

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-7, SUB 1213
DOCKET NO. E-7, SUB 1214
DOCKET NO. E-7, SUB 1187
DOCKET NO. E-2, SUB 1219

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1213)
)
In the Matter of)
Petition of Duke Energy Carolinas, LLC, for)
Approval of Prepaid Advantage Program)
DOCKET NO. E-7, SUB 1214)
In the Matter of)
Application by Duke Energy Carolinas, LLC,)
for Adjustment of Rates and Charges)
Applicable to Electric Utility Service in)
North Carolina)
)
DOCKET NO. E-7, SUB 1187)
)
In the Matter of)
Application of Duke Energy Carolinas, LLC for)
an Accounting Order to Defer Incremental)
Storm Damage Expenses Incurred as a Result)
of Hurricanes Florence and Michael and)
Winter Storm Diego)
)
DOCKET NO. E-2, SUB 1219)
)
In the Matter of)
Application by Duke Energy Progress, LLC,)
for Adjustment of Rates and Charges)
Applicable to Electric Utility Service in)
North Carolina)

ORDER ON DUKE ENERGY
CAROLINAS, LLC'S AND DUKE
ENERGY PROGRESS, LLC'S
SECOND SUPPLEMENTAL
TESTIMONY

BY THE PRESIDING COMMISSIONERS: On September 30, 2019, Duke Energy Carolinas, LLC (DEC), filed an application for a general rate case in Docket No. E-7, Sub 1214 (Sub 1214).

On October 30, 2019, Duke Energy Progress, LLC (DEP), filed an application for a general rate case in Docket No. E-2, Sub 1219 (Sub 1219).

On October 29, 2019, the Commission issued an Order Establishing General Rate Case, Suspending Rates, Scheduling Hearings, and Requiring Public Notice (Scheduling Order) in Sub 1214. Among other things, the Scheduling Order suspended DEC'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, March 23, 2020. In addition, the Scheduling Order included the following Ordering Paragraphs Nos. 16 and 17:

16. That the Company's updates to its actual revenues, expenses, rate base, and cost of capital for the period ending January 31, 2020, shall be filed on or before February 14, 2020.

17. That direct testimony and exhibits of the Public Staff and other intervenors shall be filed on or before February 18, 2020, and that the rebuttal testimony of DEC, if any, shall be filed on or before March 4, 2020.

On November 14, 2019, the Commission issued an Order in Sub 1219 that declared DEP's application to be a general rate case and suspended DEP's proposed rates for up to 270 days, pursuant to N.C.G.S. § 62-134.

On December 6, 2019, the Commission issued a Scheduling Order in Sub 1219 similar to the Scheduling Order in Sub 1214. The Scheduling Order included Ordering Paragraphs allowing DEP to file updates to its actual revenues, expenses, rate base, and cost of capital for the period ending February 29, 2020, on or before March 13, 2020, allowing direct testimony and exhibits of the Public Staff and other intervenors to be filed on or before March 25, 2020, and rebuttal testimony by DEP to be filed on or before April 14, 2020.

On February 14, 2020, DEC filed the Supplemental Testimony and Exhibits (Supplemental Testimony) of Jane L McManeus, Michael J. Pirro, and Nicholas G. Speros. In summary, the Supplemental Testimony of witness McManeus presented numerous adjustments through January 31, 2020, to DEC's test period rate base, operating revenue, operating expenses and operating income (updated cost of service), as shown on McManeus Supplemental Exhibit 1 attached to the testimony. Witness Pirro's Supplemental Testimony presented DEC's updates to its proforma adjustments to test period amounts relating to customer growth and weather normalization, and a clarification to DEC's methodology used to spread the Excess Deferred Income Tax (EDIT) among customer classes. Witness Speros's Supplemental Testimony described revisions to the Lead Lag Study that was originally submitted as Speros Exhibit 3 in his pre-filed direct testimony.

On February 18, 2020, the Public Staff and other intervenors filed direct testimony. The Public Staff's testimony included numerous proposed adjustments to DEC's updated cost of service and revenue requirement.

On March 13, 2020, DEP filed the Supplemental Testimony of Shana W. Angers, Kimberly D. McGee, Michael J. Pirro, and Kim H. Smith. In summary, the Supplemental Testimony of witness Smith presented numerous adjustments through February 29, 2020, to DEP's test period rate base, operating revenue, operating expenses and operating income. Witness Pirro's Supplemental Testimony presented DEP's updates to its proforma adjustments to test period amounts relating to customer growth and weather normalization, and proposed base fuel rate.

