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NORTH CAROLINA
UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1214

In the Matter of	)	
Application of Duke Energy Carolinas, LLC	)	**Post-Hearing Brief of**
For Adjustment of Rates and Charges Applicable	)	**The Commercial Group**
To Electric Service in North Carolina	)	

The Commercial Group hereby respectfully submits to the North Carolina Utilities Commission (Commission) its post-hearing brief in the above-captioned proceeding. Members of the Commercial Group[1] have a substantial positive impact on the North Carolina economy, employing over 100,000 North Carolina workers and supporting the employment of over 100,000 other North Carolina workers through the billions of dollars members of the Commercial Group spend for merchandise and services in the state each year.[2] Indeed, two of the top three, and three of the top fourteen, private employers in the state are members of the Commercial Group. Id. In addition, both Food Lion and Ingles have their headquarters in North Carolina. Id. at 3.

In this brief, the Commercial Group argues that the Commission should approve the stipulation agreed to by Duke Energy Carolinas, LLC (DEC or the Company) and the Commercial Group (DEC/CG Settlement).[3] Of particular note, this settlement would establish a 9.6 percent return on equity (ROE), which has also been agreed to by the Public Staff and certain other parties, and make certain minor adjustments to the OPT-VSS rate schedule that would

[1] BJ's Wholesale Club, Inc., Food Lion, LLC, Ingles Markets, Inc., JC Penney Corp., Inc., Macy's Inc., and Walmart Inc.

[2] Direct Testimony of Steve W. Chriss (Chriss Direct), pp. 2-3 (testimony found at Tr. vol. 16).

[3] This settlement agreement was entered on June 1, 2020, as amended on August 5, 2020.

move the schedule more in line with the current design of the rate schedule than DEC's original proposal.

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I. PROCEDURAL BACKGROUND

In this proceeding, the Commercial Group presented the direct testimony of Steve W. Chriss that contained three main recommendations:

1. The Commission should closely examine the Company's proposed revenue requirement increase and the associated proposed increase in ROE, especially when viewed in light of: (1) the customer impact of the resulting revenue requirement increase; (2) recent rate case ROEs approved by the Commission; and (3) recent rate case ROEs approved by commissions nationwide.
2. If the Commission determines that the appropriate revenue requirement is less than that proposed by the Company, the Commission should use the reduction in revenue requirement to move each customer class closer to its respective cost of service while ensuring that all classes see a reduction from DEC's initially proposed increases.
3. The Commission should require DEC to include Green Button "Connect My Data" functionality as part of its roll-out of customer access to their data.

After the Commercial Group filed this testimony, the Commercial Group reached the DEC/CG Settlement with DEC to resolve these issues and move OPT-VSS unit charges more in line with the original intent and structure of the rate schedule. The DEC/CG Settlement is in the public interest and should be approved.

II. THE COMMISSION SHOULD APPROVE THE DEC/CG SETTLEMENT

A. Rate Settlements Are in the Public Interest and Resolve Issues That Otherwise Would Have to be Fully Litigated

Clearly, one of the benefits of rate case settlements is to resolve issues in dispute and narrow the number of issues being litigated. This is particularly important during a pandemic. Two provisions unique to the DEC/CG Settlement demonstrate this benefit.

First, paragraph 5 of the settlement shows that the two parties have resolved in good faith an issue Mr. Chriss raised in his direct testimony concerning meter data access and Green Button functionality. Certainly, this is a positive step that removes one issue from litigation.

Second, paragraph 1 of the settlement provides that the Commercial Group shall take no position on DEC's proposed Grid Investment Plan (GIP) deferral plan. This provision differs from other settlements filed in this proceeding whereby parties have indicated support for the concept of a GIP deferral plan. Of course, the Commercial Group is concerned about large increases in rates due to GIP cost, particularly where some parties have suggested dumping a huge percentage of such costs onto North Carolina businesses. See Section III.A infra. But in exchange for other provisions of the DEC/CG Settlement, the Commercial Group effectively waived its right to contest and oppose GIP deferral in this case. Certainly, this waiver had benefit to DEC, just as other settlement provisions had benefit to the Commercial Group. This give-and-take is the hallmark of settlements and another indication that the DEC/CG Settlement is in the public interest and should be adopted.

