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OFFICIAL COPY

Apr 15 2020

April 15, 2020

VIA ELECTRONIC FILING

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

**RE: Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Reply
Comments
Docket Nos. E-2, Sub 1249; E-7, Sub 1237 and E-22, Sub 585**

Dear Ms. Campbell:

Pursuant to North Carolina Utilities Commission ("Commission") Rule R1-7 and the Commission's April 2, 2020 *Order Joining Necessary Parties and Requesting Comments*, I enclose the Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC for filing in connection with this matter.

Thank you for your attention to this matter. If you have any questions, please let me know.

Sincerely,

Lawrence B. Somers

Enclosure

cc: Parties of Record

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1249
DOCKET NO. E-7, SUB 1237
DOCKET NO. E-22, SUB 585

In the Matter of)
)
Petition for Expedited Approval of) **DUKE ENERGY CAROLINAS,**
Temporary Adjustments to Electric) **LLC AND DUKE ENERGY**
Billing Demand Charges) **PROGRESS, LLC REPLY**
) **COMMENTS**

NOW COME Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP” and collectively with DEC, the “Companies”), pursuant to North Carolina Utilities Commission (“Commission”) Rule R1-7 and the Commission’s April 2, 2020 *Order Joining Necessary Parties and Requesting Comments* (“Order”), and hereby submit these reply comments to the Petition for Expedited Approval of Temporary Adjustments to Electric Billing Demand Charges (“Petition”), filed by the Carolina Utility Customers Association (“CUCA”) on March 31, 2020 in the above-referenced proceedings.

1. The Companies served their First Data Request to CUCA on April 8, 2020. CUCA provided their Responses to DEC and DEP’s First Data Request on April 14, 2020, which are attached hereto as Exhibit 1. The Companies’ data request sought information regarding CUCA’s members and their specific circumstances, as well as the underlying factual and legal basis for CUCA’s Petition.

2. CUCA’s data request responses are cursory at best and non-responsive in many cases. As shown in Exhibit 1, CUCA disclaims knowledge of its individual members’ circumstances regarding the representations made in their Petition that their members have temporarily curtailed energy usage or increased usage associated with the

COVID-19 pandemic, despite CUCA defining “significantly curtailed or expanded consumption” as simply a demand reduction or increase of more than “10%.” See CUCA Responses to Data Request 1-1; 1-2; 1-4; 1-5.

3. In its responses, CUCA also asserts that the Companies’ Commission-approved fixed charges are “penalties” and that their payment “for services not earned by the utility” would result in a “windfall” to DEC and DEP. See CUCA Responses to Data Request 1-10; 1-12. The Companies respectfully submit that such positions taken by CUCA demonstrate a fundamental lack of understanding of how utility rates are set by the Commission and how the Companies recover the approved costs to serve their customers. Unlike the Companies’ costs incurred on behalf of commercial and industrial (“C&I”) customers that might vary depending on customer usage, the fixed costs to be recovered through minimum or demand charges do not go away when C&I customers reduce their usage. The C&I customers will expect the capacity to serve them to be available once the COVID-19 disruption passes and they return to more representative usage levels.

4. CUCA’s data request responses provide no support to meet its burden to establish that the Companies’ Commission-approved rates are not just and reasonable. Likewise, in its filed reply comments, CUCA cites no legal authority in support of its Petition, but instead, and disappointingly, spends most of its time making disparaging statements about the Companies instead of addressing the legal merits of the issues before the Commission.¹

5. As set forth in the Companies’ initial comments filed in this docket, the

¹ In its data request responses and its reply comments, CUCA also argues that any waived demand charges should be borne by the Companies’ shareholders. The Companies disagree with such a contention as there is no valid legal basis to deny the Companies their ability to recover their Commission-approved rates.

