NORTH CAROLINA
UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1219

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

The Commercial Group hereby respectfully submits to the North Carolina Utilities Commission (Commission) its post-hearing brief in the above-captioned proceeding. Members of the Commercial Group[1] have a substantial positive impact on the North Carolina economy, employing over 100,000 North Carolina workers and supporting the employment of over 100,000 other North Carolina workers through the billions of dollars members of the Commercial Group spend for merchandise and services in the state each year.[2] Indeed, two of the top three, and three of the top fourteen, private employers in the state are members of the Commercial Group. Id. In addition, both Food Lion and Ingles have their headquarters in North Carolina. Id. at 80.

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

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

[2] Direct Testimony of Steve W. Chriss (Chriss Direct), pp. 2-3 (Tr. vol. 14, 79-80).

[3] This settlement agreement was entered on June 8, 2020, as amended on August 5, 2020.

to the SGS-TOU rate schedule that would move the schedule more in line with the current design of the rate schedule than DEP's original proposal. In addition to filing this brief, the Commercial Group supports DEP's proposed order section on the DEP/CG Settlement.

## Outline of Brief

## I. PROCEDURAL BACKGROUND

In this proceeding, the Commercial Group presented the direct testimony of Steve W. Chriss that contained four main recommendations (Tr. vol. 14, 81-83):

1. The Commission should closely examine the Company's proposed revenue requirement increase and the associated proposed increase in ROE, especially when viewed in light of: (1) the customer impact of the resulting revenue requirement increase; (2) recent rate case ROEs approved by the Commission; and (3) recent rate case ROEs approved by commissions nationwide.
2. Due to certain irregularities in DEP's SGS-TOU class cost of service information, the SGS-TOU rate schedule should receive the same percentage base rate increase as the MGS rate class as a whole.
3. If the Commission determines that the appropriate revenue requirement is less than that proposed by the Company, the Commission should use the reduction in revenue requirement to move each customer class closer to its respective cost of service while ensuring that all classes see a reduction from DEP's initially proposed increases.
4. The Commission should move SGS-TOU on-peak demand charges more in line with actual cost.

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

## II. THE COMMISSION SHOULD APPROVE THE DEP/CG SETTLEMENT

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

Clearly, one of the benefits of rate case settlements is to resolve issues in dispute and narrow the number of issues being litigated. This is particularly important

during a pandemic. Two provisions unique to the DEP/CG Settlement demonstrate this benefit, as does Public Staff's consideration of the settlement's proposed SGS-TOU changes.

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

Second, paragraph 3 of the settlement shows that the two parties have resolved in good faith an issue Mr. Chriss raised in his direct testimony concerning the reliability of SGS-TOU cost of service data (Tr. vol. 14, 93-97), with the parties agreeing that the SGS-TOU rate schedule should receive the same percentage increase as the MGS rate class as a whole. Certainly, this is a positive step that removes another issue from litigation.

Third, Public Staff took a professional approach to reviewing how the DEP/CG Settlement resolved SGS-TOU rate design issues. After initially questioning whether the

SGS-TOU rate changes might interfere with a comprehensive rate design review, Staff resolved those concerns after reviewing additional testimony from DEP. Tr. vol. 15, 1126-27. The Commercial Group appreciates this resolution.

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

The median authorized return over the past five years for electric utilities across the country is 9.60 percent. Chriss Direct, page 10 line 14 (Tr. vol. 14, 87) and Chriss Exhibit 3. DEP's proposed increase in ROE to 10.30 percent ran contrary to this trend in authorized returns while the 9.60 percent ROE provided for in the DEP/CG Agreement reflects this industry trend. This reduction in ROE would reduce DEP's proposed revenue increase by over $52 million per year.[4] Further, numerous parties, including Public Staff, agree that the 9.6 percent ROE is a reasonable resolution of what was a contentious issue in pre-filed testimony.

Likewise, the settlement equity ratio of 52 percent is consistent with the equity ratio approved by the Commission for DEP in its last rate case. Chriss Direct, page 8, lines 3-4 (Tr. vol. 14, 85). Therefore, the Commission should approve the DEP/CG settlement ROE of 9.6 percent and equity ratio of 52 percent.

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[4] Chriss Exhibit 4 (just over $42 million difference from 10.3 percent to 9.74 percent ROE), corresponding to an approximate difference of $52.5 million from 10.3 percent to 9.6 percent.

