STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

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

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Petition for Expedited Approval of Temporary Adjustments to Electricity Billing Demand Charges	)))	COMMENTS OF THE PUBLIC STAFF

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission, by and through its Executive Director, Christopher J. Ayers, and, pursuant to the Commission's April 2, 2020, *Order Joining Necessary Parties and Requesting Comments* in the above captioned dockets, respectfully submits the following comments to the *Petition of Carolina Utility Customers Association, Inc. for Expedited Approval of Temporary Adjustments to Electricity Billing Demand Charges* (Petition) filed by Carolina Utility Customers Association, Inc. (CUCA)[1] in these dockets on March 31, 2020.

1. In the Petition, CUCA requests expedited approval of temporary adjustments to electricity billing demand (minimum and maximum) charges for customers served under Duke Energy Carolinas, LLC's (DEC's) Rate Schedules LGS, OPT-V, HP, OPT-E, SGS, SGS-TOU-CPP, SGS-TOU-DPP; Duke Energy Progress LLC's (DEP's) Rate Schedules LGS, LGS TOU, LGS-RTP, MGS; and

[1] CUCA is an organization of industrial utility customers whose member companies maintain numerous industrial manufacturing facilities and employ thousands of workers throughout the State of North Carolina, including the territories in which DEP and DEC operate.

Virginia Electric and Power Company, Inc., d/b/a Dominion Energy North Carolina's (DENC's) Rate Schedules 10,5, 5C, 5P, 6C, 6L, 6P, 6VP, and 7.

2. CUCA notes the adverse economic impact that certain minimum and maximum monthly demand charges will have on industrial and commercial customers whose energy usage is being temporarily curtailed as either a voluntary or compelled response to the COVID-19 State of Emergency declared by Governor Roy Cooper. It also points to other industries ramping up production to meet needs related to COVID-19 that could result in some businesses exceeding their maximum contract demand charges. CUCA indicates that under the cited tariffs, industrial and commercial customers who have ceased or curtailed energy consumption due to COVID-19 will be required to pay certain monthly minimum demand charges, while businesses that exceed their current contract demand to meet increased demand due to COVID-19 will be penalized.

3. CUCA states that the minimum and/or maximum monthly charges do not appear to be exempt from any waiver or force majeure provisions in the tariffs and related service contracts. The Public Staff interprets this statement to mean that there are no waiver or force majeure provisions that would exempt CUCA's members from the minimum and maximum charges.

4. CUCA notes that in Ohio, AEP is seeking approval to eliminate minimum billing demand charges temporarily and have the costs deferred.

5. CUCA requests that the Commission order DEC, DEP, and DENC to immediately eliminate both the monthly minimum billing demand charges and

maximum contract demand charges, prorate those current monthly demand charges for partial month of operation for sites that have significantly curtailed or expanded consumption, and review other tariff provisions to provide flexibility while CUCA's customers' operations are disrupted during the COVID-19 state of emergency. CUCA further requests that this action remain in effect through the State of Emergency declared by Governor Cooper and for 60 days for affected commercial sectors and 6 months for affected industrial sectors after the state of emergency has ended.

6. On March 19, 2020, in Docket No. M-100, Sub 158, the Commission issued its *Order Suspending Utility Disconnections for Nonpayment, Allowing Reconnection, and Waiving Certain Fees*. In this Order, the Commission ordered that all jurisdictional electric, natural gas, and water and wastewater public utilities immediately cease customer disconnections due to non-payment of utility bills, except where necessary as a matter of safety or where requested by the customer, and waive late fees incurred during the State of Emergency and suspended all regulations and provisions of individual utility tariffs that prevent or condition reconnection of disconnected customers. The Commission further ordered that at the end of the State of Emergency, customers having arrearages accrued during the State of Emergency should be allowed to make a reasonable payment arrangement for at least a six-month period without late fees for arrearages accrued during the State of Emergency. On March 31, 2020, Governor Roy Cooper issued Executive Order 124, which, in part, extended the protections provided by the Commission's March 19, 2020, Order to customers of

electric and telephone membership cooperatives and government-owned utilities. It appears that the Commission's Order would apply to all DEC, DEP, and DENC customers, including CUCA's members.

7. In order for the Public Staff to fully address CUCA's request, it requires certain information not contained in the Petition. The Commission has requested that the three electric utilities calculate the expected revenue impact should CUCA's request be granted. The Public Staff sent a data request to CUCA on April 6, 2020 (attached) seeking clarification regarding the requested relief, the specific tariff provisions associated with the requested relief, the revenue impact, CUCA's proposal for addressing the revenue impact, and CUCA's characterization of demand charges or minimum bill provisions as a "penalty". The Public Staff has requested a response by April 13, 2020 so it can incorporate its review of the data response into its reply comments.