B. The Return on Equity and Equity Ratio Agreed to in the DEC/CG Settlement Are Reasonable

The median authorized return over the past five years for electric utilities across the country is 9.60 percent. Chriss Direct, page 9 line 14 and Chriss Exhibit 3. DEC's proposed increase in ROE to 10.30 percent ran contrary to this trend in authorized returns while the 9.60 percent ROE provided for in the DEC/CG Agreement better reflects this industry trend. This reduction in ROE would reduce DEC's proposed revenue increase by approximately $76 million

per year.[4] Further, numerous parties, including Public Staff, agree that the 9.6 percent ROE is a reasonable resolution of what was a contentious issue in pre-filed testimony.

Likewise, the settlement equity ratio of 52 percent is consistent with the equity ratio approved by the Commission for DEC in its last rate case. Chriss Direct, page 7, lines 8-11. Therefore, the Commission should approve the DEC/CG settlement ROE of 9.6 percent and equity ratio of 52 percent.

C. The Modest Adjustments the DEC/CG Settlement Would Make to OPT-VSS Rates Are Reasonable, Would Better Maintain the Status Quo Than Would Those Proposed Originally by DEC, and Should be Approved

As described in more detail in subsections 1-4 below, DEC and the Commercial Group agreed in the DEC/CG Settlement to move OPT-VSS unit charges closer to cost, thereby providing North Carolina businesses better pricing signals. Whereas the Commercial Group welcomes innovative rate design studies, businesses are under severe stress now and cannot wait for studies that have been promised for years and that could take years more to yield more efficient rate design. Further, the modest OPT-VSS changes would not hinder any comprehensive rate design but, instead, would accomplish Mr. Floyd's stated goal of maintaining the status quo of current OPT-VSS rates better than the rates originally proposed by DEC in this proceeding. So also, unlike many DEC rate schedules, the OPT schedule has already gone through a stakeholder vetting process. Notably, the Staff settlements (if adopted by the Commission) themselves would change rate design and comparative class revenue levels and class return on investment. Finally, the Staff settlements would constrain DEC in how it must file

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[4] McManeus Second Settlement Exhibit 3 ($16.3 million difference from 9.75 percent to 9.60 percent ROE); Chriss Exhibit 4 ($59.2 million difference from 10.3 percent to 9.75 percent ROE).

class cost of service studies in its next rate case. Therefore, it is patently inconsistent and unfair for Staff to argue that modest movements toward cost agreed to by the utility and its ratepayers should not be made (because of a potential future rate design study), while other rate and class revenue changes made by the utility and Public Staff should be made.

1. The changes would move OPT-VSS charges closer to cost and the original spirit and intent of the OPT rate structure

Witness Bieber pointed out from DEC's own cost study that, as originally proposed, OPT-VSS energy charges would increase much faster than OPT-VSS energy costs have increased (Harris Teeter Justin Bieber Direct, p.7) with a corresponding undercollection of OPT-VSS demand charges (id. at 4). This change would represent a departure from the prior OPT-VSS cost structure. Id. at 7-8. According to DEC witness Pirro, the DEC/CG settlement simply adjusted the OPT-VSS unit charges more "in line with our previous rate case compliance filing." Tr. vol. 13, 25 (Pirro). Mr. Pirro described the spirit and intent of the original OPT-V rates established following the 2013 DEC rate case and concluded that "this agreement is more in line with the true intent of the OPT-V offering." Id. Further, the changes are modest because they only move unit charges part of the way to cost. Tr. vol. 19, 68 (Floyd).

Mr. Floyd likewise agreed, based on Mr. Pirro's statement, that this OPT-VSS change "is a positive step in rate design." Tr. vol. 19, 14. Mr. Floyd's main concern was not with the substance of the OPT-VSS changes but that:

> Given the "status-quo" nature of the Company's current rate designs and schedules, any change that is made now simply as a matter of settlement hinders the ability to properly address rate of return issues in the next rate case proceeding.

Staff Floyd Second Supplement Testimony, p.9:16-19. But as Mr. Pirro pointed out, the DEC/CG settlement would better maintain the "status-quo" of the existing OPT-VSS rate

structure than would the uniform increase to charges that DEC originally proposed in this case. Tr. vol. 13, 23:12-15 (Pirro). Mr. Pirro further added:

> [L]istening to Mr. Floyd's testimony, I know he had concerns about the comprehensive rate study and, you know, setting a price. By no means does this exclude any of the seven different options within OPT-V from being part of any comprehensive rate study. This is just for this moment in time while these rates are in effect.

Id. at 24:7-13. Importantly, the modest OPT-VSS rate changes will reduce subsidies within that rate schedule while imposing no additional burden on any other OPT rate schedule or any other rate class. Tr. vol. 13, 21-22 (Pirro).

