

On March 10, 2014, the following parties filed initial comments: Carolina Industrial Group for Fair Utility Rates II and III (CIGFUR), the Public Staff, Carolina Utility Customers Association, Inc. (CUCA), Duke Energy Carolinas, LLC (DEC) and Duke Energy Progress (DEP) filed jointly (DEC/DEP), the United States Department of Defense and all other Federal Executive Agencies (DoD/FEA), the Kroger Co. (Kroger), Virginia Electric and Power Company, d/b/a Dominion North Carolina Power (DNCP), the North Carolina Sustainable Energy Association (NCSEA), and the NC Waste Awareness and Reduction Network (NC WARN). On March 11, 2014, the Commercial Group filed initial comments, which the Commission finds and concludes were timely filed. On June 13, 2014, CIGFUR, Public Staff, CUCA, Duke, DoD/FEA, DNCP, and the Commercial Group filed reply comments.

SUMMARY OF COMMENTS

INITIAL COMMENTS

CIGFUR

Before addressing the three areas requested for comment, CIGFUR provides background of the current status of industrial customers in North Carolina. Specifically, CIGFUR indicates that “North Carolina is steadily losing skilled, high-wage jobs of the type typically offered by large, capital intensive employers.” CIGFUR cites Dr. Julius Wright’s study and testimony provided in DEP’s last general rate case that “industrial electric sales and the number of industrial customers have been persistently declining over the past fifteen or so years.” See Julius A. Wright, The Economic and Rate Implications from an Electric Utility’s Loss of Large-Load Customers (hereinafter, “Wright Study”) (filed March 14, 2013, in Docket No. E-2, Sub 1023) (DEP Rate Case). CIGFUR provided further statistics from the Wright Study as follows:

DEP’s industrial sales decreased by 28% from 1997 to 2011; Duke Energy Carolinas, LLC’s (“DEC”) industrial sales plummeted 33% from 1998 to 2011; Dominion North Carolina Power’s industrial sales plunged about 40% from 1996 to 2012.¹ Correspondingly, North Carolina has lost over 200,000 manufacturing jobs over the last ten years.² These lost industrial jobs hurt North Carolina’s economy especially hard due to the uniquely high multiplier effect industrial concerns exhibit: for every new (lost) employee at an industrial facility, there are 1-3 additional new jobs created (lost) in the region; there is region-wide increase (loss) of approximately \$500,000 per year in economic output; and there is a region-wide increase (loss) of \$200,000 to \$350,000 in employee earnings.

Wright Study, p. 3. CIGFUR states that these lost sales and customers represent lost contribution to the utility’s fixed costs that other customers must bear. “For example, a loss of just 5% of DEP’s large general service class load would, all things being equal, result in a 0.40% increase in residential electric rates. After giving effect to the multiplier, the residential rate impact would increase to 1.23%.” Because electricity costs constitute one of the most important considerations for the location of industrial customers, “if another state or country can offer lower electric rates at similar reliability, large industrial customers, in order to remain competitive, must make the rational economic decision to redeploy their capital accordingly, by ramping down activity in the higher priced jurisdiction or even resiting production locations.” CIGFUR supports a job retention tariff (JRT) targeted to customers who will make the largest difference in influencing employment levels and positively impacting other ratepayers and the local economy.

With this background, CIGFUR addresses the three areas in which the Commission sought comment regarding the creation of potential guidelines: 1) appropriate eligibility

¹ NCUC Docket No. E-2, Sub 1023, O’Sheasy: Vol. 3, 66:3–10; O’Sheasy Direct Ex. 6; NCUC Docket No. E-7, Sub 1026, Vol. 7, 292:21–23; Initial Comments of Dominion North Carolina Power, p. 2, NCUC Docket No. E-100, Sub 73 (filed Feb. 24, 2014).

² NCUC Docket No. E-2, Sub 1023, O’Donnell: Vol. 3, 225:27–28.

criteria for participation in a JRT, 2) appropriate method of cost recovery, and 3) criteria or benchmarks that should be employed for measuring or verifying that a JRT has been effective in preserving jobs.

With respect to the eligibility criteria, CIGFUR recommends that the guidelines should define a customer eligible for service under the JRT as follows:

An Eligible Customer shall be defined as any customer taking service at participating facilities (A) with a demand of 3 MW or greater, and (B) (i) which uses electric power as a principal motive power for the manufacture of a finished product, the extraction, fabrication or processing of a raw material, or the transportation or preservation of a raw material or a finished product, or (ii) whose annual cost of electricity exceeds thirty percent (30%) of that facility's cash annual operating cost and is located on land zoned for industrial use.

CIGFUR recommends that a determination of eligibility should not require a showing of financial distress. CIGFUR argues that such a requirement would inhibit participation in a JRT. CIGFUR indicates that a company does not need to be in financial stress to move to another state with more favorable operating costs.

With respect to cost recovery, CIGFUR posits that cost recovery from ratepayers is appropriate as long as the participating customers' discounted rates exceed the variable cost of service and make some contribution to fixed costs. The reason is that a JRT is designed to result in job retention and lower rates for all customer classes and therefore is in the public interest. CIGFUR states that the appropriate time to recover the cost of a JRT is through a rate case, as long as the cost of a JRT is allowed to be deferred as a regulatory asset.

Lastly, with respect to measurement and verification (M&V) benchmarks, CIGFUR states that benchmarks should generally be tied to employment levels. However, CIGFUR notes that some flexibility should be built into the reporting guidelines to account for unemployment declines not due to a discretionary decision of a participating employer. CIGFUR suggests that participating customers provide a confidential annual report to the utility indicating the employment levels. If the employment level declines by a certain percentage, for example, 5%-10%, the customer would be automatically removed for the JRT unless it demonstrates to the utility that (1) the decrease is temporary; (2) the decrease would have been greater without the JRT; or (3) the decrease is due to an event beyond the customer's reasonable control, such as a loss of a major contract. CIGFUR recommends that the Public Staff has the right to review and inspect the reports as long as the confidentiality is maintained. CIGFUR urges that if the Commission requires the filing of the report that the report be filed under seal. CIGFUR suggests that the Commission receive on an annual basis a confidential list of participating customers and an aggregated and de-identified report of the employment levels of all customers served under the JRT.

PUBLIC STAFF

The Public Staff states that any JRT³ should strike an appropriate balance between the costs and benefits to all customers to promote the public interest. The Public Staff stated that to accomplish such benefits, the JRT should be offered only to those customers for whom the discounted rate would prevent the loss of jobs and related electric load. The JRT should provide a discount no larger in amount and no longer in duration than necessary to retain jobs and load. The discounted rate should cover at least the marginal cost of serving the customers receiving the discount, including the marginal capacity cost, to ensure that customers not receiving the discount are not overly burdened and that customers receiving the discount are not unfairly advantaged.

The Public Staff recommends that the JRT should address the eligibility concerns cited by Public Staff witness James McLawhorn and the Commission in the DEP Rate Case. Any JRT guidelines should include a requirement that the tariff have meaningful, verifiable qualifications to establish that a particular customer or group of like customers is in need of a JRT and will use the discount in rates to retain jobs. The Public Staff argues that the requirements should include a demonstration of financial and managerial viability on the part of the customer receiving the discount.

The Public Staff provides provisions and requirements from other states that the Commission should consider in developing the guidelines. These include:

affidavits confirming eligibility or need; service contracts; fixed terms; provisions ensuring that revenues exceed the incremental cost (including marginal capacity cost) to serve; proof of financial distress; a minimum peak demand; participation in an energy audit or in other energy conservation measures; and penalties or repayment if the contract is violated or load is not retained.

Lastly, the Public Staff recommends that the Commission seek input from the North Carolina Department of Commerce when developing the terms and criteria for guidelines for a JRT.

CUCA

Like CIGFUR, before providing comments on the Commission's request, CUCA provides background information on the need for a JTR. CUCA states that it is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State, as well as recruiting and attracting new business and industry to the State. A JRT would assist in achieving the State's policy. Further, CUCA argues that "too many of our homegrown businesses are being pushed ever closer to the precipice because of escalating energy costs." Loss of jobs means a loss of tax base. CUCA cites to Dr. Julius Wright's testimony in the DEP Rate Case where he stated that when an industrial job is gained or lost, there is a ripple or multiplier effect. Thus, industrial and

³ The Public Staff, and other parties, refer to a possible job retention tariff (JRT) as an industrial economic recovery (IER) rider or a Job Retention Rider (JRR). For consistency purposes, when parties use the terms IER or JRR, the Commission shall convert that term to JRT for purposes of this order.

manufacturing jobs are the kinds of jobs that support other jobs, such as fast food restaurants, grocery stores, etc. Lastly, CUCA notes Kevin W. O'Donnell's testimony in DEC's last general rate case (Docket No. E-7, Sub 1026) wherein he testified that if industrial sales were eliminated in the DEC region that rates for other customers would rise on average by 10.6% and in the last DEP rate case, the rates would rise by an estimated 8.1%.