8. Until the Public Staff has had an opportunity to review this more specific data, it is not in a posture to state its position on the Petition. However, the Public Staff makes the following general observations.

9. First, the Public Staff notes the parallels between the relief sought by the Petition and the line of cases that came before the Commission following certain natural gas customers' failure to curtail during the Polar Vortex. *See* Docket No. G-5, Sub 545, *Order on Petition for Limited Modification of Rider A and Request for Expedited Decision*, September 8, 2014, and Docket No. G-9, Sub 649, *Order on Petition for Limited Waiver of Rate Schedule 106 Billing*

Procedures, October 29, 2014. In these cases, the natural gas companies requested that the Commission enter orders authorizing them to waive portions of certain rate schedules that required that interruptible customers that had received gas under Emergency Service or Unauthorized Use and to provide relief from the high rates required under those terms. The Commission declined for a number of reasons, including the legality of retroactive rate adjustments, the customer's assumption of the risks in selecting a rate schedule with certain strictures in return for the benefit of lower rates, and the potential for subsidization of the interruptible customers by firm customers. Instead, the Commission allowed the affected customers an extension of time to pay their balances over 18 months without late charges.

10. The Public Staff has reviewed the rate schedules cited by CUCA and notes that DEC, DEP, and DENC currently have provisions in their rate schedules or service regulations that provide customers an opportunity to adjust the contract demands of their service. These provisions are usually applicable to emergent situations where the customer has suffered some catastrophic situation that resulted in a substantial decrease in their use of energy. Those same rate schedules and service regulations also allow customers to amend their contract demands when more energy or greater demand is needed. The following is a summation of relevant provisions:

a. DENC

i.. All non-residential rate schedules have provisions that establish the contract periods and demands. All but three schedules make those terms as mutually agreed upon by the customer but not less than one year. Schedule LGS-RTP-CBL also has a one-year term, but also includes special provisions for service that must be satisfied for continuation past one year. Schedule LGS-RTP-ECON has a term of at least four years with no provision for renewal. Schedule NS is a contract rate available to one specific customer and is subject to the terms established pursuant to the contract.

ii. The schedules establish minimum monthly billing demands based on a percentage of the established contract demand, actual demand, or a fixed level of demand.

iii. Section VIII.C of DENC's service regulations provides a mechanism whereby a customer's contract demand may be changed due to changes in operating conditions, including the possibility of moving to a different, more advantageous rate schedule. The customer must initiate the request.

b. DEC

i. All non-residential rate schedules have provisions that establish the contract periods and demands. All schedules set the initial minimum term at one year, with continuation of the term on a year-to-year basis. Customers may provide a 30- or 60-day termination notice, after the initial one-year term, depending upon the schedule. The schedules also provide for the amendment of the contract term. However, no schedule either identifies specific amendments that would be considered, or specifies how they would be initiated.

ii. The schedules establish minimum monthly billing demands based on either a percentage of the established contract demand, actual demand, or a fixed level of demand.

iii. The only reference to possible changes in contract demands in DEC's service regulations is found in Leaf H, Paragraph XIII, which addresses a complete cessation of service due to a catastrophic event.

c. DEP

i.. All non-residential rate schedules have provisions that establish the contract periods and demands. Most schedules establish contract periods of at least one year, and remain so on a continuous basis. However, schedules CH-TOUE and LGS-RTP set the terms of service on a monthly basis.

ii. The schedules establish minimum monthly billing demands based on a percentage of the established contract demand, actual demand, or a fixed level of demand.

iii. DEP's service regulations include provisions for decreased loads due to catastrophic events (Section 1.f), termination of service (Section 1.g), and reducing contract demand (Section 7.b), all upon written request of the customer to the Company.

11. Finally, the Public Staff notes that under the State of Emergency, each customer has its own unique set of facts. How the COVID-19 crisis affects each of CUCA's customers, as well as other customers served under these rate schedules, will vary widely depending on its business sector and circumstances; thus, a more targeted approach could be more appropriate. Further, consideration should be given as to whether the relief sought in the Petition would be unfair to other customers, who presumably would be expected to pay the difference, and who are also facing severe economic harm due to the pandemic.

WHEREFORE, the Public Staff prays that the Commission consider these comments in reaching its decision in this proceeding.

Respectfully submitted this the 9th day of April, 2020.

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CERTIFICATE OF SERVICE

I certify that a copy of these Comments has been served on all parties of record or their attorneys, or both, by United States mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 9th day of April, 2020.

Electronically submitted
/s/ Lucy E. Edmondson