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

As described in more detail in subsections 1-4 below, DEP and the Commercial Group agreed in the DEP/CG Settlement to move SGS-TOU unit charges closer to cost, thereby providing North Carolina businesses better pricing signals. Whereas the Commercial Group welcomes innovative rate design studies, businesses are under severe stress now and cannot wait for studies that have been promised for years and that could take years more to yield more efficient rate design. Further, the modest SGS-TOU changes would not hinder any comprehensive rate design but, instead, would accomplish Mr. Floyd's stated goal of maintaining the status quo of current SGS-TOU rates better than the rates originally proposed by DEP in this proceeding. Notably, the Staff settlements (if adopted by the Commission) themselves would change rate design and comparative class revenue levels and class return on investment. Finally, the Staff settlements would constrain DEP in how it must file class cost of service studies in its next rate case. Accordingly, after additional review of DEP's supplemental rebuttal testimony, Staff resolved its concerns and agreed that the modest movements toward cost agreed to by DEP and Staff, and by DEP and its commercial ratepayers, would not interfere with future rate design study.

#### 1. The changes would move SGS-TOU charges closer to cost and the original spirit and intent of the SGS-TOU rate structure

Although DEP's cost study shows that approximately half of SGS-TOU cost is energy-related (49.2 percent) and half demand-related (49.1 percent), DEP originally proposed to recover 70 percent of SGS-TOU revenue via energy charges and only 29

percent via demand charges. Chriss Direct, page 23 (Tr. vol. 14, 100). Witness Bieber likewise pointed out that DEP's proposed SGS-TOU charges would "exacerbate the existing misalignments" between SGS-TOU unit cost and unit charges. HT Justin Bieber Direct, p.9 (Tr. vol. 15, 233).

Under the DEP/CG Settlement (¶4), SGS-TOU energy charges would be increased by half the approved overall increase percentage for the SGS-TOU rate schedule. According to Mr. Pirro, these changes are consistent with cost causation and reasonable. DEP Supp. Rebuttal Testimony Pirro/Huber, page 5 (Tr. vol. 11, 1166). Indeed, the changes are modest, moving unit charges only part of the way to cost. Tr. vol. 11, 1311-12 (Pirro).

Mr. Floyd likewise agreed, based on Mr. Pirro's testimony, that this new SGS-TOU unit charges "would be more cost-based in nature than simply making an across-the-board percentage change," concluding that "the Public Staff supports that." Tr. vol. 15, 1127.

Thus, the modest SGS-TOU revisions should be approved.

**2. The SGS-TOU changes are unopposed**

As cited above, the Public Staff has withdrawn its initial objection to the SGS-TOU changes. No other party has objected to the changes, which would affect only SGS-TOU ratepayers. Therefore, the Commission should approve these unopposed reasonable rate changes.

**3. North Carolina businesses need rate relief now**

It is the Commission's duty to ensure that "[e]very rate made, demanded or received by any public utility . . . shall be just and reasonable." NC GEN. STAT. §62-

131(a). As the Commission has often recognized, this is not a duty to be carried out at some indefinite time in the future, but now. Thus, in its final order in the Duke Energy Carolinas 2013 rate case, the Commission rejected an agreement by DEC and Public Staff to delay remedying discriminatory OPT rates holding that the Commission "cannot allow the imbalance that is already known to continue while the Company and Public Staff study the situation for another year or two."[5]

Nor is it clear when a comprehensive rate design study would lead to new rate structures. First, no one knows when DEP will file its next rate case. Second, any comprehensive rate design review necessarily would involve significant effort, discussion, and adjustment. As much as the Commercial Group would hope that the process would result in speedy implementation of innovative beneficial rate design, the Commercial Group fears it is unlikely to do so. Third, given the principle of gradualism, even if parties agreed on new rate designs, it might be many rate cases (perhaps decades) into the future before those rates are fully established.

2020 has been a very difficult year for North Carolina businesses (and residential customers, of course). Indeed, one member of the Commercial Group was forced to file for bankruptcy protection since this rate case began. Tr. vol. 15, 1035-36. These customers need relief now, not later, at some undefined point in time.

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

### 4. The modest SGS-TOU changes will not hinder any comprehensive rate design

As cited above, DEP, Staff, Harris Teeter and the Commercial Group all agree that the modest SGS-TOU changes will not hinder future comprehensive rate design.

Strictly speaking, there is no status quo with rates – they change with each rate case. Indeed, all (or nearly all) rates are being changed in this rate case. Plus, with hundreds of millions of dollars of new costs being added to rates and these new costs being allocated via numerous allocators to classes, rate schedules, and ultimately to new unit charges, the cost structure within each individual rate schedule will change as well - even without overt changes to rate design. If these changes preclude comprehensive rate design, such design could never occur.

