STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 1276

In the Matter of Application of Duke Energy Progress, LLC, for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina and for Performance-Based Regulation	)))))	CUCA'S SUPPLEMENTAL POST-HEARING BRIEF

Carolina Utility Customers Association, Inc. ("CUCA"), through counsel, hereby respectfully submits this Supplemental Post-Hearing Brief regarding the Rate Case Application and Request for Performance Based Regulation filed by Duke Energy Carolinas, LLC (the "Company," "Duke," or "DEC").

After the close of the evidentiary hearing in this case, DEC filed a Supplemental Revenue Requirement Stipulation ("Supplemental Stipulation") and additional testimony and exhibits; and the Public Staff filed additional testimony and exhibits.[1]

ARGUMENT

I. Accounting testimony does not overcome the deficiencies in DEC's PBR application.

Both DEC and Public Staff submitted additional testimony and exhibits relating to the Supplemental Stipulation and additional accounting adjustments made to each party's respective revenue requirement calculations.[2] Nothing in this additional evidence

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[1] This Supplemental Post-Hearing Brief is limited to the issues specified herein. CUCA's silence as to any other matter arising in connection with the Supplemental Stipulation and the additional Public Staff testimony does not indicate agreement with or consent to those other matters.

[2] Tr. vol. 17, 22-26, 30-34; Q. Bowman Supplemental Revenue Requirement Stipulation Ex. 1 & 2; Public Staff Supplemental & Settlement Accounting Exhibits 1-3.

overcomes the shortcomings of DEC's prior submissions or the weight of prior evidence as discussed in CUCA's initial Post-Hearing Brief, which shows that: (1) DEC's return on equity should be substantially lower than 9.8%, with a capital structure of 52% equity; (2) many of DEC's proposed MYRP "projects" are not discrete and identifiable capital spending projects and are not authorized for inclusion in any MYRP; (3) DEC failed to calculate expected O&M savings from MYRP projects, and such projects cannot be authorized in any MYRP; (4) the proposed MYRP does not minimize interclass subsidies to the greatest extent practicable; (5) DEC's GIP spending on self-optimizing grid was not reasonably or prudently incurred; (6) DEC's proposed industrial rate designs should be improved; and (7) DEC's proposed Reliability PIM should be rejected and replaced with a larger, continuously increasing penalty to incentivize DEC to reverse the trend of declining system performance. Accordingly, for the reasons stated in CUCA's initial Post-Hearing Brief, DEC's PBR application should be rejected or amended to correct the issues identified by CUCA.

II. The supplemental rate-apportionment testimony shows that DEC's proposed PBR fails to minimize interclass subsidization to the greatest extent practicable.

As previously discussed, under section 62-133.16(b),

> the Commission is authorized to approve performance-based regulation . . . so long as . . . interclass subsidization of ratepayers is minimized to the greatest extent practicable by the conclusion of the MYRP period.[3]

This provision places a substantive limit on the authority of the Commission, requiring the Commission to find that interclass subsidization is minimized "to the greatest extent

[3] N.C.G.S. § 62-133.16(b).

practicably by the conclusion of the MYRP period"[4] before approving any PBR application.

The supplemental testimony of Public Staff witness D. Williamson, and DEC witnesses Byrd and Beveridge, demonstrate that DEC's proposal fails to minimize interclass subsidization. Specifically, by considering and allowing only a uniform variance reduction of 10%, DEC's proposal fails to consider or address the fact that applying non-uniform variance reductions enables greater reduction of interclass subsidies than achieved by applying a uniform variance reduction.