With respect to providing comments on the requested issues, CUCA indicates that the rider should be narrowly focused on industrial customers and manufacturers due to the fact that they compete both nationally and internationally, where electric rates make a difference. CUCA suggests that one way to accomplish this goal would be to use the definition of "industrial" as provided by the Bureau of Labor Statistics in the eligibility criteria. CUCA suggests another definition to be added to the eligibility criteria is "manufacturing," and defining it as establishments engaged in the mechanical, physical or chemical transformation of materials, substances or components into new products. CUCA suggests that another eligibility criteria to use is a requirement that an eligible company's average wage for its workers should be at least 1.2 times the minimum wage.

With respect to cost recovery, CUCA suggests that the JRT be tested as a pilot program with the ultimate review of the reasonableness of the costs to be determined at the utility's next general rate case proceeding if a utility proposes to make it a permanent part of the utility's rate structure. CUCA notes that if the utility chooses to offer to pay for some or all of the JRT at the utility's expense, the Commission does not need to exercise as much analysis.

With respect to measurement and verification, CUCA cautions the Commission on creating too strict of an M&V program. CUCA suggests "that CUCA be allowed to file, on behalf of its members who request CUCA to do so on their behalf, one aggregated confidential Annual Certificate for each CUCA member, compiled by CUCA to maintain employer confidentiality, with the serving utility." CUCA states that the annual certificate should not require detailed financial information because it would discourage participation. CUCA states that a reduction in employment should not be an automatic end to a JRT, but that the business should be allowed to offer explanations for the decline in employment. Lastly, CUCA urges that the utility should be allowed to make the initial determinations regarding whether or not the M&V standards have been met and thereafter file its own confidential Annual Report to be reviewed by the Public Staff.

DEC/DEP

In their initial comments, DEC/DEP indicate that industrial sales for both DEC and DEP have declined nearly every year since 1997 and 1998 respectively, and that when industrial load decreases, the fixed costs previously borne by those customers are passed onto other customer classes. DEC/DEP state that "the importance of large load customers [] has been recognized all over the country in the form of economic development and load retention tariffs in a variety of fashions." DEC/DEP provide as Attachment B to their filing, examples of job retention tariffs and load retention/economic development tariffs. DEC/DEP conclude that the adoption of a JRT would be consistent with the Commission's prior approval of economic development tariffs in North Carolina.

With respect to the eligibility criteria for a JRT, DEC/DEP recommend that the JRT should be targeted at industrial customers that have the greatest impact on the State's economy and that a customer should have at least 12 months of operating experience with the utility. Some ways to narrow the pool of applicants is to exclude Retail Trade or Public Administration as classified by the Standard Industrial Classification (SIC) Manual, to focus on the size of the electric demand, to concentrate on the use made of the power, to determine whether the zoning of the customer is industrial, or to require that the customer's cost of electricity represents a material portion of the cash operating cost of the facility. DEC/DEP do not agree with any requirement of financial distress or the use of "free rider" screens as these types of requirements can discourage participation. DEC/DEP posit that the narrow crafting of the eligibility criteria can accomplish the same goals.

As for cost recovery, DEC/DEP urge that the participating customer continue to cover all of its variable costs as well as contributing to its fixed costs under a JRT. DEC/DEP contend that cost recovery should be permitted because job retention is in the best interests for all customers. DEC/DEP suggest that cost recovery could be proposed in either a rate case, along with a JRT meeting the Commission approved guidelines, or in the creation of a deferred regulatory asset until the utility's next rate case. DEC/DEP recommend that cost recovery should not have an impact over one percent on other customers in any given year.

For JRTs for which cost recovery is not sought from other customers (utility self-funded JRTs), DEC/DEP recommend that the Commission need not judge the program using the same criteria as there is "no harm" to other customers.

With respect to measurement and verification, DEC/DEP suggest that the participating customer be required to provide the utility with a confidential report indicating the status of employment compared to the previous year and that the customer will attempt to maintain employment levels.

DEC/DEP would compile the data from the customers' reports and on an annual basis file the "JRT Compilation" with the Commission. The JRT Compilation would provide an aggregated level of employment by all of the customers served under the JRT. DEC/DEP would monitor the individual JRT reports from the customers to confirm the effectiveness per customer. DEC/DEP suggest that for any customer that has reduced employment levels from the prior year beyond a reasonable attrition allowance (such as 2.5%) should be immediately removed from the JRT unless the customer can make a showing that the decrease in employment is temporary, the decrease in employment would have been greater without the benefit of the JRT, or the decrease is due to an event beyond the customer's reasonable control, such as the loss of a major contract. These reports to DEC/DEP should be available for inspection by the Public Staff, and the Public Staff should be able to challenge whether or not a customer remains on the JRT. DEC/DEP request that any individual JRT reports on a specific customer be made under seal as they contain commercially sensitive information.

DoD/FEA

The DoD/FEA urges that the eligibility requirements for any JRT not limit the tariff to industrial customers. DoD/FEA contends that this limitation provides a subsidy to customers that have no need for it while forcing other non-industrial customers who may also face budgetary issues to pay more. DoD/FEA contends such a JRT also carries a risk that it would reduce employment in large non-industrial customers through increasing energy costs to those customers.

DoD/FEA is one of North Carolina's largest employers. "DoD/FEA directly employs approximately 140,000 military personnel in North Carolina. DoD/FEA supports 540,000 jobs in North Carolina, \$30 billion in state personal income, and \$48 billion in gross state product," and 340,000 of those 540,000 jobs occur in the private sector. Overall, the North Carolina Department of Commerce estimates that DoD/FEA supports 10 percent of North Carolina's economy. Fort Bragg alone spends more than \$70 million per year on utilities. Fort Bragg consumes more than 500 million kWh of electricity per year with a peak demand of 140,000 kW. Even a small increase in costs per kW to provide a subsidy to other customers would result in a significant increase in overall energy costs to a large consumer like DoD/FEA. DoD/FEA proposes that any rider should provide savings to large users who reduce system costs by recognizing and responding to system demands in the form of demand response programs.

DoD/FEA indicates that DEP currently offers its LGS-RTP-26 tariff, available to eighty-five of its largest customers, which allows those customers to reduce energy costs through demand response programs, and that most major industrial power customers are on the RTP tariff. Fort Bragg is capable of reducing its peak demand by as much as 40,000 kW during a system coincident peak, which would reduce the stress on Fort Bragg's substations and DEP's transmission systems and generators. DoD/FEA suggests that the JRT concept be developed to reduce utility costs for both the supplier and the major users, and/or that the LGS-RTP tariff be modified to allow major users to reduce costs more substantially, through demand response programs, as opposed to providing a subsidy to one small class of customers. DoD/FEA states that the current RTP rate structure recognizes incremental energy use, but not capacity. Fort Bragg has untapped onsite generation and demand response capability that can be used to avoid new generation and transmission.

KROGER

Kroger opposes any JRT and recommends that the Commission reject any proposal on the grounds that such rates have no basis in cost-of-service regulation and violate G.S. 62-131. Kroger argues that the Commission specifically ordered that SIC code-based rates be phased out in Docket No. E-7, Sub 989, and that the JRT will renew these cross-subsidies.

DNCP

DNCP notes that its experience regarding the loss of industry and industrial jobs in its service territory is similar to the other utilities. Specifically, from 1996 to 2012, the

number of industrial accounts taking service on DNCP's non-residential rate schedules has decreased by approximately 40%. Excluding Nucor Steel Hertford, industrial load has similarly decreased. DNCP is generally supportive of a JRT and guidelines to implement such a tariff.

DNCP agrees with Duke that the JRT should be limited to industrial customers. DNCP indicates that it has not seen a reduction in its commercial, governmental and residential customers, like it has seen with its industrial customers, indicating a distinction exists in need for the tariff. DNCP also urges that flexibility be maintained and that the guidelines not be too narrowly focused. However, if the Commission chooses not to allow for a broad-based tariff, DNCP supports the following guidelines:

- 1- Determining which industrial customers to include should be determined on a utility by utility basis in response to the specific proposal.
- 2- A single account should not be able to receive service under both an economic development rate rider and a JRT. To allow both rates would allow a "double-benefit" funded by other ratepayers.
- 3- A rider incentive should not exceed five years.