Companies' Commission-approved Service Regulations already provide opportunities for relief for commercial and industrial customers, and the Companies and the Commission's COVID-19 order have waived disconnections for nonpayment, waived late fees and offered extended payment arrangements. The Companies respectfully submit that establishing reasonable deferred payment arrangements as may be needed on a case-by-case basis at the end of this state of emergency of undeterminable duration, and as already offered by the Companies and ordered by the Commission, is a more reasonable approach than a blanket waiver of all C&I customers' obligations to pay the fixed portion of their bills as requested by CUCA.

CONCLUSION

WHEREFORE, for all the foregoing reasons and for the reasons set forth in the Companies' initial comments, DEC and DEP respectfully request that the Commission deny CUCA's Petition. The Companies remain willing to work with C&I customers on an individual basis to determine if the Companies' respective Service Regulations and other tariff provisions apply to COVID-19 circumstances and to work with individual customers on extended payment options if needed.

This the 15th day of April, 2020.



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*Counsel for Duke Energy Carolinas, LLC
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From: Shirley Marlowe <smarlowe@crisppage.com>

Sent: Tuesday, April 14, 2020 4:54 PM

To: Somers, Bo <Bo.Somers@duke-energy.com>

Cc: Lucy E. Edmondson (lucy.edmondson@psncuc.nc.gov) <lucy.edmondson@psncuc.nc.gov>; pforce@ncdoj.gov;

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Subject: Docket Nos. E-2, Sub 1249; E-7, Sub 1237; and E-22, Sub 585

***** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. *****

Good afternoon,

Attached please find CUCA's Responses to Duke's First Data Request.

Thank you.

Shirley C. Marlowe

Legal Assistant to Robert F. Page

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1249
DOCKET NO. E-7, SUB 1237
DOCKET NO. E-22, SUB 585

In the Matter of)
)
Petition for Expedited Approval of Temporary) DUKE ENERGY CAROLINAS,
Adjustments to Electricity Billing Demand) LLC AND DUKE ENERGY
Charges) PROGRESS, LLC'S FIRST
) DATA REQUEST TO CUCA
)

Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”), by and through their legal counsel, hereby submit their First Data Request to Carolina Utility Customers Association, Inc. (“CUCA”). Please forward to the undersigned on or before April 14, 2020 your responses to the following data requests:

DEFINITIONS

The following definitions apply throughout the discovery request and are deemed to be incorporated therein:

A. “Document” means all written, recorded or graphic matters, however produced or reproduced, pertaining in any manner to the subject of this proceeding, whether or not now in existence, without limiting the generality of the foregoing, all originals, copies and drafts of all writings, correspondence, telegrams, notes or sound recordings of any type of personal or telephone communication, or of meetings or conferences, committee meetings, memoranda, inter-office communications, studies, analyses, reports, results of investigations, reviews, contracts, agreements, working papers, statistical records, ledgers, books of account, vouchers, bank checks, x-ray prints, photographs, films, videotapes, invoices, receipts, computer printouts or other products of computers, computer files, stenographer’s notebooks, desk calendars, appointment books, diaries, or other papers or objects similar to any of the foregoing, however denominated. If a document has been prepared in several copies, or additional copies have been made, and the copies are not identical (or which, by reason of subsequent modification of a copy by the addition of notations, or other modifications, are no longer identical) each non- identical copy is a separate “document.”

B. “And” or “or” shall be construed conjunctively or disjunctively as necessary to make the requests inclusive rather than exclusive.

C. The term “you” and “your” refer to CUCA and its respective members, employees, agents and consultants.

D. The term “person” means any natural person, corporation, corporate division, partnership, other unincorporated association, trust, government agency, or entity.

E. The term “regarding” means consisting of containing mentioning, suggesting, reflecting, concerning, regarding, summarizing, analyzing, discussing, involving, dealing with, emanating from, directed at, pertaining to in any way, or in any way logically or factually connected or associated with the matter discussed.

F. The singular as used herein shall include the plural, and the masculine gender shall include the feminine and the neuter.

G. “Identify” or “identifying” or “identification” when used in reference to a person other than a natural person means to state the full name of the person and any names under which it conducts business; the present or last known address of the person; and the present or last known telephone number of the person.

