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June 22, 2020

**VIA ELECTRONIC FILING**

Ms. Kimberly A. Campbell  
Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4300

**Re: Docket No. E-7, Sub 1213 – *Application by Duke Energy Carolinas, LLC for Approval of Proposed Prepaid Advantage Program***

**Docket No. E-7, Sub 1214 – *Application by Duke Energy Carolinas, LLC for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina***

Dear Ms. Campbell:

On behalf of Duke Energy Carolinas, LLC (“DE Carolinas” or the “Company”), please find enclosed for electronic filing the Company’s *Petition for an Accounting Order to Defer Impacts of Its Suspended Rate Case in Lieu of Implementing Temporary Rates Under Bond*.

Please do not hesitate to contact me should you have any questions. Thank you for your assistance in this matter.

Sincerely,

Camal O. Robinson

Enclosure

cc: Parties of Record

OFFICIAL COPY

JUN 22 2020

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

**DOCKET NO. E-7, SUB 1214**

**DOCKET NO. E-7, SUB 1213**

DOCKET NO. E-7, SUB 1214	)	
	)	
In the Matter of	)	
Application of Duke Energy Carolinas, LLC	)	<b>DUKE ENERGY CAROLINAS,</b>
for Adjustment of Rates and Charges	)	<b>LLC’S PETITION FOR AN</b>
Applicable to Electric Utility Service in North	)	<b>ACCOUNTING ORDER TO</b>
Carolina	)	<b>DEFER IMPACTS OF ITS</b>
	)	<b>SUSPENDED RATE CASE IN</b>
DOCKET NO. E-7, SUB 1213	)	<b>LIEU OF IMPLEMENTING</b>
	)	<b>TEMPORARY RATES UNDER</b>
In the Matter of	)	<b>BOND</b>
Application for Approval of Proposed Prepaid	)	
Advantage Program	)	

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NOW COMES Duke Energy Carolinas, LLC (“DE Carolinas” or the “Company”), through counsel and pursuant to Rules R1-5 and R8-27, to respectfully petition the North Carolina Utilities Commission (the “Commission”) for an order authorizing the Company to establish a regulatory asset/liability account to account for the difference between the rates the Commission ultimately approves in this base rate proceeding (the “Rate Case”) and the Company’s currently approved rates, in lieu of increasing rates on an interim basis and subject to refund pursuant to N.C. Gen. Stat. § 62-135. Establishment of the requested regulatory asset/liability account is necessary to avoid a near term rate increase to customers during the current unprecedented COVID-19 Pandemic and declared State of Emergency (“COVID-19 Pandemic”), while also mitigating the impact to the Company from the postponement of the evidentiary hearing in this matter.

As discussed in detail below, as a result of the COVID-19 Pandemic and to protect the health and safety of the general public, the Company acted, and the Commission issued

orders, postponing the evidentiary hearing for the Rate Case scheduled to begin on March 23, 2020, until further order by the Commission.<sup>1</sup> While absolutely appropriate under the circumstances, these actions are expected to result in a material delay in the implementation of new rates since the postponement of the hearing renders it infeasible for the Commission to issue an order prior to the end of the rate suspension period provided under N.C. Gen. Stat. § 62-134. Under normal circumstances, the new rates would go into effect on approximately August 1, 2020.

Given the extraordinary circumstances presented by the COVID-19 pandemic, DE Carolinas proactively waived this right under N.C. Gen. Stat. § 62-134. In the absence of this waiver, the Company would have been able to implement its proposed rate increase had the Commission failed to issue an order on the Company's Application during the suspension period.

In waiving its Section 62-134 rights, the Company reserved its rights under N.C. Gen. Stat. § 62-135, which allows the Company, upon providing ten days advance notice, to implement new rates under bond, subject to refund, and also reserved its rights to seek appropriate accounting treatment. Any action the Company takes pursuant to N.C. Gen. Stat. § 62-135, however, would result in a rate increase going into effect during the COVID-19 Pandemic when many individuals and businesses are struggling financially. The Company is certainly sensitive to the impact of a rate increase during the pandemic and would prefer to invoke its rights under N.C. Gen. Stat. § 62-135 only as a last resort.

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<sup>1</sup> In addition, in response to the financial challenges facing customers during the COVID-19 Pandemic, the Company voluntarily suspended all customer disconnections for nonpayment of bills and obtained Commission approval to waive late charges and other fees. See March 20, 2020 *Order Granting Additional Temporary Waivers of Specific Provisions of Commission Rules* in Docket Nos. E-7, Sub 1236, E-2, Sub 1228 and G-9, Sub 767.