With respect to cost recovery, DNCP asserts that a JRT should be revenue-neutral to the utility. DNCP does not find that Duke's proposal to recover the revenue deficiency through a cents-per-kWh charge applied to all customer classes to be unreasonable as long as the customer pays its variable costs plus a fair and equitable contribution to the recovery of the utility's fixed costs. DNCP asserts other approaches might be reasonable as well. DNCP proposes that establishing a JRT in a general rate case is appropriate. DNCP also asserts that allowing for approval outside a rate case might be appropriate under certain circumstances, but if approved outside of a rate case, a mechanism for cost recovery should be made concurrently.

DNCP does have concerns about engaging in decision-making on a customer's eligibility and continued participation in a JRT and recommends clear rules be developed regarding customer eligibility and ongoing job retention obligations. DNCP recommends that the customer should be required to state a reasonable expectation to maintain current employment levels and/or some level of need for this rate relief. Lastly, reporting requirements should be established by the specific utility.

NCSEA

NCSEA recommends the following three eligibility guidelines:

1. Any guidelines established should require that a utility filing a job retention tariff include as part of the application a good faith estimate of any anticipated cost-shift and a quantification of expected benefits.

NCSEA argues that the Commission has previously stated that a JRT is largely a public policy issue in which the Commission must balance the costs and benefits. Therefore, any application should provide a good faith estimate of any anticipated costs, including cost-shifts, and benefits, including the identification of classes receiving benefits.

NCSEA discusses the benefits of cross-subsidies in the context of net metering and argues that cost-shifts are only part of the story in ratemaking. The other half of the story is the benefits provided by suggested cost-shifts.

2. Any guidelines established should require that a utility filing a job retention tariff include as part of the application a statement indicating that the proposing utility has no reason to believe the tariff will not pass constitutional muster with regard to the dormant Commerce Clause.

NCSEA argues that, because the Commission in a 1994 order regarding economic development rate guidelines stated that those guidelines leave unaddressed the goal of retaining load due to retail wheeling and competition between utility concerns, the Commission has already foreseen that a request for a JRT could potentially involve interstate commerce. NCSEA states that the goal of job retention on its face seems to provide a direct commercial advantage to local business. Therefore, NCSEA requests that a utility make a statement in its application for a JRT that, to its knowledge, the tariff complies with the dormant Commerce Clause.

3. Any guidelines established should prohibit a utility filing a job retention tariff from conditioning customer eligibility on submission of proof that a viable, lower cost renewable energy or energy efficiency alternative exists that demonstrates the customer could leave or reduce its usage of the utility's system.

NCSEA requests that utilities not require the customer to prove, as a condition of eligibility, that the customer could leave the system or reduce its usage of the system through lower cost renewable energy or through an energy efficiency alternative. NCSEA states that such a requirement would be detrimental to employment in the clean energy industry.

NC WARN

NC WARN's comments in large part reference the deficiencies in the proposed DEP IER Rider in Docket No. E-2, Sub 1023. NC WARN states that there is a more in-depth record in the DEP Rate Case. NC WARN asserts that the primary impetus for the current docket stems from settlement agreements made between DEP, DEC, CUCA and CIGFUR in the merger dockets, Docket Nos. E-7, Sub 986 and E-2, Sub 998. NC WARN contends that both CUCA and CIGFUR agreed not to oppose the merger in exchange for DEC and DEP supporting an industrial discount rider. NC WARN contends that to meet their merger commitments to the industrial customers, DEC and DEP proposed the IER riders, a five-year pilot rate discount for industrial customers, in their respective rate cases.

NC WARN outlined arguments made in the DEP Rate Case that were specific to that proposal. However, within the arguments made, NC WARN points to several factors that the Commission should consider when determining a load retention rate. NC WARN suggests that the tariff should have: (1) a requirement of an affidavit confirming eligibility or need; (2) a specific service contract; (3) proof of financial distress; (4) analysis showing that the discount is set at the necessary minimum; (5) a requirement to implement

identified cost effective energy efficiency improvements following a facility audit; and (6) penalties or repayment for contract violations.

NC WARN questions whether the Commission has the authority to approve such a job retention program and suggests that instead of a JRT the Commission should focus on customers in each of the existing ratepayer classes who are most impacted by economic difficulties and examine which customers would be best assisted by rate discounts.

THE COMMERCIAL GROUP

In its initial comments, the Commercial Group first outlines that its members have a substantial positive impact on North Carolina's economy and that three of the top eight largest private employers are members of the Commercial Group. Collectively, its members employ over 100,000 North Carolina workers and support the employment of over 100,000 other North Carolina workers through the billions of dollars group members spend for merchandise and services in the State each year. The Commercial Group recommends that any job retention tariff should: 1) not unreasonably prefer or advantage any one set of ratepayers over other ratepayers, and 2) be narrowly tailored to meet job retention objectives.

The Commercial Group directs the Commission's attention to G.S. 62-140(a), which provides that no public utility shall make or grant an unreasonable preference or advantage to any person, or subject any person to any unreasonable prejudice or disadvantage. The Commercial Group argues that the terms of any JRT should not be similar to the IER proposed in the DEP Rate Case that the Commission rejected. In the proposed IER, the eligibility was linked to an industrial SIC code. The Commercial Group argues against the proposed rider by illustrating that under the IER, a bakery inside a Food Lion and a stand-alone bakery across the street would be treated differently based upon the SIC code. The Commercial Group recommends that the guidelines resemble the Business Incentive and Sustainability Rider for Northern States Power Company that was approved by the Minnesota Public Utilities Commission.

The Commercial Group recommends that standards for a JRT be more narrowly tailored than the proposed DEP IER. The Commercial Group argues that the DEP IER was overly broad in that it did not require a showing of financial hardship and it would have included small businesses that had an "industrial" classification. The Commercial Group urges more focused criteria so that valuable ratepayer funds are not wasted.

REPLY COMMENTS

CIGFUR

CIGFUR states that it joins in DEC/DEP's reply comments and incorporates them by reference and limits its reply comments to three discrete issues. First, the Commission possesses the authority to adopt guidelines for JRTs. In its initial comments, NC WARN questioned whether the Commission had statutory authority based upon the fact that G.S. 62-2 does not contain language regarding job retention or economic development.

Therefore, NC WARN argued that these issues do not fall squarely within the scope of utility regulation.

CIGFUR argues that NC WARN's assertion is incorrect. CIGFUR states that the Commission is guided by considerations of the public interest and the General Assembly has given the Commission broad authority to regulate public utilities. CIGFUR cites to G.S. 62-2 (a), which states that "the availability of an adequate and reliable supply of electric power ... to the ... economy ... of North Carolina is a matter of public policy." Also, within the policy section of Chapter 62, the statute imparts that the State is "to provide fair regulation of public utilities in the interest of the public." G.S. 62-2(a)(1). CIGFUR argues that JRT guidelines are intended to ultimately benefit all ratepayers and that this is in the public interest and within the Commission's authority.

CIGFUR further asserts that the North Carolina Supreme Court has confirmed the Commission's authority to approve rates intended to stimulate economic activity. See State ex rel. Utils. Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978) (upholding approval of a surcharge to fund an exploration program to discover new sources of gas within North Carolina). The Court held that "[i]t was certainly within the authority of the Commission to determine that all North Carolina gas ratepayers would benefit from increased supplies of natural gas, both through assured availability and improvement in the State's economy." Id. at 611–612, 242 S.E.2d at 871.

CIGFUR further explains that the Commission has exercised this type of authority in the past. For example, the Commission has previously adopted guidelines for economic development rates in this docket, as well as Docket Nos. E-2, Sub 681 (Economic Development Rider); E-2, Sub 819 (Economic Redevelopment Rider); E-7, Sub 719 (Economic Redevelopment Rider); E-7, Sub 771 (Economic Development Rider and Economic Redevelopment Rider); E-22, Sub 384 (customer-specific rate, filed pursuant to Commission's guidelines for economic development rate, intended to encourage industrial company to build large facility in Eastern North Carolina); and G-9, Sub 407 (Economic Development Rider). Lastly, CIGFUR refers the Commission to DUPC Investigation Into Electric Loan Retention Tariffs, 253 P.U.R. 4th 98, 25 (Conn. 2006) ("A review of other jurisdictions shows that virtually every state has some type of an economic development incentive rate to promote business retention and economic growth."), to support the creation of a JRT in North Carolina.

