S.E.2d at 367 (citation omitted). According to the Companies, CUCA has made no such showing.

Duke opined that demand charges are no different than any other component of rates set by the Commission in a general rate case, that they are entitled to the same presumption of reasonableness, and that they are designed to compensate the utility for the fixed cost that it incurs to have enough capacity available when the customer demands it. The Companies stated that their fixed costs to serve customers are unaffected by usage or the COVID-19 pandemic, and the obligation to pay them should not be waived as requested by CUCA.

The Companies also stated that CUCA's Petition makes no mention of how the Companies' lost revenue could be recovered or shifted to other customers. Further, while the Companies acknowledged that many C&I customers' businesses are undoubtedly struggling during the State of Emergency, they pointed out that CUCA's Petition offers no process to determine the financial viability of individual C&I customers, but instead seeks a blanket waiver of the obligation to pay a portion of their bills, even for customers who have ramped up production and have increased business. According to Duke, the Petition makes no showing that all C&I customers lack the ability to pay their bills, or lack access to resources to pay their bills, including the federal COVID relief funds, or other sources such as their own lines of credit or parent companies.

The Companies discussed the Polar Vortex Orders and stated that the Commission noted that although the parties in that proceeding had made a forceful case that equitable relief was justified in those unique circumstances, grant of the requested relief would have countervailing and adverse consequences to PSNC customers other than those who chose not to curtail. Duke noted that in the Polar Vortex Orders the Commission allowed the customers to pay the additional amount owed in equal installments during an 18-month period without the imposition of late fees or interest charges, so long as all installments were paid on time. Citing these precedents, the Companies submitted that reasonable deferred payment arrangements as may be needed on a case-by-case basis at the end of the State of Emergency, as already offered by the Companies and ordered by the Commission, is a more reasonable approach than simply waiving the C&I customers' obligation to pay the demand portion of their bills as requested by CUCA.

Duke also included a discussion of the financial impacts to the Companies from COVID-19 and the potential financial impact of CUCA's Petition. According to the Companies, they are beginning to experience a significant reduction in load and associated revenues due to many C&I customers, as well as schools and colleges, scaling back operations or closing completely during the State of Emergency. In addition, there has been recent volatility in the debt and equity markets and pressure on liquidity for most industries, including utilities. The Companies stated that during March 2020 they experienced difficulty in borrowing in the commercial paper market to meet their daily and short-term capital needs. The Companies submitted that the negative consequences of CUCA's Petition should be considered in the context described above.

DEC estimated revenue losses of \$0.3 million per month in the residential and schools' sectors, and \$6 million per month in manufacturing, for an estimated total

3-month loss (May-June 2020) of \$18.9 million. DEP estimated a total revenue loss for May-June of 2020 of \$9 million, based on \$1.3 million per month in the residential and schools' sectors, and \$1.7 million per month in manufacturing. These estimates were based on various assumptions of demand loss.

The Companies added that these estimates do not attempt to quantify the impact of the request by CUCA to prorate those current monthly demand charges for partial months of operation for sites that have significantly curtailed or expanded operations because that effort would be practically impossible. Further, even if proration of the demand charges was theoretically possible and allowed, the Companies stated that they would be required to attempt to manually bill potentially tens of thousands of accounts for such reduced usage.

Duke further contended that granting the Petition would establish a dangerous precedent and requested that CUCA's Petition be denied. However, Duke reiterated that it remains willing to work with C&I customers on an individual basis to determine if the Companies' respective Service Regulations and other tariff provisions apply to COVID-19 circumstances and to work with individual customers on extended payment options if needed.

#### *Nucor*

Nucor stated that it is an industrial customer of DENC and takes service pursuant to a special contract for electric service under Schedule NS. Nucor noted that Schedule NS is not listed as one of the rate schedules for which CUCA seeks temporary adjustments. Nucor stated that it is generally supportive of CUCA's Petition and requested that the Commission extend any temporary adjustments to billing demand charges to Schedule NS.

