

BOEHM, KURTZ & LOWRY
ATTORNEYS AT LAW
36 EAST SEVENTH STREET, SUITE 1510
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255
TELECOPIER (513) 421-2764

OFFICIAL COPY

Nov 04 2020

VIA E-FILE

November 4, 2020

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

Re: Docket Nos. E-7 SUB 1214

Dear Ms. Campbell:

Please find attached the BRIEF OF HARRIS TEETER, LLC e-filed today in the above-referenced docket.

By copy of this letter, all parties of record have been served.

Very Truly Yours,

/s/ Kurt J. Boehm

Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY

Ben M. Royster (NC Bar ID: 34184)
ROYSTER AND ROYSTER, PLLC

COUNSEL FOR HARRIS TEETER, LLC

KJBkew

cc: Jennifer T. Harrod, Special Deputy Attorney General @ jharrod@ncdoj.gov
All counsel of record (via electronic delivery)

BEFORE THE NORTH CAROLINA UTILITY COMMISSION

<hr style="border: 0.5px solid black;"/>)	
Application of Duke Energy Carolinas,)	
LLC For Adjustment of Rates and)	
Charges Applicable to Electric Service in)	DOCKET NO. E-7 SUB 1214
North Carolina)	
<hr style="border: 0.5px solid black;"/>		

BRIEF OF HARRIS TEETER LLC

Harris Teeter LLC. (“Harris Teeter”) respectfully submits this Brief with the North Carolina Utilities Commission (“Commission”). Harris Teeter recommends that the Commission approve the May 28, 2020 Settlement agreed to by Harris Teeter and Duke Energy Carolina’s, LLC (“DEC” or “the Company”), and the substantively identical Settlement between the Commercial Group and DEC agreed to on June 1, 2020, concerning the rate design for Rate OPT-VSS. **Harris Teeter also notes that it supports the portion of DEC’s Proposed Order that addresses the OPT-VSS rate design.**

1. Rate Design For Rate OPT-VSS

The Harris Teeter and Commercial Group Settlements Agreeing To A Compromise Concerning the Rate Design For Rate OPT-VSS with DEC Should Be Approved.

DEC’s OPT-VSS rate schedule is available to small secondary customers with a delivery voltage less than or equal to 600 volts and a maximum summer on-peak demand that is less than or equal to 1,000 kW. The current OPT-VSS rate schedule consists of a basic facilities charge, summer and winter on-peak demand charges, an economy demand charge, and on-peak and off-peak energy charges.¹

¹ On October 29, 2020, an errata filing was made indicating that witness Bieber’s testimony was inadvertently omitted from Volume 16 of the hearing transcripts. Volume 16 has not yet been corrected to add Mr. Bieber’s Direct Testimony so this Brief cites to the pagination in Mr. Bieber’s Testimony.

In his Direct Testimony, Harris Teeter witness Justin Bieber used the Company’s cost of service study in order to perform an analysis comparing the OPT-VSS charges to underlying costs in DEC’s original filing in this case. Mr. Bieber showed that the Company’s proposed use of a “uniform percentage increase” method to design the commercial and industrial rates in this case is not consistent with the cost causation drivers.² Under this method, DEC originally proposed to increase the rate OPT-VSS *energy* charges by more than 9%, despite the fact that according to the Company’s own unit cost of service study, the proposed *energy-related* costs for rate OPT-VSS have increased by less than 2%.³

Mr. Bieber concluded that DEC’s originally proposed rate design for the OPT-VSS rate schedule would under-recover demand-related charges while over-recovering the energy-related charges relative to the underlying costs. And, relative to the currently effective rates, the proposed OPT-VSS rate design would actually represent a departure away from cost-based demand and energy charges, rather than providing gradual movement towards cost-based rates.⁴

The below Table, summarizes Mr. Bieber’s Exhibit JDB-1 and illustrates the relationship between the OPT-VSS rate schedule revenues and cost of service by classification at DEC’s current rates compared to the rates that DEC proposed in its original filing in this case.⁵

**Table JDB-2
DEC Current and Proposed Charges Relative to Costs
For the OPT-VSS Rate Schedule**

<u>Classification</u>	<u>Present Rev/Costs</u>	<u>DEC Proposed Rev/Costs</u>
Customer	163.1%	143.4%
Demand	93.2%	89.2%
Energy	107.4%	115.2%
Total	100.0%	100.4%

² Bieber Direct, at 7.