The DEP/Staff settlements also would make rate design changes, would change relative class rates of return, would minimize rate subsidies, and would substantially change the balance of customer bills as between various rate classes. Specifically, the DEP/Staff second settlement (pages 16 to 18) has a whole section on rate design, which, among other changes, would adjust rates specifically to change class rates of return (id. at 16). Granted, these changes are designed to move rates toward cost, but so are the SGS-TOU changes from the DEP/CG Settlement.

The second DEP/Staff settlement likewise would adjust "base fuel and fuel related cost factors, by customer class" (id. at 19), and return Excess Deferred Income Taxes to customers via rate design methods (id. at 6-7) advocated by Staff, which

methods Mr. Floyd says would sharply change class allocations from those proposed by other parties.[6]

Thus, Mr. Floyd correctly summed it up best:

> As these days have progressed and the testimony delivered before the Commission in these hearings, taking the Commercial Group and the Harris Teeter settlements in terms of the SGS-TOU for Progress, the Public Staff is optimistic that, based on the Company's testimony, that none of these conditions are going to constrain a future rate study.

Tr. vol. 15, 1127.

Therefore, the Commission should approve the DEP/CG Settlement SGS-TOU changes.

### D. Having DEP Propose to Allocate Any Deferred, Approved GIP Cost for the SGS-TOU Rate Schedule is Reasonable

The commercial settlement provides that "any Grid Improvement Plan costs allocated to SGS-TOU customers shall be recovered via SGS-TOU demand charges." DEP/CG Settlement ¶2. Because no GIP costs are being allocated in this case (although there is a deferral request for future recovery), this provision has no direct impact on rates being set in this rate case. But it is reasonable - where SGS-TOU demand charges underrecover demand costs (Chriss Direct, p.23 – Tr. vol. 14, 100) and where transmission and distribution costs are generally demand and customer-related (Tr. vol. 15, 1085-86) - for parties that have litigated this issue to resolve it by proposing that any future GIP costs allocated to SGS-TOU should be recovered via demand charges.

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[6] *See* Staff Floyd Second Supplemental, page 5:9-16 (Tr. vol. 15, 1002).

Mr. Pirro pointed out: "If the Commission approves the Company's request to defer costs relating to certain GIP programs, the Commission will address recovery of those costs in the Company's next general rate case." Tr. vol. 11, 1166-67. Further, no party can constrain the Commission to do anything in a future rate case. This is a reasonable settlement provision.

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

## III. OTHER ISSUES

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

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

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

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

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

Fourth, as DEP witness Hager pointed out, it may be impossible to quantify accurately relative customer reliability benefits saying she "can't envision a productive way to do that." Tr. vol. 11, 1240. Even Staff witness Thomas admitted that "[c]ustomer benefits are very difficult, if not impossible, to verify." Staff Thomas Direct Testimony, p.12 (Tr. vol. 15, 443). One simple illustration demonstrates this impossibility. Whereas the CBA set an arbitrary value of $5 or $10 on the benefit per residential customer of not having her service interrupted,[7] Mr. Oliver agreed that the benefit received by a residential customer requiring 24-hour home medical device treatment would be "priceless." Tr. vol. 9, 76:1-6 (Oliver). Obviously, adding a priceless valuation to the

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

residential side of the class benefit scale would lead to a conclusion that residential customers receive 97 percent or more of the benefit from reduced service interruption, instead of business customers, the exact opposite of Mr. Thomas' suggestion. As Ms. Hager put it:

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

Tr. vol. 11, 1067-68 (emphasis in original).

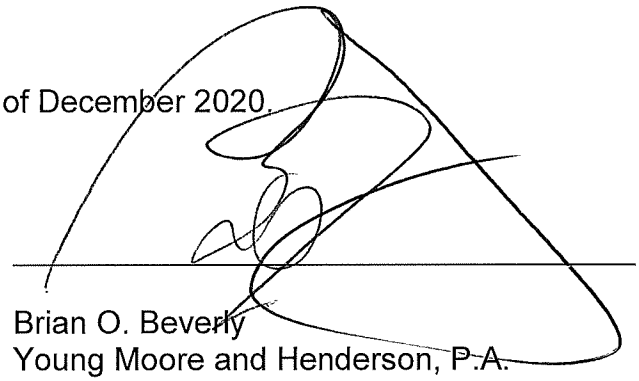
Fifth, the cost/benefit analysis discussed by Staff witness Thomas was based on stale data as it was performed pre-COVID. See Tr. vol. 11, 1196-97 (Hager). Now, with a large percentage of DEP's residential ratepayers working from home, the benefit such customers would receive from having more reliable service could be hundreds or thousands of times more than the projected $5 per customer. Id. at 1197-1198.

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

## IV. CONCLUSION

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

Respectfully submitted, this 4th day of December 2020.

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## CERTIFICATE OF SERVICE

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

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