H. “Identify” or “identifying” or “identification” when used in reference to a person other than a natural person means to state the full name of the person and any names under which it conducts business; the present or last known address of the person; and the present or last known telephone number of the person.

I. “Identify” or “identifying” or “identification” when used in reference to a document means to provide, with respect to each document requested to be identified by these discovery requests, a description of the document that is sufficient for purposes of a request to produce or a subpoena duces tecum, including the following:

- 1) the type of document (e.g., letter, memorandum, etc.);
- 2) the date of the document;
- 3) the title or label of the document;
- 4) the Bates number or other identifier used to number the document for use in litigation;
- 5) the identity of the originator;
- 6) the identity of each person to whom it was sent;
- 7) the identity of each person to whom a copy or copies were sent;
- 8) a summary of the contents of the document;
- 9) the name and last known address of each person who presently has possession, custody or control of the document;
- 10) if any such document was, but is no longer, in your possession, custody or control or is no longer in existence, state whether it: (1) is missing or lost; (2) has been destroyed; or (3) has been transferred voluntarily or involuntarily, and if so, state the circumstances surrounding the authorization for each such disposition and the date of such disposition.

J. “Identify”, “identifying” or identity” when used in reference to a communications means to state the date of communications, whether the communication was written or oral, the identity of all parties and witnesses to the communication, the

substance of what was said and/or transpired and, if written, the identity of the document(s) containing or referring to the communication.

INSTRUCTIONS

- A. If you contend that any response to any data request may be withheld under the attorney-client privilege, the attorney work product doctrine or any other privilege or basis, please state the following with respect to each such response in order to explain the basis for the claim of privilege and to permit adjudication of the propriety of that claim:
- 1) The privilege asserted and its basis;
 - 2) The nature of the information withheld;
 - 3) The subject matter of the document, except to the extent that you claim it is privileged.
- B. These data requests are to be answered with reference to all information in your possession, custody or control or reasonably available to you. These discovery requests are intended to include requests for information, which is physically within your possession, custody or control as well as in the possession, custody or control of your agents, attorneys, or other third parties from which such documents may be obtained.
- C. If any data request cannot be responded to or answered in full, answer to the extent possible and specify the reasons for your inability to answer fully.
- D. These data requests are continuing in nature and require supplemental responses should information unknown to you at the time you serve your responses to these interrogatories subsequently become known.
- E. For each data request, provide the name of the company witness(es) or employee(s) responsible for compiling and providing the information contained in each answer.

DATA REQUESTS

- 1-1. As alleged in your March 31, 2020 Petition for Expedited Approval of Temporary Adjustments to Electricity Billing Demand Charge (“Petition”) please identify those CUCA members and their specific manufacturing locations that have temporarily curtailed energy usage due to voluntary or compelled response to the COVID-19 state of emergency. For each such member location:
- a Identify any location that was identified as “non-essential” and forced to cease operations due to the Governor’s State of Emergency order. Otherwise, state the reason for reduced operations (reduced consumer demand, supply chain issues, COVID-19 cases, etc.)

- b. Identify the specific account numbers that are impacted by the demand reductions.
- c. Identify the date on which the demand was reduced.
- d. Provide an estimate as to when the demand is expected to resume.
- e. Provide an explanation as to what defines resumption of normal operations.
- f. Provide an estimate of the demand reduction (KW)
- g. Estimate the financial relief (or minimum demand billing charges) that is being sought for each billing period of which operations are reduced beginning with the start dates provided above and ending with the estimated end date.
- h. For each such member, provide their annual revenues, annual operating expenses, and annual electricity bills.

Response:

- a. CUCA does not have this requested information. Duke, on the other hand, can easily look at its weekly/monthly usage reports for that information..
- b. CUCA does not have this information from our members
- c. See b. above.
- d. As soon as the coronavirus pandemic comes to an end.
- e. 3 or more months of demands at pre-coronavirus levels.
- f. See b. above.
- g. Duke would have that information through its billing records. CUCA, as a trade association only, does not have this information.
- h. See b. above.