³ Rate OPT-VSS Present energy costs \$214.5M ÷ Rate OPT-VSS Proposed energy costs \$218.8M = 1.95%. Values from Duke Energy Carolinas E-1 Item 45e DEC-COS-NC-SCP-Unit Cost-PF and PR-12 ME 12-31-18.

⁴ Bieber Direct, at 7-8.

⁵ Bieber Direct, at 9.

The above Table shows that according to DEC's own cost of service study, present energy revenues currently recover about 107% of the energy related costs while the present demand revenues recover 93% of the demand related costs. The OPT-VSS rate design that DEC originally proposed in this case would have exacerbated this problem by recovering more than 115% of the energy related costs while only recovering 89% of the demand related costs through demand-related charges.⁶

As explained by Mr. Bieber, if a utility proposes a demand charge that is below the cost of demand, it is going to seek to recover its class revenue requirement by over-recovering its costs in another area, most typically through levying an energy charge that is above unit energy costs, which is the case with DEC's originally proposed rate design. For a given rate schedule such as OPT-VSS, when demand charges are set below cost, and energy charges are set above cost, those customers with relatively higher load factors are required to subsidize the lower load factor customers within the class.⁷ Given this analysis, Mr. Bieber recommended modifications to the proposed OPT-VSS rate design that would improve the alignment between the rate components and the underlying costs while employing the principle of gradualism and mitigating intra-class rate impacts.⁸ Mr. Bieber's concerns regarding the Company's originally proposed rate design for OPT-VSS were shared by the Commercial Group which also represents OPT-VSS customers.

During settlement discussions with Harris Teeter and the Commercial Group, DEC agreed to address Harris Teeter's and the Commercial Group's concerns regarding additional intra-class subsidies being levied on higher load factor OPT-VSS customers. On May 28, 2020 and June 1, 2020, respectively, DEC agreed to Settlements with Harris Teeter and the Commercial Group stating that the OPT-VSS off-peak energy charge shall be set at 3.0222 cents per kWh and the on-peak energy charge shall be increased by a percentage amount that

⁶ Bieber Direct, at 8-9.

⁷ Bieber Direct, at 9.

⁸ Bieber Direct, at 4.

is equal to half of the overall percentage increase for the OPT-VSS rate schedule and that the demand charges for the OPT-VSS rate schedule shall be adjusted by the amount necessary to recover the final OPT-VSS revenue target.⁹ This 3.0222 cent off-peak energy charge falls right in the middle of the off-peak energy charges originally proposed by DEC (3.2 cents) and the off-peak energy charge that Mr. Bieber recommended be approved (2.9 cents) in order to address the intra-class subsidies within the OPT-VSS class that he described in his Direct Testimony.¹⁰ In this way, the Harris Teeter and Commercial Group settled rate design is a compromise between DEC and its OPT-VSS customers.

No party objected to the terms of the Harris Teeter and Commercial Group Settlement until September 8, 2020, when Public Staff filed the Second Supplemental Testimony of Jack Floyd. Mr. Floyd testified that he does not agree with all of the rate design terms of the Harris Teeter and Commercial Group Settlements “at this time” stating that “making discrete changes to individual rate schedules constrains the ability to conduct a comprehensive study of rates and rate design in the future.”¹¹ Mr. Floyd stated that it is premature and counter-productive to begin redesigning rates and the terms of service under specific rate schedules, without having a full understanding of the rationale for the change and the impact on other rate schedules and revenues.¹²

During the evidentiary hearing, DEC witness Mr. Pirro defended DEC’s recommendation that the Commission approve the Harris Teeter and Commercial Settlements. Mr. Pirro attempted to assuage Mr. Floyd’s concerns that the Settlements would impact non-OPT-VSS customers, clarifying that the Settlements would not shift revenues to any other customers within any of the other six options within OPT-V.¹³ Mr. Pirro testified:

⁹ Harris Teeter Stipulation, § 3; Commercial Group Stipulation, § 3.

¹⁰ Tr. Vol. 19, 68.

¹¹ Tr. vol. 18, 338.

¹² Tr. vol. 18, 338.

¹³ Tr. vol. 13, 22.