CIGFUR urges that a JRT should be limited to industrial customers. CIGFUR reiterates the concrete definition of an Eligible Customer for a JRT that it provided in its initial comments and urges its inclusion in the guidelines. CIGFUR argues that industrial customers are uniquely situated and that to expand the JRT to non-industrial customers increases the expense of the program and disconnects the program from the policy justifications for it. First, industrial energy sales have declined over the past fifteen years. See Duke Energy Carolinas Integrated Resource Plan, pp. 13, 64–68, Docket No. E-100, Sub 137 (filed Oct. 15, 2013); Duke Energy Progress Integrated Resource Plan, pp. 13, 55–59, Docket No. E-100, Sub 137 (filed Oct. 15, 2013); Dominion Virginia Power's and Dominion North Carolina Power's Report of Its Integrated Resource Plan, p. 21, Docket No. E-100, Sub 137 (filed Aug. 30, 2013). Second, CIGFUR notes that industrial customers can display exceptional electric price elasticity. The data shows that large

industrial customers will respond to electricity price signals in a significant way. Over a longer term (2–3 years), the data indicates that industrial customers will reduce electricity consumption by as much as 30% to 40% in response to a 10% increase in electricity prices, “a much more aggressive response to electric price changes than is exhibited by the commercial class of customers.” Wright Study, pp. 11-12 Third, CIGFUR asserts that because of industrial customers’ uniquely high multiplier effect and load factor, the retention of industrial jobs and load benefits all customers by boosting the North Carolina economy and absorbing a utility’s fixed costs. These three factors, which are unique to industrial customers, support targeting the JRT to industrial customers. CIGFUR notes that no evidence has been provided to justify offering a JRT to other customer classes.

Lastly, CIGFUR recommends that the guidelines should not prevent a customer from receiving service under an economic development tariff and a job retention tariff. DNCP, in its initial comments, states that, if “more focused guidelines” are established, “[a] single account should not be able to receive service under both an [economic development rider] and [a JRT] at the same time.” CIGFUR disagrees, stating that the rates accomplish two different goals: one is to attract new capital, jobs and load, and the other is to retain existing jobs and load. CIGFUR argues that including such a prohibition in the guidelines runs counter to DNCP’s stated goal of “allowing each of the Utilities the flexibility to determine when and how to best support the goals of job retention and economic growth and competitiveness within their own services areas.” In any event, CIGFUR argues that this decision is one that should be addressed in a utility-specific filing versus the guidelines.

PUBLIC STAFF

In its reply comments, the Public Staff indicates that on April 9, 2014, it convened a meeting of representatives of the parties for the purposes of discussing the various parties’ positions and determining whether the parties could agree on any criteria that should be included in the guidelines. The Public Staff indicates that while total consensus was not achieved, the parties were able to agree generally that at a minimum, the following should be included in the guidelines:

- A. The tariff application should include the following:
 - i. Information regarding the group of customers that would be generally eligible to be considered for the discount and justification for targeting that specific group.
 - ii. Specific eligibility criteria for the target group of customers to qualify for the discount and justification for the criteria – criteria must be designed to target job retention and must be reasonably related to retaining customer load. (The Commercial Group and Kroger would prefer language such as “criteria must be designed to achieve job retention and retain customer load.” The Public Staff does not oppose this language).

- iii. Information demonstrating that the tariff is not unduly discriminatory and is in the public interest.
 - iv. Information regarding how customer specific information should be treated for confidentiality purposes.
 - v. Quantification of the maximum potential monetary exposure for other customers and how the applicant proposes to recover such costs.
 - vi. A cost study to demonstrate that the discounted rate covers at least the marginal cost of energy and capacity for the target group based on characteristics broadly representative of the group.
- B. A retention tariff shall not be made available to any customer that does not have at least 12 consecutive months of operating experience with the utility.
- C. The availability of a retention tariff shall not exceed five years from approval of the tariff and cannot be extended. However, a utility may reapply for another retention tariff under the guidelines.

The Public Staff has some concerns regarding the JRT. One concern relates to suggested criteria that would allow participating customers on a JRT to remain on a JRT notwithstanding a failure to retain jobs or load if certain conditions are met. Although the Public Staff has concerns regarding this criteria, it suggests that this issue is best addressed in the context of a specific application for a specific JRT.

The Public Staff's second concern relates to the Commission's authority under Chapter 62 to base a rate differential on preserving jobs. The Public Staff posits that in order for a JRT to be just and reasonable and non-discriminatory, there must be a link between the tariff and maintaining jobs and load. This link allows for the Commission's authority as a loss of jobs, a loss of the related load and the associated revenue loss would have a negative impact on the electric rates of all other customers. The Public Staff urges that the guidelines should require that the utility specify the minimum level of load and number of jobs that must be maintained for a customer to be eligible for and remain on the tariff.

The Public Staff's third concern is free ridership. The Public Staff states that additional guidelines and filing requirements should be included in the Commission's guidelines to ensure that any JRT needed will avoid attracting free riders as much as possible so to not overburden other customers. The Public Staff attached proposed Guidelines and Filing Requirements for Job and Load Retention Tariffs as Exhibit A to its filing. The Public Staff's proposal utilizes some of the same requirements as those found in the Commission's guidelines for self-generation deferral rates and economic development tariffs, which the Public Staff maintains are similar in purpose.

The key points that the Public Staff addresses in Exhibit A are:

- a. The guidelines should require a utility to show an urgent need for a discount to maintain jobs and load and that amount of the discount is no more than necessary.
- b. The guidelines should require the customers receiving a discount sign a contract and that the contract should be filed with the application for the tariff. The contract should include the level of load and jobs the customer will agree to maintain, and termination and “clawback” provisions for failing to maintain the load and jobs. A contract requiring a “reasonable expectation” to maintain current employment levels is insufficient. The Commission’s guidelines for economic development rates and self-generation deferral rates both require a contract, as do retention tariffs in other states. (For example, see the Duke Energy Kentucky, Inc.’s Rider DIR; Rider EDRR; Southern Indiana Gas and Electric Company’s Rider ED; Southern California Edison’s Rider EDR-R; the City of Riverside’s Schedule BR; Alliant Energy’s Economic Development Program Rider; and the Pacific Gas and Electric’s tariffs attached to DEC/DEP’s comments in this docket.) The contract should include a provision stating that the customer is eligible under the terms of the tariff, that the customer is in need of the discount to achieve job and load retention, and that the customer will use the discount to do so.
- c. The discount offered under the retention tariff should be a declining discount. Like the economic development tariff, the retention tariff is intended to be a temporary discount.
- d. A customer should not be permitted to be on a retention tariff and an economic development tariff at the same time. The Public Staff believes that the tariffs have similar purposes, and allowing a customer to take advantage of both would amount to “double dipping” for undertaking the same activity.
- e. The utility should be required to provide a customer by customer analysis and data every year (i.e., no aggregated data). This information may be filed confidentially.
- f. The guidelines should provide that a utility may only recover the costs of a retention rider in the context of their incurrence in a historical test year in a general rate case. The Public Staff disagrees with DEC and DEP that a utility should be permitted to defer the costs of the tariff until a general rate case. If a utility would not have been allowed to defer revenues lost due to loss of load, it should not be allowed to defer revenues lost due to a discount aimed at retaining that load.
- g. Public Staff scrutiny of a pilot tariff is important, whether funded with shareholder money or ratepayer money.

Lastly, the Public Staff indicates that the Economic Investment Committee within the Department of Commerce oversees Job Development Investment Grants (JDIG) for the State. JDIG recipients must execute a contract that specifies their job creation and retention obligations, and termination provisions for a default. A copy of the form contract, provided to the Public Staff from the Department, is attached to its filing as Exhibit B for the Commission's reference.

CUCA

CUCA mainly reiterates its initial comments filed on March 10, 2014, and those comments will not be repeated. CUCA did, however, redefine from its initial comments, its definition of the "manufacturing" process for purposes of customer eligibility. In its reply comments, CUCA supports a requirement that the customer engage in a "manufacturing process – that is, a process which converts raw or partly finished materials into a different end product for sale or shipment."

CUCA supports the general concept of DEC/DEP's initial comments that the initial guidelines for a JRT for industrial or manufacturing customers should be as relatively open-ended as possible and that more detailed requirements are appropriately reviewed after the filing of a specific tariff proposal.