1-2. As alleged in your Petition, please identify those CUCA members that have ramped up production to meet the additional needs related to COVID-19. For each such member, please

- a. Identify the reasons for which COVID-19 has caused the member to ramp up production. (E.g. PPE supplier, essential to healthcare supply chain, etc.)
- b. Identify the specific account #'s that have increased due to ramped up production.
- c. Identify the date of which the demand was increased.
- d. Provide an estimate of when the demand should return to normal operations.
- e. Provide an explanation as to what defines the resumption of normal operations.

- f. Provide an estimate of the increased demand (KW) due to COVID-19 ramp up
- g. Estimate the financial relief (or excess demand charges) that are being sought for each billing period of which operations have increased beginning with the start dates provided above and ending with the estimated end date.

Response:

- a. CUCA is aware of members that are preparing masks and gowns as PPE for healthcare workers.
- b. CUCA does not have this information from our members
- c. See b. above.
- d. As soon as the coronavirus pandemic comes to an end and there are 3 or more months of demands at pre-coronavirus levels.
- e. 3 or more months of demands at pre-coronavirus levels.
- f. See b. above.
- g. Duke would have that information through its billing records. CUCA, as a trade association only, does not have this information.

1-3. Please identify any CUCA member that has converted or is converting their NC production lines into Personal Protection Equipment (PPE) products used for COVID-19 response. For each such member, please

- a. Identify the specific location in North Carolina.
- b. Identify any account #'s that are directly associated with the PPE production.
- c. Identify the date of which operations were (or will be) converted for PPE production purposes.
- d. Estimate the KW demand used for PPE production needs.
- e. Identify whether the specific location for PPE will be subject to a minimum demand charge before or after the conversion and estimate the billing relief that is being sought for each account.

Response:

- a. The requested information is considered proprietary to member operations. However, Parkdale Mills has gone public in its efforts to manufacture PPA productions at its facilities. CUCA does not know the specific location of the Parkdale facilities.
- b. CUCA does not have this information from our members.

- c. See b. above
- d. See b. above.
- e. See b. above.

1-4. Regarding the relief in your Petition to “prorate those current monthly demand charges for partial month of operation for sites that have significantly curtailed or expanded consumption of demand charges via proration, please define and provide further explanation and quantification of “significantly curtailed or expanded consumption” as used by CUCA.

Response: Significantly curtailed, in CUCA’s opinion, equates to a demand reduction of 10% or more. Expanded consumption, in CUCA’s opinion, means a demand increase of 10% or more.

1-5. Please identify all CUCA members that are seeking relief of demand charges via proration of the monthly demand charges due to “significantly curtailed or expanded consumption” curtailment or expansion during partial months of operations. For each such member, please

- a. Identify the reasons for which COVID-19 caused the change in consumption (e.g. Executive order, reduced consumer demand, PPE production, etc.)
- b. Identify the specific account numbers that were increased by ramped up production.
- c. Provide an estimate of the increased demand (KW) or decreased demand (KW)
- d. Provide the date of which the proration should occur.
- e. Provide an estimate of the percentage of proration that should be used to provide relief, taking into account the date within the respective billing period.

Response:

- a. CUCA does not have this information from our members.
- b. See a. above.
- c. See a. above
- d. See a. above.
- e. See a. above.

1-6. Please identify any known U.S. electric utilities that have requested, or been required, to prorate demand charges due to COVID-19 consequences.

Response: CUCA does not have the requested information.

- 1-7. Please provide copies of any data requests received by CUCA from any other party to this Docket and provide copies of CUCA's responses thereto.

Response: See attached response to Public Staff.

- 1-8. On April 7, 2020, Mr. Dan Nation, Director of Government Affairs with CUCA member Parkdale Mills, filed a letter with the Commission supporting CUCA's Petition. In his letter, Mr. Nation states, "The windfall of millions of dollars in charges collected by utility services that are not utilized puts the future of many manufacturing plants in every industry at risk." Please define "windfall" as used by Mr. Nation; explain the basis for this statement; and identify and produce all documents and analyses or other data or information upon which Mr. Nation relied upon in support of this statement.