On March 16, 2020, DEC filed a motion requesting that the Commission postpone the expert witness hearing in Sub 1214 for up to 60 days and suspend the procedural schedule, including discovery requests (Motion to Postpone). In summary, DEC discussed the State of Emergency declared by Governor Cooper due to the COVID-19 pandemic and the suspension of multiple activities throughout the state and country. Further, DEC 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 to Postpone 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 end of the rate suspension period under N.C.G.S. § 62-134.

On March 16, 2020, in Sub 1214, 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 and accepted DEC'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 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, DEC, Duke Energy Progress, LLC (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 Sub 1219 requesting that the time for filing intervenors' direct testimony be extended to March 27, 2020. In support of its motion, the Public Staff discussed the State of Emergency declared by the Governor due to the COVID-19 pandemic, and the pandemic's effects on the Public Staff's work schedule.

On March 24, 2020, in Sub 1219, the Commission issued an Order Suspending Procedural Schedule and Continuing Hearing, pending further orders of the Commission.

On March 25, 2020, DEC and the Public Staff (Stipulating Parties) filed an Agreement and Stipulation of Partial Settlement (DEC Stipulation), as well as testimony supporting the Stipulation. In summary, the Stipulation stated the Stipulating Parties' agreements on DEC's storm cost recovery for purposes of this proceeding, the return of protected federal EDIT to ratepayers, and numerous cost of service adjustments.

On April 3, 2020, DEP filed a motion in Sub 1219 requesting that the Commission order the partial resumption of the procedural schedule. In summary, DEP proposed dates for the filing of intervenors' testimony, and reinstate the discover schedule. Further, 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) through December 31, 2020, 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 April 7, 2020, the Commission issued an Order Addressing Procedural Matters in Sub 1219. The Order, among other things, set the following dates: April 13, 2020, for the Public Staff and other intervenors to file their direct testimony; April 23, 2020, for the filing of supplemental testimony to address the DEP's March 13, 2020 supplemental testimony; and May 4, 2020, for DEP to file rebuttal testimony. In addition, the Order 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 renders it infeasible for the Commission to issue an order prior to the rate suspension period under N.C.G.S. § 62-134.

On April 13, 2020, in Sub 1219, the Public Staff and other intervenors filed direct testimony. The Public Staff's testimony included numerous proposed adjustments to DEP's updated cost of service and revenue requirement.

On April 23, 2020, in Sub 1219, the Public Staff filed Supplemental Testimony that included proposed adjustments to DEP's updated cost of service and revenue requirement.

On June 2, 2020, DEP and the Public Staff (Stipulating Parties) filed an Agreement and Stipulation of Partial Settlement (DEP Stipulation). In addition, DEP filed settlement testimony of Stephen G. DeMay. In summary, the DEP Stipulation stated the Stipulating Parties' agreements on DEP's storm cost recovery for purposes of this proceeding, the return of protected federal EDIT to ratepayers, adjustments to costs and amortization period for the Asheville Combined Cycle project, and numerous cost of service adjustments.

On June 5, 2020, the Public Staff filed the settlement testimony of witness Michael C. Maness in support of the DEP Stipulation.

On June 17, 2020, the Commission issued an Order Adopting Procedures for Expert Witness Hearings in Subs 1214 and 1219 (collectively rate case dockets). 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.

On July 9, 2020, the Commission issued an Order Accepting Recommended Consolidated Issues for Remote Expert Witness Hearing and Postponing Separate Issue Hearings (Consolidated Hearing Order), in the rate case dockets. The Consolidated Hearing Order identified the topics to be addressed by expert witness testimony in the consolidated DEC/DEP hearing to be held remotely beginning on July 27, 2020, and postponed the previously scheduled separate hearings on DEC's and DEP's applications until a date certain to be set by subsequent order.