“[I]t’s important to know that -- so like when we do rate design, it’s a zero-sum gain, so within the OPT-V class, Secondary Small has its own revenue requirement, so those customers being served under Secondary Small, it’s just how we have agreed to recover those revenues, so there’s no shifting of revenues or recoveries to any other customers within any other -- any of the other six options within OPT-V.”¹⁴

Mr. Pirro also explained that the intent of the OPT-V pricing was to offer attractive off-peak energy pricing for high load factor customers to run their operations more efficiently and to allow them to plan their business operations to shift load to off-peak.¹⁵ In the prior rate case (D-E-7, Sub 214), the Company used a 4-to-1 on-peak to off-peak ratio for the percentage increase to accomplish this objective.¹⁶ In this case, the Company originally applied a more uniform increase to both on-peak and off-peak. Mr. Pirro concluded that the OPT-VSS pricing under the Harris Teeter and Commercial Group Settlements is preferable because it is “more in line with the true intent of the OPT-V offering.”¹⁷

Mr. Pirro also addressed Mr. Floyd’s concerns regarding how a OPT-VSS rate design settlement would impact the comprehensive rate design study recommended by Public Staff, concluding that the proposed adjustment to the OPT-VSS rate would not hinder the Commission’s or Public Staff’s options in conducting, or making rate changes as a result of, a comprehensive study:

[L]istening to Mr. Floyd’s testimony, I know he had concerns about the comprehensive rate study and, you know, setting a price. By no means does this exclude any of the seven different options within OPT-V from being part of any comprehensive rate study. This is just for this moment in time while these rates are in effect.¹⁸

During cross-examination, Mr. Floyd conceded that the rate design changes agreed to by Harris Teeter, the Commercial Group and DEC, do not impact non-OPT-VSS customers.¹⁹ And that his primary concern with the Settlements relates to his preference to not make any

¹⁴ Tr. vol. 13, 22.

¹⁵ Tr. vol. 13, 23.

¹⁶ Tr. vol. 13, 23.

¹⁷ Tr. vol. 13, 23.

¹⁸ Tr. vol. 13, 24.

¹⁹ Tr. Vol. 19, 64.

rate design changes prior to conducting a post-rate case rate design study.²⁰ But Mr. Floyd indicated that he is not substantively opposed to the OPT changes in the Commercial Group Stipulation per se, stating:

I think Mr. Pirro in his testimony conveyed that that rate was developed taking into account a better understanding of the on-peak/off-peak cost relationships, rather than simply applying an across-the-board percentage increase. That being said, I have not seen any analysis behind that, but I take him at his word. I've had a good working relationship with Mr. Pirro. If that's the case, then that is a positive step in rate design. However, that is an isolated adjustment or change in structure. And again, my cautionary stance is predicated on looking at all of the factors: OPT, residential, lighting, the whole works.²¹

Mr. Floyd indicated that the oral testimony provided by witness Pirro “shed some light on how that rate was established” and implied that it gave him a better understanding of the rationale for the changes to the OPT-VSS rates that the parties agreed to in the Harris Teeter and Commercial Group Stipulations.²² In sum, it appears that Mr. Floyd’s initial objection to the Harris Teeter and Commercial Group Settlements has softened since he filed his Second Supplement Testimony on September 8, 2020.

Harris Teeter submits that Mr. Floyd’s two original objections to the Settlements; 1) that the Settlement rate design may have some impact on non-OPT-VSS customers; and 2) that the Settlement rate design may interfere with a post-rate case comprehensive rate design study, have been sufficiently addressed by Mr. Pirro and Mr. Bieber. The record reflects, and Mr. Floyd concedes, that the Settlement will not impact non-OPT-VSS customers. And the Settlement rate design and a comprehensive rate design study are not mutually exclusive. The Commission can approve both proposals. Harris Teeter has no objection to Public Staff’s proposal to conduct such a study.

²⁰ Tr. Vol. 19, 11-12.

²¹ Tr. Vol. 19, 14.

²² Tr. Vol. 19, 16.

The OPT-VSS rate design recommended in the Harris Teeter and Commercial Group Settlements with DEC should be approved. As explained by Mr. Bieber, these modifications will improve the alignment between the rate components and the underlying costs for OPT-VSS while employing the principle of gradualism and mitigating intra-class rate impacts.

DATED this 4th day of November, 2020.

/s/ Kurt J. Boehm

Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: 513-421-2255 Fax: 513-421-2764
e-mail: kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com

Ben M. Royster (NC Bar ID: 34184)
ROYSTER AND ROYSTER, PLLC
851 Marshall Street
Mount Airy, N.C. 27030
Ph: 336-789-5127 Fax: 336-789-6650
benroyster@roysterlaw.com

COUNSEL FOR HARRIS TEETER LLC

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available), or regular U.S. Mail upon the parties of record in this proceeding this 4th day of November, 2020.

/s/ Kurt J. Boehm
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
Ben M. Royster (NC Bar ID: 34184)