Response: Duke should address this request to Mr. Dan Nation.

- 1-9. On April 7, 2020, Mr. Dan Nation, Director of Government Affairs with CUCA member Parkdale Mills, filed a letter with the Commission supporting CUCA's Petition. In his letter, after asserting that utility companies operate as monopolies, Mr. Nation states, "They will not face the same issues as their customers and will return to normal operations without difficulty." Please explain the basis for this statement; and identify and produce all documents and analyses or other data or information upon which Mr. Nation relied upon in support of this statement.

Response: See response to 1-8.

- 1-10. In your Petition, CUCA appears to characterize minimum demand charges approved by the Commission as penalties. Does CUCA assert that such minimum demand charges are penalties or penalize CUCA members if they are required to pay them during the COVID-19 state of emergency? If so, please explain the justification for CUCA's characterization of the minimum charges approved by the Commission as penalties.

Response: CUCA maintains that the tariffs in place today were not designed with the concept of a national pandemic. As a result, the payment of a charge as a "minimum billing demand" without the consumption of electricity is, in our opinion, a penalty.

On April 10, 2020, the Charlotte Business Journal published an article entitled "Duke Energy warns NC regulators: Suspending demand charges could weaken utility finances" in which the lead sentence noted that Duke claimed it would lose \$28 million from a reduction in the minimum demand charges. Paying \$28 million in fees without having received a product or a service is a penalty to NC manufacturers.

1-11. If your Petition were to be granted by the Commission, please explain CUCA's position as to (a). how any resulting foregone revenues would be recouped by the Companies and (b) provide details on how CUCA's position on cost recovery would impact customers within each customer classification.

Response: CUCA is NOT seeking to socialize foregone revenues to other classes. Instead, CUCA is of the opinion that Duke's stockholders should absorb the lost revenues. Duke, like any other utility in NC, is not guaranteed to earn a set rate of return. It is only guaranteed the OPPORTUNITY to earn a set ROE. As such, with situations like the present, which we deem to be akin to force majeure, Duke stockholders should absorb lost revenues, if any, as natural forces are causing the current pandemic.

1-12. In an April 6, 2020 Charlotte Business Journal article entitled, “Manufacturers Call On Duke Energy, Regulators To Suspend 'Windfall' Charges During Pandemic,” CUCA Executive Director Kevin Martin is quoted as stating, “Duke Energy can reap a huge windfall from charges for capacity that manufacturers and institutions cannot use.” If such a statement was made by Mr. Martin, please define “windfall” as used by Mr. Martin; explain the basis for this statement; and identify and produce all documents and analyses or other data or information upon which Mr. Martin relied upon in support of this statement.

Response: Windfall is any set of \$ paid to Duke for services that are not earned by the utility. See also the response to 1-10 whereby Duke will receive \$28 million without a corresponding demand or service being provided. CUCA maintains this \$28 million is a windfall.

1-13. If your Petition were to be granted, please explain how DEC and DEP might avoid the fixed costs the Commission-approved demand or minimum charges are designed to cover while the charges are waived.

Response: CUCA represents manufacturers. We do not represent Duke and, therefore, will not recommend to Duke how it should operate its business. However, CUCA notes that basic business acumen dictates Duke could sell its generating output into the secondary market OR it could cut O&M expenses as a way to recover some lost revenues. The above stated alternatives are examples of how manufacturers that operate in open and competitive markets will have to examine their own situations during this coronavirus pandemic. With respect, CUCA suggests Duke consider both of the above-stated alternatives.

This the 8th day of April, 2020.

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CERTIFICATE OF SERVICE

I certify that a copy of the Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, in Docket Nos. E-2, Sub 1249; E-7, Sub 1237 and E-22, Sub 585, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid to the following parties:

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