Accordingly, to avoid an increase in rates during the pendency of the Rate Case, even an increase subject to refund, the Company requests that the Commission permit it to establish a regulatory asset/liability account pursuant to Commission Rule R8-27 to account for any difference between current rates and rates as ultimately approved.

If permission is granted, DE Carolinas proposes that when the Commission issues its order, or directive with sufficient information to calculate new rates, in the pending Rate Case, the Company will calculate what its revenues would have been had the new rates approved in this Rate Case been implemented on August 1, 2020 versus its revenues under the present rates, and will book that difference to the authorized regulatory asset/liability account (FERC Account 182.3 or 254). Because the material impacts of postponing the evidentiary hearing result from a global pandemic necessitating extraordinary, unprecedented state action to slow the spread of COVID-19, the accrual should either be collected from or flowed back to customers over one year with rates to go into effect no later than 90 days after new rates in this Rate Case become effective after the Commission directives are issued. Absent the approval of the accounting treatment requested herein, the Company may need to proceed with giving notice to implement temporary rates under N.C. Gen. Stat. § 62-135 as a necessary measure to maintain its financial condition. However, the Company maintains that the deferral proposed herein is a fair alternative that appropriately balances the interests of both customers and the Company during this unprecedented pandemic.

In support of this Petition, the Company respectfully presents to the Commission the following:

## **BACKGROUND**

1. On September 30, 2019, DE Carolinas filed its rate case Application in this docket requesting authority to adjust and increase its rates for retail electric service in North Carolina effective October 30, 2019. In its Application, the Company requested in the event the Commission suspends its proposed rates for up to 270 days, pursuant to N.C. Gen. Stat. § 62-134, that new permanent base rates become effective no later than August 1, 2020. On October 29, 2019, the Commission issued its *Order Establishing General Rate Case, Suspending Rates, Scheduling Hearings and Requiring Public Notice*. Pursuant to the Public Notice, the Commission suspended DE Carolinas' proposed rates for up to 270 days pending investigation.

2. On March 16, 2020, DE Carolinas filed a motion in this docket requesting that the Commission postpone the expert witness hearing for up to sixty (60) days and suspend the procedural schedule. In summary, DE Carolinas discussed the State of Emergency declared by the Governor due to the COVID-19 Pandemic, and the suspension of multiple activities throughout the state and country. Further, DE Carolinas stated that the hearing in this matter will require extensive travel by the parties and their witnesses and will require the gathering of interested members of the public, parties, witnesses, and the Commission and its staff together during the hearing for several days. In addition, DE Carolinas stated that postponement of the hearing will be consistent with the steps being taken to protect the health and safety of the general public. DE Carolinas also stated that, subject to its right to implement temporary rates under N.C. Gen. Stat. § 62-135 or to seek appropriate accounting treatment available to the Company to mitigate potential impacts from the postponement, its motion included notice of its prospective waiver of its right to

seek to implement its original proposed rates by operation of N.C. Gen. Stat. § 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. Gen. Stat. § 62-134. Later that day, the Commission entered an order which, *inter alia*, postponed the evidentiary hearing pending further order of the Commission, and accepting DE Carolinas' prospective waiver.

3. On May 6, 2020, the Public Staff, DE Carolinas and Duke Energy Progress, LLC jointly moved for the Commission to issue an order scheduling one consolidated evidentiary hearing to consider the companies' rate case applications. Most recently, on June 17, 2020, the Commission issued its *Order Adopting Procedures for Expert Witness Hearings*. Per this Order, the Commission agreed to partially consolidate the evidentiary hearings to commence on Monday, July 27, 2020.

**EXTRAORDINARY CIRCUMSTANCES WARRANT APPROVAL OF THE  
REQUESTED DEFERRAL IN LIEU OF A NEAR TERM INTERIM RATE  
INCREASE**

4. As DE Carolinas stated in its motion to suspend the procedural schedule and postpone the evidentiary hearing in the DE Carolinas Rate Case, COVID-19 is an unprecedented pandemic and the safety of the Company's customers, stakeholders, employees and communities; the Commission, its staff, the Public Staff; and the various intervenors and their representatives in this case, are matters of significant concern. Extraordinary measures such as postponing the evidentiary hearing, now scheduled to commence July 27, 2020, to attempt to avoid or slow down transmission of COVID-19 were entirely appropriate.