#### *PSNC*

PSNC filed a letter in lieu of comments. It stated that the concerns with the electric rate schedules that CUCA raises in its Petition are not applicable to PSNC's customers because PSNC does not have a demand charge mechanism in its rates. PSNC stated that customers who experience temporary decreases in production or plant closures, and hence reduced usage, would not see their bills affected by a previously established demand charge.

#### *Public Staff*

The Public Staff stated that it needed additional information from CUCA and the electric utilities, and had sent a data request to CUCA seeking clarification regarding the requested relief, the specific tariff provisions associated with the requested relief, the revenue impact, CUCA's proposal for addressing the revenue impact, and CUCA's characterization of demand charges or minimum bill provisions as a "penalty." The Public Staff stated that it would incorporate its review of the data responses into its reply

comments, but that until it had an opportunity to review this more specific data, it was not in a posture to state its position on the Petition.

However, the Public Staff did make several general observations. First, it noted the parallels between the relief sought by the Petition and the line of cases that resulted in the Polar Vortex Orders. The Public Staff stated that the Commission declined to grant the gas customers' requests for a number of reasons, including the legality of retroactive rate adjustments, the customers' assumption of the risks in selecting a rate schedule with certain strictures in return for the benefit of lower rates, and the potential for subsidization of the interruptible customers by firm customers.

Second, the Public Staff stated that it had reviewed the rate schedules cited by CUCA and that DEC, DEP, and DENC currently have provisions in their rate schedules or service regulations that provide customers an opportunity to adjust the contract demands of their service. According to the Public Staff, these provisions are usually applicable to emergent situations where the customer has suffered some catastrophic event that resulted in a substantial decrease in their use of energy, and that the same rate schedules and service regulations also allow customers to amend their contract demands when more energy or greater demand is needed. The Public Staff also provided a thorough summation of the relevant provisions of each electric utilities' rate schedules.

Further, the Public Staff noted that under the State of Emergency each customer has its own unique set of facts. How the COVID-19 crisis affects each of CUCA's customers, as well as other customers served under the electric utilities' rate schedules, will vary widely depending on its business sector and circumstances. Thus, the Public Staff opined that a more targeted approach could be more appropriate. Finally, the Public Staff contended that consideration should be given as to whether the relief sought in the Petition would be unfair to other customers, who presumably would be expected to pay the difference, and who are also facing severe economic harm due to the pandemic.

## **Summary of Reply Comments**

### *CUCA*

CUCA first responded that it is not asking that Duke's customers be relieved of paying for actual energy consumption and is supportive of all customers paying for their full energy usage. Second, CUCA responded that it is not seeking to "abolish or rescind" a portion of Duke's "fixed or established" rate structure and does not seek to alter, replace, or revise any of Duke's existing rates. CUCA asserted:

The Petition only requests a temporary suspension, for the duration of the emergency only, of the imposition of minimum demand charges or setting a new minimum demand of an industrial customer whose operations have been impacted by COVID-19.

CUCA Reply Comments at 2.

CUCA further opined that even if Duke's assertions were correct, the "change" in demand charge collection would only impact a portion of Duke's overall rate structure and would not impact Duke's rate of return.

CUCA next responded to Duke's comments regarding DEC's "Unavoidable Cessation of Consumption" and DEP's "Suspension of Billing Under Agreement at Customer's Request" provisions of their respective Service Regulations (collectively, Unavoidable Cessation provision). CUCA stated that DEP's provision applies if a customer "will be using less than one-half of their contract demand during a period of suspended operations for at least three consecutive months but no longer than twelve consecutive months." CUCA stated that to qualify under the relief afforded by DEP manufacturers would need to reduce their demand by over 50% of their contract demand for no less than three months and no greater than twelve months. CUCA opined that manufacturers that stay shuttered for more than three months may very well not come back into business. CUCA asserted that three months is an unreasonably long time for Duke to recover demand charges from struggling manufacturers, especially in situations where Duke is not providing electric service for the manufacturer's consumption. Further, CUCA opined that the Unavoidable Cessation provision, which requires that a customer give a 30-day notice of cessation of service and have a three-month shutdown, poses undue obstacles for impacted businesses that do not know how long they may be closed. CUCA further asserted that the provisions do not provide adequate relief for the current environment and that they expose the need for new remedies such as those proposed in CUCA's Petition. Additionally, CUCA stated that it does not believe that the service regulations cited by Duke were developed with an international pandemic in mind but, instead, were designed for normal business operations.