Thus, the modest OPT-VSS revisions should be approved.

2. North Carolina businesses need rate relief now

It is the Commission's duty to ensure that "[e]very rate made, demanded or received by any public utility . . . shall be just and reasonable." NC GEN. STAT. §62-131(a). As the Commission has often recognized, this is not a duty to be carried out at some indefinite time in the future, but now. Thus, in its final order in DEC's 2013 rate case, the Commission rejected an agreement by DEC and Public Staff to delay remedying discriminatory OPT rates holding that the Commission "cannot allow the imbalance that is already known to continue while the Company and Public Staff study the situation for another year or two."[5]

Staff witness Floyd made a similar point in his testimony in DEC's last rate case as he endorsed DEC's position of maintaining the status quo of rate schedule structures based on a promise to develop new rate designs in the future.[6] According to Mr. Floyd, this was "a

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[5] Order Granting General Rate Increase, Docket E-7 Sub 1026, p.98 (Sept. 24, 2013).

[6] Direct Testimony of Jack L. Floyd, pages 14-15, Docket E-7 Sub 1146. The Commission took judicial notice of this testimony. Tr. vol. 19, 17-18.

reasonable approach, so long as the Company is expeditious in its efforts to develop these new rate designs." Id. at 15:6-8. And yet, nearly three years later, OPT customers once again are told to wait to make even modest rate design improvements until some undefined point in the future. Notably, while taking this position to maintain the status quo in the last rate case until comprehensive rate design could be undertaken, Mr. Floyd himself (id. at p.15) urged the implementation of three rate design changes in Docket E-7 Sub 1146:

> Nevertheless, there are some rate issues that should be addressed in this proceeding. These issues are: (1) the BFC [Basic Facilities Charge], (2) stand-by charges, and (3) lighting.

Staff proposes similar rate design changes in this rate case as well. See Section II.C.4, infra. Thus, rate design changes clearly do not preclude comprehensive rate design.

Further, the OPT rate schedule has already been "fully vetted" with stakeholder input. Tr. vol. 13, 18:19-21 (Pirro). Therefore, there is much less reason to delay minor OPT changes while a stakeholder process involving all rate schedules runs its course.

Nor is it clear when a comprehensive rate design study would lead to new rate structures. First, no one knows when DEC will file its next rate case, including Mr. Floyd (Tr. vol. 19, 16:11-12) and Mr. Oliver (Tr. vol. 9, 80). The study apparently is intended to be a stakeholder process, but as much as the Commercial Group would hope that the process would result in speedy implementation of innovative beneficial rate design, the Commercial Group fears it is unlikely to do so. Indeed, such a study would be extremely broad, reviewing "all of DEC's rate schedules," "all existing rate designs," "all current principles and policies that inform current

[rate] components," and results of numerous class cost of service studies.[7] Given such an ambitious undertaking, even Mr. Floyd does not expect all parties to agree on such things as which class cost of service study should be used nor on how rates should be designed. Tr. vol. 19, 16. Further, he acknowledges that given the principle of gradualism, even if parties agreed on new rate designs, it might be many rate cases (perhaps decades) into the future before those rates are fully established.[8]

2020 has been a very difficult year for North Carolina businesses (and residential customers, of course). Indeed, one member of the Commercial Group was forced to file for bankruptcy collection since this rate case began. Tr. vol. 19, 21-22 (Floyd). These customers need OPT relief now, not later, at some undefined point in time.

3. The modest OPT-VSS changes will not hinder any comprehensive rate design

The whole premise of Mr. Floyd's wait-until-more-comprehensive-rate-design argument is that rate changes now would hinder future comprehensive rate design. Id. at pp.11-12. But the modest OPT-VSS changes being made in the DEC/CG Settlement would not hinder such a study.

Strictly speaking, there is no status quo with rates – they change with each rate case. Indeed, all (or nearly all) rates are being changed in this rate case. Plus, with hundreds of millions of dollars of new costs being added to rates and these new costs being allocated via numerous allocators to classes, rate schedules, and ultimately to new unit charges, the cost

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[7] Staff Floyd Second Supp. Testimony, p.12; DEC/Staff Second Settlement, pp.14-16.

[8] Staff Floyd Direct Testimony, p.24:17-18.

structure within each individual rate schedule will change as well - even without overt changes to rate design. If these changes preclude comprehensive rate design, such design could never occur. In any event, as discussed in Section II.C.2 supra, the modest OPT-VSS changes from the DEC/CG Settlement would better restore the status quo.