5. Notwithstanding the foregoing, as a result of the delay, the Company's inability to place new, permanent rates into effect impairs its ability to begin collecting sufficient revenues to recover its costs incurred since 2018 to provide safe and reliable electric service to its customers, thereby potentially causing material financial harm. The longer the regulatory lag in granting the Company's requested rate increase, the more detrimental the impact to the Company's financial condition.

6. One mechanism to address negative financial consequences (including regulatory lag) of a delay in the implementation of new rates is N.C. Gen. Stat. § 62-135, which provides a mechanism whereby the Company may implement rates under bond, subject to refund. However, under the prevailing pandemic circumstances, implementation of new rates under bond should be viewed as a last resort to the Company, particularly when there are alternative accounting mechanisms available to the Commission for use at its discretion to mitigate the financial impact to both the Company and customers during the pandemic. Approval by the Commission of a regulatory asset/liability account as requested in this Petition is an available alternative.

7. Other utilities have made similar requests to the Commission. For example, Aqua North Carolina, Inc. ("Aqua") has sought permission to record the difference between revenues under present rates versus those that would be collected from implementing rates under bond. *See Petition for Approval of an Order Allowing Deferral of Revenues In Lieu of Rates Under Bond, or, Alternatively, Notice of Intent to Place Temporary Rates in Effect Subject to An Undertaking to Refund Pursuant to G.S. 62-135*, (the "Aqua Deferral Petition") Docket No. W-218, Sub 526 (June 11, 2020). Just as Aqua noted in its Deferral Petition, the Company also recognizes that there is no precedent for

using the proposed deferral mechanism as an alternative to implement rates under bond.<sup>2</sup> By the same token, the current global pandemic and its impacts are unprecedented; and warrant implementation of alternatives that benefit customers to serve the public interest and energy policy in this State. Aqua states, and the Company agrees, that “... the Commission’s longstanding practice concerning the use of deferral methodologies has been characterized by the ability to utilize accounting mechanisms to deal with unusual and unique situations in a fair manner, balancing ultimate good for ratepayers with the financial needs of Commission-regulated public utilities.”<sup>3</sup> In this instance, the Company’s deferral proposal benefits the Company’s customers because its proposed deferral request will allow the Company to avoid implementing rates under bond --- which is authorized by statute and otherwise necessary to maintain DE Carolinas’ financial stability in North Carolina. Accordingly, the request for an accounting order sought by the Company will permit it to begin accruing revenue it otherwise would have been entitled to collect if the hearing had not been postponed. In addition, it will delay a rate increase for customers during the pandemic when many are experiencing financial hardships and businesses and companies are not operating at full capacity. The Company submits that the requested deferral appropriately promotes the energy policy of this state “to provide fair regulation of public utilities in the interest of the public”<sup>4</sup> and “to promote adequate, reliable and economical utility service to all of the citizens and residents of the State”<sup>5</sup> and is consistent

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<sup>2</sup> *Id.* at 6-7.

<sup>3</sup> *Id.*

<sup>4</sup> N.C. Gen. Stat. § 62-2(a)(1).

<sup>5</sup> N.C. Gen. Stat. § 62-2(a)(3). Further, in its Deferral Petition, Aqua describes the benefits of its requested deferral option as follows: “certainty at the time of later imposition of the rate change; delay of charges in rates to a later point in time by when it is hoped that the economy and the nation’s health will be improved; avoidance of a two-stepped rate increase process and the attendant confusion and possibility of refunds with interest; and a reasonable opportunity for the Company to avoid a significant, unrecoverable revenue loss between [the date the Company is entitled to place temporary rates in effect] and the date of the Commission’s



with the Commission's broad supervisory authority over the rates charged by public utilities. N.C. Gen. Stat. § 62-32.

8. The Company notes that the Public Staff and Attorney General's Office ("AGO") argue that Aqua's alternative deferral proposal constitutes retroactive ratemaking.<sup>6</sup> Given that DE Carolinas' deferral proposal is similar, presumably the Public Staff and AGO will oppose the Company's request for the same reasons. This argument is wholly without merit. As the Commission previously determined in Duke Energy Progress, LLC's 2017 Rate Case in Docket No. E-2, Sub 1142, a "cost deferral is a recognized practice that allows recovery of expenditures that might otherwise constitute impermissible retroactive ratemaking." *Order Accepting Stipulation, Deciding Contested Issues and Granting a Partial Rate Increase* at 141 (*inter alia* granting the Company's request for a deferral of past and future coal ash costs). Further the Commission noted:

A deferred cost is an exception to the general principle that the Company's current cost of service expenses should be recovered as part of the Company's current revenues. When the Commission approves a typical cost of service, such as salaries and depreciation expense, there is a reasonable expectation that the expense will continue at essentially the same level until the Company's next general rate case, at