Further, CUCA refuted Duke's comments that Duke has already provided relief to customers by agreeing not to disconnect for non-payment and by being willing to work with individual consumers on a one-on-one basis to make payment arrangements. CUCA asserted that there is a fundamental difference between residential/small commercial consumers and large C&I consumers in the manner in which they are billed for electric service. CUCA noted that residential consumers pay for the vast majority of their costs through an energy charge, while industrial consumers pay for energy service through a mix of customer charges, energy charges, and demand charges. CUCA stated that if a residential customer does not use power in any given month, the customer's bill contains only the customer charge. If, however, a large C&I consumer does not use electric service it must still pay a minimum demand charge that can reach into the hundreds of thousands of dollars. CUCA stated that it is not advocating that its members not pay for service they actually receive. Instead, CUCA is advocating that its members not be required to pay for service that they are not receiving and not able to use due to disruptions related to COVID-19.

CUCA noted that should the electric utilities' existing C&I customers go out of business, the demand and energy costs those companies previously paid for would be shifted to other customers. CUCA stated that these costs would be a lot more than the temporary suspension of the demand charges requested by CUCA.

CUCA did not agree with the electric utilities' position that the polar vortex circumstances in 2014 presented similar issues. It asserted that the polar vortex was a one-month event and not a multi-month international pandemic. A further difference noted by CUCA was that the waiver applied to natural gas that was already consumed during the polar vortex. CUCA opined that manufacturers were not, in 2013-2014, faced with the prospect of not being able to return to business due to an unprecedented viral plague that is creating a health emergency for the entire country. As such, CUCA maintained that the electric utilities' argument linking the two dissimilar scenarios is not a fair and valid comparison.

CUCA stated that it does not advocate that the costs of the electric utilities' lost revenues be socialized. Instead, CUCA stated that it believes that Duke's stockholders should absorb any lost revenues associated with the loss of minimum demand charges during the COVID-19 pandemic. CUCA argued that the approximately \$28 million in lost revenues to Duke would not be that significant a loss to Duke. CUCA asserted that Duke was putting its profits ahead of small businesses.

#### *DEC and DEP*

The Companies stated that according to CUCA's data request responses CUCA disclaims knowledge of its individual member's circumstances regarding the representations made by CUCA in its Petition that its members have curtailed energy usage or increased energy usage associated with the COVID-19 pandemic, despite CUCA defining "significantly curtailed or expanded consumption" as a demand reduction or increase of more than "10%." Duke attached CUCA's data responses to its reply comments. The Companies stated that CUCA also asserted in its data request responses that the Companies' Commission-approved fixed charges are "penalties" and that their payment "for services not earned by the utility" would result in a "windfall" for DEC and DEP. The Companies respectfully submitted that such positions taken by CUCA demonstrate a fundamental lack of understanding of how utility rates are set by the Commission and how the Companies recover the approved costs to serve their customers. They stated that unlike the Companies' costs incurred on behalf of C&I customers that might vary depending on customer usage, the fixed costs to be recovered through minimum or demand charges do not go away when C&I customers reduce their usage. Further, they stated that C&I customers will expect the capacity to serve them to be available once the COVID-19 disruption passes and they return to more representative usage levels.

The Companies also submitted that CUCA's data request responses provide no support to meet its burden to establish that the Companies' Commission-approved rates are not just and reasonable. The Companies also contended that CUCA cites no legal authority in support of its Petition in its reply comments, but instead makes disparaging remarks.