CUCA agrees generally with DNCP's comments. CUCA supports DNCP's position "that any necessary Measurement and Verification provisions should be omitted from the initial, general guidelines established by the Commission and, instead, should be deferred as a response to a specific [JRT] filing."

CUCA supports the four "General Areas of Agreement" regarding the initial guidelines for JRTs that emerged out a meeting initiated by the Public Staff. CUCA does not support the initial comments of the Public Staff stating that the Public Staff's suggestions would "kill any chance of a successful IER or JRT ever being filed or implemented." CUCA disagrees that proof of financial need be required to be eligible for a JRT. CUCA states that such a provision would prevent most industrial customers from even applying for the tariff. Furnishing financial information and business strategies could result in various negative outcomes such as competitive losses, loss of market share, loss of stock price and required filings at the SEC. CUCA asserts that any term of a JRT should be for a term certain and not until the tariff is no longer necessary as proposed by the Public Staff. CUCA states that the "guidelines" should be "inviting" to industrial customers and that the more difficult questions of cost recovery and measurement and verification should be determined in in the specific tariff proceeding.

CUCA responds to the Commercial Group's free rider argument by stating that if the Commission requires financial need to reduce free ridership, then the Commission will be eliminating most of the otherwise eligible applicants because most applicants would not submit such confidential financial information. CUCA responds to NC WARN's initial comments by stating that NC WARN's concerns are not appropriate for consideration in terms of the general guidelines, but are best determined when a specific tariff is filed. Furthermore, with respect to any issue of discrimination, CUCA states that Chapter 62 does not prohibit any and all forms of discrimination, only "unreasonable"

discrimination. CUCA states that as long as the Commission has a rational nexus regarding the rate structure and any different treatment among classes, the Commission's actions are not prohibited.

CUCA states that NCSEA's comments regarding estimating any costs shifts and concerns regarding the dormant Commerce Clause are more appropriate once a specific JRT is filed versus during the establishment of the guidelines for a tariff phase.

DEC/DEP

DEC/DEP support the guidelines generally agreed upon by interested parties during the meeting the Public Staff initiated to find consensus. DEC/DEP further generally agree with DNCP's initial comments, which can be summarized as follows: (1) limiting a job retention rider does not unfairly disadvantage other customer classes; (2) the Commission should allow utilities to consider developing proposals focused on retaining and expanding industrial jobs in NC; (3) supporting the opportunity to propose a rider to target job retention and incentivize economic development within a customer class; (4) a single customer account should not receive service under both an economic development rate and JRT offering; and (5) that a class-based JRT incentive should not exceed five years (absent extenuating circumstances as approved by the Commission). As to cost recovery, DEC/DEP agree with DNCP that (1) a cents-per-kWh charge to all customer classes is not unreasonable, provided companies receiving an incentive pay variable costs plus a contribution to the recovery of the utility's fixed costs; (2) it is logical that a JRT proposal and cost recovery for such be made within a general rate case, but a utility should be allowed to file for approval of a JRT outside a general rate case should circumstances warrant; and (3) there needs to be a clear mechanism providing for current and future recovery of costs associated with a JRT incentive. As to measurement and verification, DEC/DEP share DNCP's concerns about a utility having to engage in discretionary decision-making about customers' eligibility for and continued participation in a JRT. DEC/DEP agree with DNCP that reporting requirements should be established on a utility-by-utility basis at the time of the JRT proposal.

In response to CUCA and CIGFUR's initial comments, DEC/DEP state that their respective proposed eligibility criteria are examples of how a utility could structure its tariff application and that the "Guidelines" that the parties generally agreed to in the meeting convened by the Public Staff are broad enough to encompass these examples. DEC/DEP agree with CUCA and CIGFUR's concern that a showing of financial stress not be required for eligibility. DEC/DEP state that "disclosing such information could violate securities laws, constitute contract default, and ultimately make it more costly, not less costly, for employers to operate and to retain jobs." DEC/DEP add,

that providing such information even on a confidential basis does nothing to limit this concern, because a mere expression of financial distress, even if confidential, could trigger customer requirements to disclose such information to their lenders and customers, such as customers or lenders who require contractual liquidity provision for supply and purchase agreements and banking and guarantor agreements or other financial instruments.

DEC/DEP state that this possibility “could eliminate or exceed the benefit proposed under a JRT.” DEC/DEP state that their impression after the meeting of all parties is that this issue has been resolved.

DEC/DEP agree with both CUCA and CIGFUR that cost recovery should be from all ratepayers and that if approved outside a rate case, deferral of the costs should be allowed until the next rate case. DEC/DEP do not agree that a determination of the reasonableness of the costs can be simply deferred. Rather, DEC/DEP state that any approval for a JRT should specifically detail the criteria that should apply in consideration for cost recovery in a subsequent rate case and that costs should not be disallowed in a rate case based upon policy arguments that were not raised in the JRT approval proceeding outside the rate case or addressed in the Commission’s order approving a JRT outside of a rate case.

As to measurement and verification, DEC/DEP do not agree with CUCA that the utilities should decide whether an applicant has provided sufficient information to support the continuation of the JRT. DEC/DEP state this is a subjective determination better made by the Public Staff or Commission or some other third party. DEC/DEP support CUCA and CIGFUR’s position on the confidentiality of company specific information. DEC/DEP further agree that they would remove any customer from a JRT if the customer failed to report as required or failed to provide an adequate explanation for any decline in employment levels. DEC/DEP reiterate that this determination regarding whether a company has provided an adequate explanation for a decline in employment should be made by the Public Staff or the Commission.

In response to the Commercial Group and Kroger’s initial comments that a JRT that limits eligibility to industrial customers is wrong and unlawful, DEC/DEP reply that the Commission has full authority to grant a JRT and that it can be structured to be non-discriminatory. North Carolina General Statute Section 62-140 only prohibits unreasonable or unjust discrimination among classes of customers. See State ex rel. Utils. Comm’n v. Bird Oil Co., 302 N.C. 14, 22, 273 S.E.2d 232, 237 (1981)(“in establishing rates, th[is] statute plainly prohibits (1) unreasonable preferences, (2) unreasonable advantages, (3) unreasonable prejudices, (4) unreasonable disadvantages and (5) unreasonable differences”). DEC/DEP further reference State ex rel. Utils. Comm’n v. Carolina Util. Customers Ass’n, Inc., 323 N.C. 238, 252, 372 S.E.2d 692, 700 (1988) (holding that where non-cost factors justify differing rates for individual customer classes, the rates are not unreasonably discriminatory). DEC/DEP find that the public interest and the benefits arising out of a JRT provide sufficient justification for the JRT. DEC/DEP refer to several Commission dockets which approved economic development riders and opine that JRTs are a reasonable extension of these currently-approved economic development riders. See Order Approving Revisions, Docket Nos. E-2, Sub 681, E-2, Sub 819 (Dec. 14, 2006) (approving DEP’s revised Economic Development Rider ED and Economic Redevelopment Rider ERD); Order Granting General Rate Increase, Docket No. E-7, Sub 1026 (Sept. 24, 2013) (approving DEC’s Rider EC (NC) Economic Development and Rider ER (NC) Economic Redevelopment); Order Approving Revisions, Docket Nos. E-2, Sub 681, E-2, Sub 819 (Dec. 14, 2006).

In addition, DEC/DEP disagree with the Commercial Group that the JRT should be tailored to only benefit customers in financial distress. DEC/DEP argue that profitable

companies lay off employees or move operations, thus the question is not whether the company is going out of business, but rather whether the company is going to eliminate jobs or move jobs elsewhere. Either way, DEC/DEP argue that this issue is more appropriately determined at the time a specific JRT is filed. DEC/DEP further state that,

unfortunately for a job retention objective of enabling a significant jobs impact while containing the cost impact upon others in a reasonable manner (i.e. getting the biggest bang for a reasonable buck) and being implementable, pragmatic qualifications may permit some non-target customers to participate yet screen out some other justifiable candidates.

DEC/DEP remind the Commission that “[t]he potential for over- or under-inclusiveness parallels a long-standing, inherent tension between the ratemaking goals of elimination of cross-subsidization and simplification of rate structure. See State ex rel. Utils. Comm'n v. Edmisten, 291 N.C. 424, 429, 230 S.E.2d 647, 650 (1976).” DEC/DEP assert that any proposed eligibility criteria will strike the appropriate balance to provide benefits to the citizens of North Carolina.