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Final Rate Case Order." (Aqua Deferral Petition at 1-2.) Aqua "submits that the Company's proposed deferred revenue alternative is clearly a more beneficial option for ratepayers, for whom the ultimate rate increase is delayed, and who will see no increase until there is the benefit of final review and decision by the Commission. It also balances the Company's need for some assurance of ultimate recovery---at rates that will have been rigorously examined by the Commission and the public advocate agencies who are parties to the case---of substantial revenues otherwise lost during the intervening period from [the date the Company is entitled to place temporary rates in effect], until issuance of the Commission's final Order. It is true that ratepayers would be entitled to a refund with interest if rates subject to an undertaking to refund are imposed that exceed the rates ultimately ordered, and thus they would ultimately be made whole. However, the deferred revenue methodology avoids the imposition of rates in a two-step process and provides the benefit of rate stability until there is certainty of final decision. Additionally, during the interim, the nation's economy and health have additional time to recover." (*Id.* at 7.) DE Carolinas submits that the same benefits apply for its customers under its deferral proposal.

<sup>6</sup> *Joint Response of the Public Staff and the Attorney General's Office to Aqua's Petition For Approval of Order Allowing Deferral of Revenues in Lieu of Rates Bond, or Alternatively, Notice of Intent to Place Temporary Rates in Effect Subject to a Refund Pursuant to G.S. § 62-135*, Docket No. W-218, Sub 526, at 5 (June 16, 2020).

which time it will be reset. On the other hand, when the Commission approves a deferred cost the Commission identifies a specific amount that has already been incurred by the Company, or, in the case of CCR costs, is estimated to be incurred by the Company. In addition, the Commission sets the recovery of the amount over a specific period of time. Further, the Company is directed to record the recovery of the specific amount in a regulatory asset account, rather than a general revenue account. If DEP continues to recover that deferred cost for a longer period of time than the amortization period approved by the Commission that does not mean that DEP is then entitled to convert those deferred costs into general revenue and record them in its general revenue accounts. Rather, the Company should continue to record all amounts recovered as deferred costs in the specific regulatory asset account established for those deferred costs until the Company's next general rate case.

*Id. at 224.* The same logic extends to the Company's deferral proposal in this instance. The Company is proposing to defer an amount that will be known and measurable and is proposing to recover from or return to<sup>7</sup> customers that fixed amount over one-year. The Company's proposal does not constitute retroactive ratemaking and is a lawful and appropriate alternative to this unprecedented situation.

9. The requested deferral would permit the Company to accrue the difference between revenues under present rates versus revenues under the rates approved in this Rate Case, from August 1, 2020 (the date the Commission-suspended rates would have otherwise gone into effect absent the postponement) until the date the newly approved rates are implemented. The deferral would include revenues associated with the components of the Company's proposed EDIT rider. The resulting accrued revenue, along with a return

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<sup>7</sup> The Company notes that the Public Staff and the AGO also argue that Aqua's proposal shifts risk away from the utility. To be clear, the Company's proposed method permits the Company to accrue the difference between revenues under present rates versus revenues under rates as ultimately approved by the Commission. If approved revenues are higher than under present rates, the Company will recover that amount from customers. If approved revenues are lower than under present rates, the Company will return that amount to customers. Thus, the proposed mechanism works both ways.

at the weighted average cost of capital, would either be collected from or flowed back to customers over one-year starting within 90 days from when new rates in this Rate Case become effective after the Commission order is issued.

10. The requested deferral would also allow the Company to record the accounting impacts that normally begin when new rates go into effect beginning August 1, 2020. These accounting impacts include: (a) change in depreciation rates, (b) coal ash amortization, (c) amortization of rate case costs, (d) amortization of severance costs, (e) amortization of EDIT and tax deferred revenue, and (f) any other amortizations or accounting changes approved by the Commission in this case that would normally begin with the new rates effective date. Because the Company will not know the level of these accounting impacts approved by the Commission until it receives an order, or directive with sufficient information to calculate new rates, the Company would book these accounting impacts after receiving such order or directive retroactively to August 1, 2020.

11. While the Company has been evaluating the option to exercise its vested right (as of April 27, 2020) to issue temporary rates under N.C. Gen. Stat. § 62-135, it is mindful of the significant impact the current pandemic is having on its customers and considers issuing temporary rates as a last option in the event the Company's request for aforementioned relief is denied.<sup>8</sup> N.C. Gen. Stat. § 62-135 contains permissive statutory language ("any public utility ... *may* ... put such suspended rate or rates into effect...")