Thus, Mr. Pirro correctly summed it up best:

> [L]istening to Mr. Floyd's testimony, I know he had concerns about the comprehensive rate study and, you know, setting a price. By no means does this exclude any of the seven different options within OPT-V from being part of any comprehensive rate study. This is just for this moment in time while these rates are in effect.

Id. at 24:7-13.

4. The Public Staff testimony and settlements likewise make rate design changes

If there were any remaining doubt as to whether the modest OPT-VSS rate changes should be approved and would not hamstring any rate design study, the Commission need only look at the Public Staff testimony in this case and DEC/Staff settlements. This Staff testimony would change the class cost of service methodology on which rates are based from Summer CP to SWPA, and the settlements themselves would make rate design changes, would change relative class rates of return, would minimize rate subsidies, and would substantially change the balance of customer bills as between various rate classes. If the modest OPT-VSS rate changes would hinder a comprehensive rate design study (as Public Staff alleges), certainly the myriad changes proposed by Public Staff would do so in greater measure.

For example, as cited above, Mr. Floyd testified that "*any* change that is made now simply as a result of settlement hinders the ability to properly address rate of return issues in the next rate case proceedings." Staff Floyd Second Supplemental Testimony, p.9:16-19 (emphasis added). However, the DEC/Staff second settlement (pages 16 to 18) has a whole section on rate

design, which, among other changes, would adjust rates specifically to change class rates of return (id. at 17-18). Granted, these changes are designed to move rates toward cost, but so are the OPT-VSS changes from the DEC/CG Settlement.

The second DEC/Staff settlement likewise would adjust "base fuel and fuel related cost factors, by customer class" (id. at 19), and return Excess Deferred Income Taxes to customers via rate design methods (id. at 6-7) advocated by Staff, which methods Mr. Floyd says would sharply change class allocations from those proposed by other parties.[9] It simply is not credible that the modest OPT-VSS rate changes would hinder later comprehensive rate design while all these changes supported by Staff would not do so.

Therefore, the Commission should approve the DEC/CG Settlement OPT-VSS changes.

D. Having DEC Propose to Allocate Any Deferred, Approved GIP Cost for the OPT-V Rate Schedule is Reasonable

The commercial settlement provides that "any Grid Improvement Plan costs allocated to OPT-V customers shall be recovered via OPT-V demand charges." DEC/CG Settlement ¶2. Because no GIP costs are being allocated in this case (although there is a deferral request for future recovery), this provision has no direct impact on rates being set in this rate case. But it is reasonable - where OPT-V demand charges underrecover demand costs (Bieber Direct, p.4) and where transmission and distribution costs are generally demand and customer-related[10] - for parties that have litigated this issue to resolve it by proposing that any future GIP costs allocated to OPT-V should be recovered via demand charges.

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[9] *See* Staff Floyd Second Supplemental, page 5:3-12.

[10] Tr. vol. 19, 71-72 (Floyd).

Mr. Floyd said he opposes this provision, once again, in large part because he believes it could constrain a future rate design process. Id. at 70-71. But this concern is without legitimate basis. In fact, the settlement that Public Staff entered into with DEC itself specifically directs and constrains DEC to "file annual cost of service studies based on both the SCP and SWPA methodologies" in DEC's next rate case. DEC/Staff Second Settlement page 16. Notably, this constraint would be in place even after a comprehensive rate design study has been performed. So if all parties to a stakeholder process agree on *the* class cost of service methodology that is most fair (however unlikely that outcome might be), why would it be fair for DEC and Staff to agree on what DEC should file while it would be unfair for DEC and its ratepayers to agree to a similar provision? Further, no party can constrain the Commission to do anything in a future rate case. This is a reasonable settlement provision.

For all these reasons, the Commission should approve the DEC/CG Settlement.

III. OTHER ISSUES

A. Allocating GIP Costs to Classes on the Basis of Stale, Perceived Benefits That Were Derived From National Data for a Resource Cost/Benefit Analysis is not Reasonable

DEC justified its deferral of GIP cost in part on a cost/benefit analysis (CBA) that is common to resource certificate proceedings. This analysis used very rough projections of benefits customers might receive from GIP projects. The projections themselves were from stale national data rather than up-to-date North Carolina data. Tr. vol. 9, 64 (Oliver). Nevertheless, Public Staff witness Thomas suggested that the data could be used to inform GIP class cost allocation decisions. Tr. vol. 8, 17. With the CBA rough projections erroneously indicating that perhaps 97 percent of the largest portion of benefits (reliability benefits) go to businesses, such a cost allocation could crush North Carolina businesses. This idea should be dismissed out of hand.