In its initial comments, NCSEA made the following requests:

1. Any guidelines established should require that a utility filing a job retention tariff include as part of the application a good faith estimate of any anticipated cost-shift and a quantification of expected benefits;
2. Any guidelines established should require that a utility filing a job retention tariff include as part of the application a statement indicating that the proposing utility has no reason to believe the tariff will not pass constitutional muster with regard to the dormant Commerce Clause; and
3. Any guidelines established should prohibit a utility filing a job retention tariff from conditioning customer eligibility on submission of proof that a viable, lower cost renewable energy or energy efficiency alternative exists that demonstrates the customer could leave or reduce its usage of the utility's system.

DEC/DEP state that they do not oppose condition (3); oppose condition (2) as unnecessary; and partially agree with condition (1) in that DEC/DEP do not oppose providing a good faith estimate of costs, but state that there is no way to quantify the benefits for a multiplier effect in the economy.

With respect to the dormant Commerce Clause issue, NCSEA suggests that a JRT might on its face provide a direct commercial advantage to local business creating a constitutional violation. NCSEA's fix for this is to require the utility to state in an application for approval of a JRT that to its knowledge, the JRT does not violate the dormant Commerce Clause. DEC/DEP respond that this requirement is unnecessary because any JRT will comply with the dormant Commerce Clause. DEC/DEP argue that a JRT does not burden or restrict interstate commerce. Further, if a JRT impacts interstate commerce, such impact is merely incidental and greatly outweighed by the local benefits of such a tariff. See Pike v. Bruce Church, Inc., 397 U.S. 137 (1970) (“Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate

commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits."). DEC/DEP state that retaining jobs in North Carolina is a legitimate interest of the State which outweighs any incidental impact that the JRT has on interstate commerce. Lastly, DEC/DEP provide that other utility commissions have adopted JRTs, and, thus, any JRT would not be giving North Carolina an economic edge over other states, but would merely allow North Carolina to keep pace with these other states.

Lastly, DEC/DEP state that NCSEA's comments regarding cross-subsidies and net metering is "curious and misplaced."

DEC/DEP state that DoD/FEA's comments regarding the modification of large users' tariffs to reduce costs through demand response is not appropriate for this docket. DEC/DEP argue that "demand response is allowed and encourage in response to RTP hourly rates." In response to DoD/FEA's statement that any JRT should include military bases, DEC/DEP agree to discuss whether a JRT specific to military bases could be designed, but insisted that the DoD/FEA should not be included in any JRT aimed at large private employers. Lastly, DoD/FEA expressed a need to prevent customers under a JRT who have laid off workers from being able to re-qualify under newly reduced employment levels. DEC/DEP agree that preventing customers who have been removed from a JRT from reapplying might be appropriate under certain circumstances, but should be determined on a case by case basis.

DEC/DEP counter NC WARN's assertion that DEC/DEP do not care about a JRT, and that DEC/DEP are only fulfilling a promise made during the merger. First, DEC/DEP refer the Commission to Mr. Newton's testimony in Docket No. E-2, Sub 1023, where he stated that DEC/DEP believe that industrial and large commercial customers are of such importance to the State they agreed to seek such relief and that nothing is untoward about the agreements. Second, those settlement agreements are irrelevant to this docket.

Public Staff requested in its initial comments that any JRT should be offered only to customers for whom the discounted rate would prevent loss of jobs and electrical load and that the discount should be no greater in amount or longer in duration than necessary to accomplish job and related load retention. DEC/DEP respond stating that precision cannot be accomplished and that the Commission should balance any condition for eligibility with the impact of that condition upon the administration of a JRT and whether the condition will dissuade customer participation.

The Public Staff also recommended that the Commission look to the guidelines and filing requirements adopted for self-generation deferral rates and economic development rates when determining the guidelines for a JRT. DEC/DEP state that those guidelines should only be used as a data point. DEC/DEP suggest that more general qualifications criteria as compared to the other guidelines are appropriate for a JRT.

Finally, DEC/DEP state that they did not reply to many more specific comments of the parties as those comments are more appropriately addressed when a specific tariff is filed for approval.

DoD/FEA

In its reply comments, DoD/FEA argues that no evidence has been provided that shows any connection between North Carolina energy costs and lost industrial jobs. Without this evidence, any JRT would be an impermissible, discriminatory subsidy. DoD/FEA suggests that an alternative to the JRT is to bolster demand response and increase Demand Response Automation (DRA) programs. DoD/FEA provides two options as an alternative to the JRT:

1. A system coincident peak rider can be added to the RTP-TOU tariff based on the historical summer and winter peaks. The contract demand level would be reset by the customer demand at the time of the system peak.
2. Allow major users who have opted out of the DSM/EE program to participate in the DRA program. Most of the major users who opted out of the DSM/EE program did so because they had already invested in energy efficiency and demand side management. Therefore, the capital investment objectives of the DSM/EE legislation to reduce system demand had been met. However, the on-going incentives to reduce system stress during peak periods can be improved with the proper incentives. Since the major users are on the RTP-TOU tariff, they get price signals for normal supply and demand situations. They can provide more value for emergency situations as defined under the proposed DRA that separate emergency and curtailable situations.

DoD/FEA states that more aggressive demand response programs may produce the same results or better results as any JRT.

DNCP

DNCP supports the guidelines generally agreed upon by interested parties during the meeting Public Staff initiated to find consensus. Specifically, DNCP agrees to the following:

- A. The tariff application should include the following:
 1. Information regarding the group that would be generally eligible to be considered for the discount and justification for targeting that specific group.
 2. Specific eligibility criteria for the target group of customers to qualify for the discount and justification for the criteria – criteria must be designed to target job retention and must be reasonably related to retaining customer load.
 3. Information demonstrating tariff is not unduly discriminatory and is in the public interest.

4. Information regarding how customer specific information should be treated for confidentiality purposes.
 5. Quantification of the maximum potential monetary exposure for other customers and how the applicant proposes to recover such costs.
 6. A cost study to demonstrate that the discounted rate covers at least the marginal cost of energy and capacity for the target group based on characteristics broadly representative of the group.
- B. A retention tariff shall not be made available to any customer that does not have at least 12 months of operating experience with the utility.
 - C. A retention tariff approved under the guidelines shall not exceed five years from approval of the tariff and cannot be extended. However, a utility may reapply for another retention tariff under the guidelines.

THE COMMERCIAL GROUP

In its reply comments, the Commercial Group proposes the following specific guidelines:

1. Eligibility should not be based on any unreasonable classification or distinction among ratepayers, such as an SIC code.

The Commercial Group reiterates its initial comments that the SIC code should not be used to determine eligibility and to do so amounts to unlawful rate discrimination. Rather, the Commission should follow DoD's suggestion of urging the utilities to create rate mechanisms that encourage large users to save on electric bills.

2. The utility should first demonstrate that the ratepayer(s) targeted to receive an electric rate discount need(s) the discount to preserve jobs, and will use that discount to preserve jobs.

The Commercial Group requests that any JRT should be narrowly tailored. The Commercial Group states that in their initial comments, the pro-industrial advocates merely repeat the same general information that was submitted in support of DEC and DEP's IER proposals that the Commission has already rejected, and that no evidence has been presented to support broad subsidies.

3. The utility proposing a job retention tariff should self-fund at least 50 percent of the tariff discount.

The Commercial Group is encouraged by the fact that DEC/DEP may potentially self-fund JRTs, and suggests that a hybrid option should exist as well where the utilities partially fund the JRT.

DISCUSSION AND CONCLUSIONS

Based upon the comments provided in this docket, the Commission supports the adoption of guidelines and filing requirements for job retention tariffs. The Commission finds the approval of a JRT is a matter of sound ratemaking policy to address the undisputed decline in industrial sales in North Carolina. When DEC/DEP initially filed for approval of an IER in their respective rate cases, North Carolina was experiencing a significant loss of industry and a rise in unemployment. The Commission did not have guidelines in place to assess any type of JRT and the parties in the DEP Rate Case could not find consensus surrounding adoption of the IER. The Commission finds that the adoption of these JRT guidelines will assist all parties involved with the creation of a properly designed JRT to benefit all ratepayers. A JRT's objective is to stem further loss of industry, industrial production and industrial jobs from a utility's service area. The Commission has previously approved economic development riders. Commissions in other states have approved such incentive rates to promote specific economic or social objectives for the benefit of its citizens, making such tariffs within the public interest.

As part of its consideration of whether to approve a JRT, the Commission requested and the parties provided comments on three areas related to the creation of the guidelines: eligibility, cost recovery, and measurement and verification. The Commission has reviewed the comments and has incorporated these comments into the development of the guidelines. Comments outside of the scope of the request will not be addressed herein.