Duke respectfully requested that CUCA's Petition be denied. The Companies again stated that they are willing to work with C&I customers on an individual basis to

determine if the Companies' respective Service Regulations and other tariff provisions apply to COVID-19 circumstances, and to work with individual customers on extended payment options if needed.

### *Public Staff*

The Public Staff stated that it does not support granting relief that would shift the costs to other customer classes or spread the costs across other customers within a class. The Public Staff also discussed the regulatory compact that imposes an obligation on the electric utilities to provide service, while allowing them a reasonable opportunity to earn a fair rate of return. In addition, the Public Staff referenced Duke's initial comments stating that DEC and DEP have observed reductions in load and revenues as a result of the COVID-19 State of Emergency and the Companies' difficulty in assessing the revenue impacts on a prospective basis due to the unknown nature of customers' prospective loads.

The Public Staff noted the six-month payment arrangement period that the Commission granted in the Waiver Order and stated that to the extent the six-month timeframe is determined to be impractical for non-residential customers, the Public Staff would support extending the timeframe for payment arrangements to mirror the 18-month term without late charges that was authorized in the Polar Vortex Orders. Further, the Public Staff suggested that should the Commission consider these measures to be inadequate, the Public Staff recommended the following for the Commission's consideration:

- During the period of the State of Emergency, a non-residential customer may request the utility to modify the billing demand applicable to its service if there is a decrease in actual demand, as follows: If the actual demand decreases below the currently established billing demand for the customer for any month during the State of Emergency, then the billing demand for any month during the State of Emergency may be established on a monthly basis as the higher of either (1) the actual demand, or (2) one-half of the minimum billing demand as established by the rate schedule applicable to the customer's service. Once the State of Emergency has concluded, the customer must make a new request for utility service, at which time the electric utility shall reestablish the billing demand pursuant to the terms of the rate schedule selected by the customer.
- A non-residential customer may request the utility to modify the billing demand applicable to its service if there is an increase in actual demand, as follows: If the actual demand increases above the currently established billing demand for the customer for any month during the State of Emergency, then the billing demand for any month during the State of Emergency shall be established pursuant to the rate schedule applicable to the customer's service. Once the State of Emergency has concluded, the customer may request to have its actual billing demand modified to a level that is consistent with its billing demand preceding the State of Emergency. However, if the customer's

increased actual demand is sustained for at least three months beyond the period of the State of Emergency, the actual billing demand shall be modified pursuant to the rate schedule applicable to the customer's service, retroactive to the first billing month after the conclusion of the State of Emergency.

- The impacts of any revenue changes that occur during the State of Emergency may be addressed as part of the utility's test year revenues in a future rate case.
- As with any general rate case, the Commission can consider the actual data during the emergency and make appropriate pro forma adjustments to the utility's revenues accordingly.

The Public Staff further noted that there is variation in the service regulations of the electric utilities as to their ability to amend billing or contract demands due to various circumstances. Given the uncertainty expressed by CUCA as to whether the service regulations allow amending billing or contract demands for situations like the COVID-19 State of Emergency, the Public Staff believes that it would be appropriate for the Commission to request that the electric utilities convene discussions with parties to their current or most recent general rate cases to identify any specific changes that should be made to the service regulations to address future emergencies and file a report on the discussions, including any proposed changes to the service regulations.

Finally, the Public Staff stated that it believes the Commission should balance the interests of particular customer classes against the statutory requirement that all of the using and consuming public receive adequate, reliable, and economical utility service at just and reasonable rates. For these reasons and those provided in its initial comments, the Public Staff recommended that the Commission deny CUCA's request.