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<sup>8</sup> Despite their opposition to Aqua's petition, even the Public Staff and AGO seem to agree that implementing temporary rates subject to refund in the midst of a pandemic should be avoided. *See Joint Response to Aqua's Petition* at 10 ("stating, "[w]hile the Public Staff and the AGO acknowledge that Aqua is legally entitled to implement temporary rates subject to an undertaking to refund pursuant to N.C.G.S. § 62-135, the Public Staff and the AGO believe all utilities should avoid increasing their rates during this time in which many of their customers are suffering financial hardships as a result of coronavirus that render them unable to pay their bills at current rates.").

(emphasis added))<sup>9</sup> rather than mandatory language (“shall”). The statute provides a discretionary mechanism a *utility* may invoke to protect its financial position, but there is no requirement it do so. Moreover, nothing in the statute indicates that the utility’s sole remedy is to implement rates under bond, and the Commission has ample authority to fashion an alternate remedy that considers and fairly balances the interests of customers as well as the utility. Thus, the Company submits, that under the current unprecedented circumstances, its request to establish a deferral strikes a more appropriate balance between mitigating impacts to customers from raising rates during the pandemic while ensuring the Company’s financial stability is not materially impaired due to the unavoidable delay in the Commission’s consideration of and approval of new rates.

#### **FINANCIAL CONSEQUENCES OF DELAY**

12. DE Carolinas is experiencing a reduction in the Company’s demand and associated revenues due to many reasons, including but not limited to, commercial and industrial customers closing or scaling back operations as a result of the pandemic. In addition, there has been recent volatility in the debt and equity markets and pressure on liquidity for most industries, including utilities.

13. Absent Commission action, the Company will face additional earnings degradation arising from the inability to put permanent rates into effect on August 1, 2020. These effects could materially impair the Company’s financial stability and ability to attract capital on reasonable terms.

14. The Company has presented its financial information and demonstrated the need for a change in rates as reflected in McManeus Supplemental Rebuttal Exhibit 1 filed

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<sup>9</sup> See *Silver v. Halifax Board of Commissioners*, 371 N.C. 855 (2018) (explaining that the word “‘may’ is generally intended to convey that the power granted can be exercised in the actor’s discretion.).

in this docket. Page 2 of this exhibit shows the Company's adjusted return on equity at present rates is 6.98 percent and overall rate of return on North Carolina retail rate base is 5.71%.

15. Absent approval of this request, the Company will be denied the opportunity to earn the return authorized in its last rate case and will be denied the opportunity to earn even the lowest recommended return on equity in the present case. Conversely, approval of this request will afford the Company the opportunity to earn the level of return that the Commission ultimately deems is appropriate in this case.

16. The circumstances surrounding the delayed increase in revenues due to the collective impact of the COVID-19 pandemic are unprecedented. They result not from normal cyclical economic changes, but rather from the pandemic itself as well as state actions taken to protect public health and safety. Many actions have been taken in this docket to recognize and respond to the extremely substantial and variable impacts on the Company's cost of service caused by the COVID-19 Pandemic. This requested regulatory treatment is consistent with these actions. Further, the unique circumstances of the COVID-19 Pandemic and the amount of the financial impacts justify the Company's accounting request.

## CONCLUSION

For all the foregoing reasons, DE Carolinas respectfully petitions the Commission to allow the Company to establish a regulatory asset/liability for a deferral to accrue revenue for the difference between the rates ultimately approved by the Commission in this Rate Case and currently approved rates and establish a one-year recovery/flow-back mechanism. Further, DE Carolinas seeks expedited treatment of this motion so that it can further assess its need to file notice to issue temporary rates under bond if the Company's motion is denied.

This the 22<sup>nd</sup> day of June, 2020.

*/s/ Kiran H. Mehta*  
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*Attorneys for Duke Energy Carolinas, LLC*

**CERTIFICATE OF SERVICE**

DOCKET NO. E-7, SUB 1214

DOCKET NO. E-7, SUB 1213

I hereby certify that a copy of the foregoing **DUKE ENERGY CAROLINAS, LLC'S PETITION FOR AN ACCOUNTING ORDER TO DEFER IMPACTS OF ITS SUSPENDED RATE CASE IN LIEU OF IMPLEMENTING TEMPORARY RATES UNDER BOND** was served electronically or by depositing a copy in United States Mail, first class postage prepaid, properly addressed to the parties of record.

This the 22<sup>nd</sup> day of June, 2020.

*/s/ Camal O. Robinson*

Camal O. Robinson

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