Eligibility

The Commission agrees with CIGFUR and CUCA that a company should not be required to show financial distress to be eligible for a JRT. The Commission shares DEC/DEP's concerns that "disclosing such information could violate securities laws, constitute contract default, and ultimately make it more costly, not less costly, for employers to operate and to retain jobs." Further, the Commission finds informative DEC/DEP's statement "that providing such information even on a confidential basis does nothing to limit this concern, because a mere expression of financial distress, even if confidential, could trigger customer requirements to disclose such information to their lenders and customers, such as customers or lenders who require contractual liquidity provision for supply and purchase agreements and banking and guarantor agreements or other financial instruments." Although the Commission agrees that a showing of financial distress should not be required, the Commission finds that some documentation from a customer requesting service under a JRT could be helpful to combat free ridership. An example of such a documentation requirement is for a utility to require a JRT applicant to provide it with documentation tending to show that the customer's load is at risk of loss, such as documentation that the utility has reason to believe the customer is communicating with other utilities. However, this issue regarding exactly what type of documentation a JRT should require is best determined once a specific JRT has been filed by a utility.

The Commission agrees with the Public Staff that any JRT should strike an appropriate balance between its costs and benefits to all customers to promote the public interest. Both Kroger and the Commercial Group urge the Commission to prohibit eligibility based upon a customer's Standard Industrial Classification (SIC). Further, the

Commission values the Commercial Group's request that any future JRT be more narrowly tailored than the proposed IER in DEP's Rate Case so that valuable money is not wasted on free ridership. While not determining the exact eligibility criteria for a utility, the Commission supports efforts by utilities to craft the eligibility requirements that are narrowly tailored to meet the intended goals of maintaining jobs in the most economically efficient manner and agrees with Kroger and the Commercial Group that eligibility should not be determined by a SIC code. The Commission finds and notes, however, that creating eligibility criteria is not an exact science, and any eligibility criteria may be over-inclusive or under-inclusive. Therefore, although the Commission keeps an open mind regarding any JRT's eligibility criteria, the Commission agrees with the Wright Study that concludes that industrial customers or a subset of industrial customers may provide the most benefit for the least amount of cost. Industrial customers are unique from other customers in that they are not generally tied to any particular location and can more readily or easily relocate. An appropriate definition of customer may be CIGFUR's suggested definition of a customer. This definition appropriately screens out smaller customers, minimizing the cost of the JRT.

NCSEA requests that the guidelines require that a utility, in its application for a JRT, state that it sees no reason why it would violate the dormant Commerce Clause. Any proposed JRT will either be constitutional or not under a dormant Commerce Clause analysis. Therefore, requiring the utility to state that it believes a JRT is constitutional in its application is unnecessary. Furthermore, in its reply comments, DEC/DEP assert that a JRT does not violate the dormant Commerce Clause; therefore, two of the utilities have satisfied NCSEA's request for such a statement. The Commission finds that even though DEC/DEP have expressed no opposition to NCSEA's third request that utilities not require the customer to prove, as a condition of eligibility, that the customer could leave the system or reduce its usage of the system through lower cost renewable energy or through an energy efficiency alternative and DNCP did not respond to NCSEA's request, such language is not necessary to insert in the guidelines and is more appropriately dealt with in reviewing a utility's specific JRT. The Commission finds that NCSEA's first request has been partially covered by the guidelines and any remaining portion of the request can be dealt with in a specific JRT filing.

The Commission agrees with DoD/FEA that the DoD/FEA is a valuable asset to North Carolina and a large employer within North Carolina. However, the Commission acknowledges that the DoD/FEA is distinguishable from other large employers as the DoD/FEA is a governmental entity. The Commission takes note of the 40,000 kW of potential demand response at Fort Bragg and encourages, as was suggested by DEC/DEP, the utilities to enter into discussions with the DoD/FEA to determine whether or not it is possible that a DoD/FEA-specific JRT or other tariff may be created to benefit all ratepayers.

The Commission has addressed NC WARN's relevant comments in its discussions and conclusions above.

Cost Recovery

The Commission agrees with the majority of the parties that if the Commission approves a specific JRT, cost recovery from the remaining customers is appropriate as long as the participating customers' discounted rates exceed the marginal cost of service and make some contribution to the utility's fixed costs. The regulatory compact supports the Commission's ratemaking decision. As a part of the regulatory compact, regulated utilities are entitled to a reasonable rate of return on investment and to recover prudently-incurred costs. Federal Power Comm'n v. Hope Nat'l Gas Co., 320 U.S. 591, 603 (1944); Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia, 262 U.S. 679 (1923). The Commission finds that any discounted rate that is established through an approved JRT must be in the public interest and must provide benefits to all rate classes as well as to the entire region. As CUCA and CIGFUR explained, if a large customer that would otherwise leave the system stays on the utility's system and pays its variable costs plus some contribution of the utility's fixed costs, all customers benefit in terms of paying reduced rates. All customers in the region further benefit by maintaining such large customer's revenue stream and corresponding multiplier impacts during periods of economic uncertainty. The State of North Carolina, as well as the nation, remains in a period of economic uncertainty, and to the extent that a JRT is properly designed and administered, it will benefit all of North Carolina's ratepayers. Approval of the guidelines in this order is the first step. The utilities, however, have indicated that they may decide to fund all or a portion of a JRT. Therefore, if the utility chooses to fund any portion of the JRT, the Commission does not object to a hybrid option proposing self-funding or partial funding by a utility.

The Commission finds and concludes that a utility may request approval of a JRT outside of a general rate case. The Commission further concludes that a determination regarding recovery of costs is most appropriately decided at the time the Commission is determining whether or not to approve a specific JRT.

Measurement and Verification

All parties agree that the benchmarks should be tied to a customer's employment levels. CIGFUR, CUCA and DEC/DEP state that some flexibility should be allowed in a JRT to allow a customer who has failed to maintain a minimum level of employment to not automatically be removed from the tariff. These parties suggest the customer should be allowed to explain the reasons why it has not been able to maintain the jobs and, if sufficient reasons exist, be allowed to remain on the JRT. Although, the Commission finds this determination is more appropriate once a specific JRT is filed, the Commission urges the utilities to create clear standards.

Furthermore, all of the utilities express concern regarding engaging in decision-making on whether or not a customer has complied with the tariff and whether or not the customer should remain on the tariff. The Commission agrees with the utilities that they should not be in a decision-making role regarding whether a customer should remain on a JRT and encourages the utilities to create clear, bright-line rules regarding eligibility and termination of eligibility in designing JRTs. For example, a JRT might provide that if a customer does not maintain certain minimum employment levels, the

customer should be automatically removed from the JRT. The Commission agrees with the Public Staff that a properly designed JRT should require a minimum level of jobs to be maintained to remain on the JRT.

As far as the utilities' reporting on the customers on a JRT, the Commission finds that an aggregation of all of the customers on a utility-specific JRT and their aggregated data regarding employment levels will not provide sufficient information to determine whether the JRT is beneficial to all customers. On the other hand, the Commission is concerned that more detailed or customer-specific information would include confidential/competitive business information. Any requirement that an applicant release such sensitive information to the Commission could significantly undermine the purpose of a JRT, by discouraging targeted customers from applying to take advantage of the tariff designed to retain jobs and related load. The Commission finds that a possible avenue to satisfy the need for measurement and verification and to encourage helpful participation in a JRT is to have the utility compile the information on a customer by customer for an annual inspection by the Public Staff at the utility's place of business. The Public Staff could be involved in the initial decision-making regarding which customers should be removed from the tariff, if there is any dispute, and could file a generic aggregated report with the Commission regarding the effectiveness of the JRT upon completion of its review.

Therefore, based upon the comments received herein, the Commission is of the opinion that it should adopt the attached guidelines and filing requirements for job retention tariffs. The Commission notes that the guidelines adopted in this order contain a waiver clause that allows an applicant for job retention rates to request a modification of any of the filing requirements for good cause shown. The guidelines are also flexible enough to accommodate requests for job and load retention rates on a case-by-case basis or generic basis.

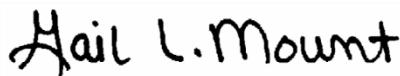
The Commission concludes from the comments received in this proceeding that it should allow differing approaches for the use of job retention rates at least for the time being, in order to allow the flexibility necessary for each company's needs. The guidelines adopted herein will further that objective, and they will do so in a manner that benefits all customer classes.