## **DISCUSSION AND CONCLUSION**

CUCA requests that the Commission order the electric utilities to make the following changes in their base rates:

- (1) Temporarily eliminate both the monthly minimum billing demand charges and maximum contract demand charges;
- (2) Prorate the current monthly demand charges for a partial month of operation for sites that have significantly curtailed or expanded consumption;
- (3) Review other tariff provisions to provide as much flexibility as possible while customers' normal operations are disrupted; and
- (4) Continue these measures in force for the duration of North Carolina's State of Emergency, plus 60 days for affected commercial sectors and six months for affected industrial sectors.

Under the Act, the Commission is required to set just and reasonable rates. N.C.G.S. § 62-130. In addition, the Commission's decisions on rates and other matters must be based on competent, material, and substantial evidence. N.C.G.S. § 62-65. Once approved, the rates set by the Commission are deemed to be just and reasonable. N.C.G.S. §§ 62-132 and 62-94(e). In the Commission's most recent rate case orders — DEC's and DEP's in 2018 and DENC's in 2020 — the Commission concluded that the rates set therein were just and reasonable for all customers. The essence of CUCA's Petition is that due to the COVID-19 State of Emergency the demand rates set by the Commission in the electric utilities' last general rate cases are no longer just and reasonable for C&I customers and, therefore, should be eliminated or reduced for some indeterminate period.

The Commission recognizes the adverse economic impacts being experienced by non-residential customers, who have temporarily curtailed their energy usage due to the COVID-19 State of Emergency. The Commission also is generally aware that certain industrial customers are retooling their manufacturing processes to produce or increase production of equipment and supplies necessary to mitigate the spread of COVID-19. Nonetheless, customers from all customer classes have been adversely affected by the COVID-19 pandemic. The Commission must balance the interests of particular customer classes against the statutory requirement that all of the using and consuming public receives adequate, reliable, and economical utility service at just, reasonable, and fair rates. In this instance, CUCA is requesting that the Commission approve broad rate changes across a wide spectrum of non-residential customers without a showing of the presence or magnitude of financial stress on a specific customer or well-defined group of customers. Further, CUCA presented no evidence to support or justify such an extensive modification of the electric utilities' just and reasonable rates.

Uncertainties remain as to how long the State of Emergency will last and how soon North Carolina's economy will return to a normal level of operation once the emergency is over. The Commission is not persuaded that now is the time, or that it has sufficient information at this time, to require the electric utilities to eliminate or substantially reduce the demand charges found to be just and reasonable in their last general rate cases. The Commission acknowledges that some, perhaps many, C&I customers are experiencing financial hardships as a result of the State of Emergency. Likewise, financial hardships are being felt in varying degrees by the electric utilities' residential, institutional, and municipal customers. The Commission is unwilling on this record and at this time to reduce the rates of C&I customers in a manner that is likely to significantly reduce the electric utilities' recovery of their fixed costs and that could create the need to shift the recovery of those costs to other customers. The Commission concludes that its Waiver Order is a reasonable and adequate measure to address the changes in utility rates and service that are warranted at present and in the foreseeable future.

Further, the Commission concludes that the targeted approach recommended by the Public Staff is a reasonable and fair response to the effects of the State of Emergency on C&I and other customer classes. Duke and DENC endorsed that approach as well and have stated their intent to be flexible in working with all customers during and after the

State of Emergency. The Commission appreciates the electric utilities' spirit of cooperation and will hold them closely to their commitments. As the companies work with their customers on the details of payment plans, security deposits, and other matters, the Commission reminds them to be cognizant of the requirement that similarly situated customers receive equal treatment. Finally, customers who feel they are not being treated fairly may seek the Public Staff's assistance with their concerns and, if needed, file a complaint with the Commission under N.C.G.S. § 62-73.

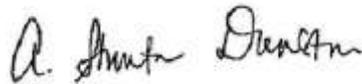
Based on the foregoing, the Commission finds good cause to deny the relief requested by CUCA and to dismiss the Petition.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of May, 2020.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "A. Shonta Dunston". The signature is written in a cursive, somewhat stylized font.

A. Shonta Dunston, Deputy Clerk