First, as mentioned above, no GIP costs are being put into rates in this proceeding and, therefore, there is no need now to decide how such costs (if any are ultimately approved by the Commission) should be allocated among classes.

Second, cost causation, not the rough projection of benefits, is the hallmark for setting regulated utility rates. Setting prices based on what benefit a customer receives might be fine for the sale of paintings on the open market or for signing a professional basketball player to an NBA contract. But unless the North Carolina energy market is deregulated, it is not a sound basis for setting regulated utility rates. Would the Commission really want a person requiring a 24-hour home medical device to pay substantially more for electric service than her healthy neighbor simply because she placed a higher value on uninterrupted electric service?

Third, rough estimates of customer benefits involving other utilities across the country cannot be a sound basis for setting DEC's cost of service because national benefit projections have no applicability to North Carolina costs (or benefits).

Fourth, as DEC witness Hager pointed out, it may be impossible to quantify accurately relative customer reliability benefits saying she "can't envision a productive way to do that." Tr. vol. 13, 70. Even Staff witness Thomas admitted that "[c]ustomer benefits are very difficult, if not impossible, to verify." Staff Thomas Direct Testimony, p.11. One simple illustration demonstrates this impossibility. Whereas the CBA set an arbitrary value of $5 or $10 on the benefit per residential customer of not having her service interrupted,[11] Mr. Oliver agreed that the benefit received by a residential customer requiring 24-hour home medical device treatment

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[11] Tr. vol. 8, p.37 (Thomas).

would be "priceless." Tr. vol. 9, 76:1-6 (Oliver). Obviously, adding a priceless valuation to the residential side of the class benefit scale would lead to a conclusion that residential customers receive 97 percent or more of the benefit from reduced service interruption, instead of business customers, the exact opposite of Mr. Thomas' suggestion. As Ms. Hager put it:

> [A]ttempting to allocate ANY investment costs for ratemaking purposes based on perceived benefits realized by customers, as differentiated from cost causation to the utility, is likely to be very subjective and thus controversial.

DEC Hager Rebuttal Testimony, pp.23-24 (emphasis in original).

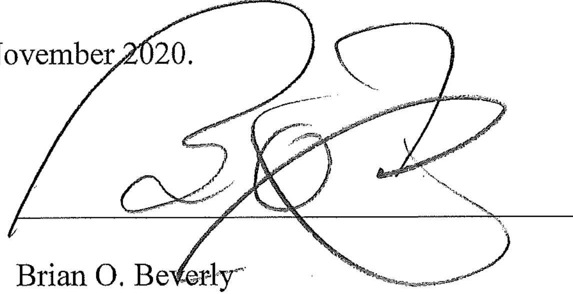
Fifth, the cost/benefit analysis discussed by Staff witness Thomas was based on stale data as it was performed pre-COVID. See Tr. vol. 13, 126-127 (Hager). Now, with a large percentage of DEC's residential ratepayers working from home, the benefit such customers would receive from having more reliable service could be hundreds or thousands of times more than the projected $5 per customer. Id. at 127-128.

For all these reasons, the Commission should reject the idea that GIP costs should be allocated to classes based on perceived benefits instead of cost causation.

IV. CONCLUSION

WHEREFORE, the Commercial Group respectfully requests that the Commission grant the relief requested herein and in the direct testimony and exhibits of Steve W. Chriss.

Respectfully submitted, this 4th day of November 2020.



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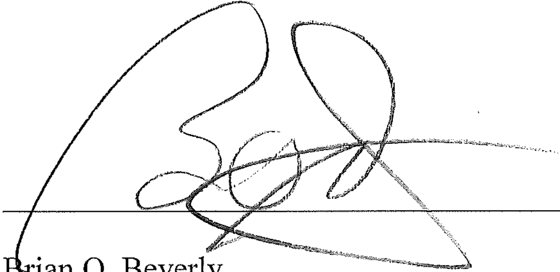
CERTIFICATE OF SERVICE

I certify that I have on this date served a copy of the foregoing document, *Post-Hearing Brief of the Commercial Group*, on all parties of record in accordance with Commission Rule R1-39, by electronic delivery upon agreement of the parties being served.



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