IT IS, THEREFORE, SO ORDERED that the Guidelines and Filing Requirements for Job Retention Tariffs attached hereto as Appendix A are hereby adopted.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of December, 2015.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Gail L. Mount". The signature is written in a cursive, flowing style.

Gail L. Mount, Chief Clerk

GUIDELINES AND FILING REQUIREMENTS FOR JOB RETENTION TARIFFS

(a) INTRODUCTION - A Job Retention Tariff (JRT) is a tariffed discount temporary in both overall life and applicability to certain customers, intended to allow the utility to prevent the immediate or imminent loss of North Carolina jobs and potentially the customer's related load. An appropriately designed and applied JRT will allow the utility to retain North Carolina jobs and as a related by-product its load in a manner that is beneficial to the utility, its ratepayers, and the State as a whole. However, no JRT shall be approved by the Commission without a showing that it is not unduly discriminatory and is in the public interest.

A JRT shall be offered only to those customers for whom the discounted rate would help prevent the loss of jobs and potentially electric load. The total amount paid for capacity and energy by the customers with regard to the load at risk, after application of the JRT discount, shall cover at least the variable costs and some contribution to fixed costs for the customers receiving the discount, to ensure that customers not receiving the discount are not overly burdened and customers receiving the discount are not unfairly advantaged.

The Commission is charged with the responsibility and authority to promote adequate, reliable, and economical utility service, and to provide just and reasonable rates and charges for that service. Therefore, it is important that the utility provide documentation that there is a need for the tariff, and that the tariff will help avoid a loss of jobs. Additional requirements or information may be ordered by the Commission as it considers appropriate under the circumstances.

(b) GENERAL PROVISIONS REGARDING A JRT:

- (1) No JRT shall be approved by the Commission without a showing that it is not unduly discriminatory and is in the public interest.
- (2) The utility applying for approval of a JRT shall demonstrate that the tariff is designed to assist a customer or group of customers to maintain jobs and potentially load.
- (3) Because a JRT is intended to be temporary, it shall only be in effect for a maximum of five years measured from the date the approved tariff becomes effective. However, a utility may reapply for a subsequent JRT pursuant to these guidelines.
- (4) A customer approved for service under the JRT shall only be eligible for such service until the expiration date of the JRT as set pursuant to the provisions of subparagraph (b)(3) above.
- (5) A customer shall not be permitted to be served under a JRT at the same time it is being served under an economic development tariff or a self-generation deferral rate.

- (6) During the period a customer is being served under a JRT, if the customer reduces the number of jobs or the amount of demand or energy targeted below the minimum level agreed to pursuant to the JRT contract between the utility and the customer, the customer's service under the tariff shall be cancelled.
- (7) The appropriate ratemaking treatment of the impacts of a JRT will be determined as required in general rate case proceedings or if a JRT is approved outside of a rate case, the decision to defer costs to a general rate case will be determined during that proceeding.
- (8) If a utility desires to offer a JRT to its customers on a pilot or full-scale basis and charge all discounts paid under the program to non-utility revenue and expenses, it may do so if approved by the Commission. However, a JRT offered in that manner shall be subject to no less a level of Commission oversight than one for which the costs of the discount are charged to utility operating revenues and expenses.
- (9) The utility shall be required to compile a customer by customer analysis each year during the duration of the JRT of the impact of the JRT on targeted jobs, electric demand, and electric energy sales, and provide the Public Staff the opportunity to visit and review the information so that the Public Staff can evaluate both the effectiveness of the tariff and customer compliance with the terms of the tariff. The Public Staff shall file a report with the Commission indicating generally, without customer specific information, whether the JRT is effective, that customers were in compliance with their contracts, and whether the JRT remains in the public interest.
- (10) Service under a JRT shall not be made available to any customer that does not have at least 12 months of operating experience with the utility.
- (11) The process of determining customer eligibility to be served under an approved JRT shall include meaningful, verifiable qualifications to establish that a particular customer will achieve job retention and potentially retain customer load, and will use the discount to do so. JRT customer eligibility requirements shall also include a demonstration of financial viability on the part of the customer applying to receive the discount.

- (12) Prior to receiving service under the JRT, a customer shall be required to enter into a "JRT contract" with the utility. The contract shall include the level of jobs the customer shall agree to maintain, as well as any potential load that the customer and the utility agree should be maintained, and termination provisions for failing to maintain the minimum level of jobs, as well as any minimum load that the customer agrees to maintain. A contract requiring a "reasonable expectation" to maintain current employment levels is insufficient. The contract shall contain a provision affirming the customer's obligation to use the discount to achieve job retention. The contract shall also contain a provision affirming the customer's obligation to use the discount to achieve any potentially retained load that the customer has agreed to maintain although any agreed upon retained load is at the discretion of the customer.
- (13) Prior to receiving service under a JRT, applying customers shall agree to receive an energy audit of their facility by the utility or its selected contractor within six months of service under the JRT. Customers who have undergone an independent energy audit within the three years immediately prior to the commencement of service under the JRT may avoid this obligation by presenting documentation of the audit to the utility.

JRT: (c) PROVISIONS REGARDING THE DISCOUNT TO BE PROVIDED BY A

- (1) The total amount paid for capacity and energy by the customers with regard to the load at risk, after application of the JRT discount, shall cover at least the customer's variable costs and some portion of its fixed costs for the customers receiving the discount. Satisfaction of this requirement shall be demonstrated by an analysis of the impact of the JRT on the utility's system, as follows:
 - (i) Marginal Cost Analysis. Any application for a JRT shall include a net present value analysis that demonstrates that the projected marginal revenues from continuing to serve the load at risk exceed the projected marginal costs for the target group, based on characteristics broadly representative of the group. This analysis shall be based on forecasted load and all projected marginal costs, including future costs of capital and expenses associated with projected increments or decrements of capacity and energy.

- (ii) Rate Impact Analysis. The utility is required to identify the effect on the rates of other customers, both in terms of the impact on rates as a result of the discount and the impact on rates if load is lost without the discount. Expected benefits, identified in terms of rates, resource planning, load retention, and any other identifiable effects, shall be described in detail.

(d) PROVISIONS REGARDING DISCRIMINATION – G.S. 62-140(a) prohibits unreasonable differences as to rates between classes of service. As part of any application for a JRT, the utility shall file information demonstrating that the tariff is not unduly discriminatory and is in the public interest, and will comply with existing statutes and rules prohibiting unjust discrimination and undue preference. As part of that information, the Commission will consider the linkage between the proposed tariff and the benefits to all ratepayers related to the cost-effective avoidance of lost load, as well as the proposed customer eligibility requirements. In order to avoid undue discrimination, the utility must also apply its customer eligibility requirements, once approved, in a non-discriminatory manner.

(e) APPLICATION - All information provided as part or in support of any application for a JRT and in compliance with these guidelines shall be presumed public, absent an item-by-item request for confidential treatment. All items requested to be treated as confidential must be so identified. The utility application for approval of a JRT shall contain, either embodied in the application or attached thereto as exhibits, the following:

- (1) The full and correct name, business address, and business telephone number of the applicant.
- (2) Information regarding the customer group or groups that would be generally eligible to be considered for the discount, and justification for targeting the specific group or groups. The utility shall specifically identify all of the criteria it proposes to use to determine threshold eligibility for JRT consideration, including customer class or sub-class; minimum employment; minimum annual and/or monthly average and peak demands; and minimum annual kWh sales, taking into consideration recommendations from the comprehensive energy audit required under these guidelines.
- (3) A copy of the currently applicable rate schedules and riders to which the utility desires to make the JRT applicable.
- (4) The proposed JRT tariff.
- (5) A copy of the proposed contract template.

- (6) Support for the assertion that the proposed discount will comply with existing statutes and rules prohibiting unjust discrimination and undue preference.
- (7) Quantification of the estimated maximum potential monetary exposure for other customers and how the applicant proposes to recover such costs.
- (8) Information necessary to fully comply with the remainder of these guidelines.

(f) **MODIFICATION OR WAIVER** - In conjunction with any application for a JRT, the applicant may request a modification to or the waiver of any of the above filing requirements. The Commission may grant such request for good cause shown. For purposes of such a request, good cause shall include a demonstration that meeting a requirement without modification would:

- (1) be impossible, impractical, or unduly burdensome to the applicant or customer; or
- (2) not materially aid the Commission in determining whether the proposed rate is just and reasonable, is not unduly discriminatory, and is in the public interest.