SECOND SUPPLEMENTAL TESTIMONY OF DEC AND DEP

On July 2, 2020, DEC filed Second Supplemental Testimony and Exhibits (Second Supplemental Testimony) of witnesses McManeus and Pirro. In summary, the Second Supplemental Testimony of witness McManeus presented updates to several cost of service items and DEC's proposed revenue requirement to incorporate what witness McManeus termed "known and measurable changes through May 31, 2020." McManeus Second Supplemental Testimony at 2. The Second Supplemental Testimony of witness Pirro presented DEC's proposed update to its customer growth adjustment to incorporate "certain known and measurable changes through May 31, 2020." Pirro Second Supplemental Testimony at 2.

In the cover letter accompanying the testimony, DEC asserted that its Second Supplemental Testimony is authorized under N.C.G.S. § 62-133(c), and that updating its cost of service is appropriate due to the delay in the evidentiary hearing caused by the COVID-19 pandemic. According to DEC, updating its costs closer in time to the start of the hearing gives a more recent and accurate depiction of DEC's actual costs of service, which updated actual costs should be reflected in the new rates proposed in this proceeding.

Also on July 2, 2020, DEP filed Second Supplemental Testimony of witnesses Smith and Pirro that presented cost of service and revenue updates for DEP similar to those presented in DEC's Second Supplemental Testimony.

PUBLIC STAFF'S RESPONSES

On July 7, 2020, the Public Staff filed Responses to DEC's and DEC's Second Supplemental Testimony in the rate case dockets. In summary, the Public Staff stated that DEC and DEP (collectively Duke or Companies) acknowledged the Stipulation, but claimed that the items it seeks to update are "new," and that the updates are necessary to provide a reasonable opportunity for the Companies to earn a fair return. The Public Staff disagreed that the updates are necessary to maintain the Companies' financial position. According to the Public Staff, in a recent earnings call Duke Energy Corporation (Duke Energy), the parent company of DEC and DEP, represented to its investors that it will be able to maintain its financial position during the COVID-19 pandemic. Further, the Public Staff submitted that based on the uncertainty created by the pandemic the Commission should be skeptical as to whether the amounts provided in Duke's updates are representative of what can be expected in the future. In addition, the Public Staff cited Commission Rule R1-24(c), which provides in part:

Stipulations. — The parties to any proceeding or investigation before the Commission may, by stipulation in writing filed with the Commission or entered in the stenographic record at the time of the hearing, agree upon the facts or any portion thereof involved in the controversy, which stipulations shall be binding upon the parties thereto and may be regarded and used by the Commission as evidence at the hearing.

The Public Staff maintained that Duke's updates are contrary to the terms of the Stipulations, and that if the Companies are allowed to breach the Stipulations by filing the updates the Stipulations should be voided in their entirety. Further, the Public Staff contended that if the Companies are allowed to update their cost of service through May 31, 2020, the updates should include all revenues and expenses, and that the selected adjustments proposed in Duke's Second Supplemental Testimony do not present an accurate picture of the Companies' overall costs and revenues. Moreover, the Public Staff stated that if the Commission accepts the Companies' updates the Public Staff and other intervenors should be granted at least 60 days to audit the updated amounts and provide further supplemental testimony to the Commission, citing Commission Rule R1-17(c).

Finally, the Public Staff stated that new procedural deadlines should be established to accommodate such further supplemental testimony.

DUKE'S REPLY

On July 9, 2020, DEC and DEP filed a Joint Reply to the Public Staff's Response. In summary, Duke stated that the Companies' revenue requirements, based on known and measurable changes through May 31, 2020, have increased significantly primarily due to approximately \$48.4 million in additions to plant in service by DEC, and approximately \$25.4 million by DEP. In addition, Duke stated that in the Public Staff's discussion of the recent Duke Energy earnings call the Public Staff failed to acknowledge that Duke Energy CEO Lynn Good explained that some of the "levers" Duke Energy may pull to mitigate impacts from the COVID-19 pandemic are not sustainable in the long-term, citing as examples the hiring freeze and outage deferrals, both examples of temporary cost reductions that if carried out in the long-term could negatively impact the Companies' ability to continue providing reliable service. Further, Duke agreed with the Public Staff that there is continued uncertainty about the pandemic, but submitted that it is nevertheless appropriate for the Commission to consider the proposed adjustments, as they may continue to impact the Company's revenues and expenses for a long time. Moreover, Duke stated that the Companies' additions to plant in service are unquestionably enduring, and will not be impacted by uncertainty relating to the pandemic.

In addition, Duke contended that its updates do not alter any of the calculations or methodology agreed to in the Stipulation, and instead

[s]imply present new, material adjustments based on current facts and circumstances for the Commission to consider in addition to the terms agreed upon in the Partial Stipulations reached with the Public Staff. The Commission may consider and accept the terms of the Partial Settlements with Public Staff, the terms of the settlement agreements with the other intervenors, and/or some or all of the additional 17 numerical adjustments included in the Companies' May Updates.

Joint Reply at 16-17.

Duke acknowledged that its proposed updates "may cause the amount of the agreed-upon adjustments to differ," but stated that it views the question of whether they should be permitted to update certain adjustments through May 2020 as being an "Unresolved Issue" included in the Stipulations. *Id.* at 18.

With regard to the time needed for the Public Staff to respond to the updates, Duke stated that it has no objection to leaving the evidentiary record open through the duration of the hearings to allow for limited discovery and additional testimony on the updates, and that it has been providing supplemental responses to previous Public Staff discovery requests to assist the Public Staff in auditing the updates.

Finally, Duke stated that if the Commission determines that any of the updates are a violation of the terms of the Stipulations it requests that rather than automatically voiding the Stipulations the Commission afford Duke and the Public Staff the opportunity to discuss which of the updates are covered by the Stipulations and determine how the Stipulating Parties would like to proceed.

PUBLIC STAFF'S RESPONSE TO DUKE'S REPLY

On July 15, 2020, the Public Staff filed a Response to Duke's Reply. In summary, the Public Staff questioned Duke's contention that Duke updated only "material" items. The Public Staff stated that the term "material" is subjective and open to interpretation, and that there may be disagreement between the parties with respect to whether or not an item is material. The Public Staff stated that it has not yet begun its review of the updates and cannot opine on the materiality of the items at this time. In addition, the Public Staff detailed its review process, and stated that Duke is well aware of the amount and scope of work it takes to perform a full audit of a Companies' filings. The Public Staff cited the Commission's Order Allowing Deferral Accounting, Denying Public Staff's Motion for Reconsideration, Granting Transfer of CPCNs, and Qualifying the Transferred Facilities as New Renewable Energy Facilities, issued June 5, 2019, in Docket No. E-7, Sub 1181, as an example of the Commission's recognition of the need for the Public Staff and other parties to have sufficient time to investigate the utilities' update filings.

Moreover, the Public Staff disagreed with Duke's contention that this situation is similar to the issue that arose in DEC's last rate case in Docket No. E-7, Sub 1146, when DEC presented its proposal to return excess deferred income taxes to customers pursuant to the federal Tax Cuts and Jobs Act (TCJA) at the beginning of the hearing, as the TJCA was passed well within the agreed-upon update period in that case. In addition, the Public Staff stated that the TJCA proposal was one discrete issue, whereas in the present case Duke proposes to update three to four months of revenue and several selected costs.

The Public Staff further opined that Duke's reference to the Clemson CHP adjustment is likewise inapposite. According to the Public Staff, the costs of the Clemson CHP were included in DEC's Supplemental Testimony covering the period through January 31, 2020, and were therefore included in the Public Staff's supplemental and settlement testimony regarding costs incurred through January 31, 2020, which did not constitute a "second bite of the apple" by the Public Staff.

Further, the Public Staff disagreed with Duke's assertion that the settled items in the Stipulations are settlements only as to methodology, not numbers, particularly with regard to the growth and usage adjustments set forth in Paragraph No. III.15 of the DEC Stipulation. According to the Public Staff, the adjustment agreed upon in this paragraph impacts corresponding adjustments to fuel revenues and expense and non-fuel variable O&M expenses, including adjustments related to billing related expenses. Additionally, the Public Staff contended that although the DEC Stipulation does not explicitly reference Company proposals and Public Staff adjustments related to plant, salaries and wages, inflation, depreciation expense, accumulated depreciation (update and annualization),

and property taxes, all of these were adjusted by DEC and the Public Staff to annualized January 31, 2020 levels (albeit with possible disagreements on matters not related to the update period), consistent with adjustments made directly on the basis of changes in kWh and the number of bills, and thus required no mention in the DEC Stipulation. The Public Staff stated that these should be taken as resolved dollar amounts as well, at least with regard to the cutoff date of January 31, 2020) given that they, as well as the adjustments and end-of-period amounts of revenues and variable expenses, are explicitly dependent on the January 31, 2020 update deadline used for customer growth and usage in the DEC Stipulation.

DISCUSSION AND CONCLUSIONS

North Carolina General Statute § 62-133 is the primary source of the Commission's ratemaking authority. Subsection (c) of the statute states, in pertinent part:

The test period shall consist of 12 months' historical operating experience prior to the date the rates are proposed to become effective, but the Commission shall consider such relevant, material and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues or the cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within this State, including its construction work in progress, which is based upon circumstances and events occurring up to the time the hearing is closed.

In addition, Commission Rule R1-17(c), under the subheading "Supplemental Data," tracks the above language from N.C.G.S. § 62-133(c), and further states:

Information relating to the change(s) referred to above relied upon by the applicant shall be filed with the Commission ten (10) working days prior to the date that the testimony of the Public Staff and other intervenors is due to be filed to the extent said change(s) are known by the applicant at that time.

To the extent that additional information becomes available subsequent to ten (10) working days prior to the filing of testimony by the Public Staff and other intervenors, such information which will be offered to support change(s) shall be made available to the Commission and other parties as soon as practicable. Under such circumstances the Public Staff and other intervenors shall have the right to address said evidence through additional direct testimony, such option to be exercised at the discretion of the Public Staff and other intervenors.

Mindful of both N.C.G.S. § 62-133(c) and Rule R1-17(c), which allow for the Companies' to update pertinent information through the close of the hearing, and of N.C.G.S. § 62-69(a) and Rule 1-24(c), which encourage stipulations and settlements, the Presiding Commissioners conclude that the most reasonable way to resolve the matter is the following:

1. On or before July 27, 2020, DEC and DEP shall each file a statement in their respective general rate case dockets electing one of the following options:
 - a. Withdrawing all portions of the Second Supplemental Testimony filed on July 2, 2020, that contain expense, cost, or revenue data that vary from the same items of expense, cost, or revenue contained in the Partial Joint Stipulation and refiling any other portions of the second supplemental testimony that do not so vary. The Companies may, but are not required, to update any other items of expense, cost, or revenue that do not vary from the Partial Joint Stipulation at the time or times permitted in accord with Rule R1-17(c); or
 - b. Advising the Commission and the parties that they wish to adopt and not withdraw the Second Supplemental Testimony filed on July 2, 2020, in its entirety, including those portions that contain expense, cost, or revenue data that vary from the same items of expense, cost, or revenue contained in the Partial Joint Stipulation. Thereafter, the Companies may, but are not required, to update any other items of expense, cost, or revenue that do not vary from the Partial Joint Stipulation at the time or times permitted in accord with Rule R1-17(c).
2. In the event either or both of DEC and DEP elect option b. under the preceding paragraph, then the Public Staff and intervenors shall be given a period of 60 days from July 27, 2020, in which to conduct discovery relative to such updated information as is contained in the Second Supplemental Testimony of the Company. In such event, hearings on the non-consolidated portions of the case of a Company electing option b. shall be postponed and shall be rescheduled for a date after the conclusion of the 60-day period. In the event either Company elects option b, then the statement filed with the Commission as required under Paragraph 1 shall also include an irrevocable waiver by the Company of the Company's right to seek to implement its original proposed rates by operation of N.C.G.S. § 62-134(b) in the event that postponement of the hearing renders it infeasible for the Commission to issue an order prior to the rate suspension period under N.C.G.S. § 62-134, and such waiver shall replace and supersede the waivers previously given by DEC on March 16, 2020, and by DEP on April 3, 2020.
3. At the conclusion of any period of discovery conducted pursuant to Paragraph 2, the Public Staff and either or both of DEC and DEP, as applicable, shall file a joint statement with the Commission stating: (a) whether they wish to abandon and withdraw the Partial Joint Stipulation in its entirety; or (b) whether they wish to replace, modify, or amend the Partial Joint Stipulation in whole or in part. In the event the parties choose to replace, modify, or amend the Partial Joint Stipulation, thereafter the

Commission will proceed to review and consider only the Partial Joint Stipulation as so replaced, amended, or modified.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of July, 2020.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Kimberley A. Campbell". The signature is written in a cursive, flowing style.

Kimberley A. Campbell, Chief Clerk