Before addressing the evidence, it is worth examining the burden of proof and burden of persuasion applicable to this aspect of DEC's PBR application. In this general rate case proceeding, contrary to its arguments otherwise, DEC always has both the burden of proof and the burden of persuasion to show that its proposed rates are just and reasonable.[5] However, DEC has claimed that its "positions" are "presumed reasonable unless an opposing party adduces sufficient evidence to cast doubt upon their reasonableness or prudence."[6] DEC's claim misconstrues the standard regarding the Commission's consideration whether *costs* are reasonable and prudent as being generally applicable to any "position" (i.e., anything the utility might claim). The case cited by DEC, *State ex rel. Utilities Commission v. Stein*, 375 N.C. 870, 908, 851 S.E.2d 237, 261–62 (2020), and the cases cited therein, address the burden-shifting framework applicable to

[4] *Id.*
[5] N.C.G.S. § 62-134(c).
[6] Post-Hearing Brief of Duke Energy Carolinas, Inc., p. 68 (Oct. 11, 2023) (contending that DEC's "capitalization determinations" are entitled to a presumption of reasonableness).

the reasonableness and prudence of costs. *Stein* does not hold and does not support DEC's contention that any "position" DEC takes is entitled to a presumption that it is reasonable.

To be clear, as the utility, DEC is *never* entitled to *any* presumption, whether that is with regard to "positions" (legal or otherwise) or findings of fact to be made by this Commission. In evaluating whether a utility's costs were reasonably and prudently incurred—and only in that context—*after* the utility presents evidence regarding its costs, *and* if no other evidence calls into question the reasonableness of the costs, the Commission *may* accept the utility's evidence without further investigation *or may require whatever other evidence the Commission believes necessary*.[7] The undersigned are not aware of any decision of this Commission or of the appellate courts of North Carolina that has applied a burden-shifting framework to any ratemaking issue other than the reasonableness of costs incurred by the utility. On the contrary, the North Carolina Supreme Court has squarely held, for instance, that the Commission is not bound by the utility's expert testimony regarding property values or rates of return even when that is the only record evidence.[8] Similarly, the Court has held that "the burden of proof is upon the utility to show that the property should be included in its rate base."[9] In sum, except as to the reasonableness of

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[7] *State ex rel. Utils. Comm'n v. Stein*, 375 N.C. 870, 908, 851 S.E.2d 237, 261–62 (2020); *State ex rel. Utils. Comm'n v. Intervenor Residents of Bent Creek/Mt. Carmel Subdivisions*, 305 N.C. 62, 75–77, 286 S.E.2d 770, 778–79 (1982) ("If there is an absence of data and information from which either the propriety of incurring the expense or the reasonableness of the cost can readily be determined, the Commission may require the utility to prove their propriety and reasonableness by affirmative evidence.").

[8] *State ex rel. Utils. Comm'n v. Duke Power Co.*, 285 N.C. 377, 390, 206 S.E.2d 269, 278 (1974) (holding with respect to property valuation, "It is the prerogative of the Commission to determine the credibility of evidence before it, even though such evidence be uncontradicted by another witness."); *State ex rel. Utils. Comm'n v. Duke Power Co.*, 305 N.C. 1, 22, 287 S.E.2d 786, 798–99 (1982) (holding with respect to rate of return that the Commission need not accept even uncontradicted evidence).

[9] *State ex rel. Utils. Comm'n v. Gen. Tel. Co. of Se.*, 281 N.C. 318, 354, 189 S.E.2d 705, 728 (1972).

costs as to which the Commission is satisfied, no burden of proof, persuasion, or production in this case ever shifts to any party other than DEC.

With that framework in mind, the burden of showing that DEC's PBR proposal will minimize interclass subsidization "to the greatest extent practicable" is placed on DEC, and the Commission cannot authorize an MYRP that fails to achieve the greatest practicable reduction in interclass subsidization. The supplemental testimony of Public Staff witness Williamson and DEC witnesses Byrd and Beveridge show that DEC has failed to meet its burden.

DEC's proposal in this case is to apply a uniform 10% reduction in variance across all classes to reduce interclass subsidies over the course of the MYRP.[10] Public Staff witness Williamson, on the other hand, highlighted through his supplemental testimony that the Public Staff's proposed method for apportioning revenues "independently moves each rate class" closer to parity.[11]

While witness Williamson's methodology involves a certain amount of subjectivity and changing of calculations after the final revenues are in place which could make it difficult to apply in practice,[12] one pillar of the method seems to be unchallenged: There's nothing "wrong with moving one rate class faster than another . . . from cost of service or a fairness standpoint."[13] DEC advocates the use of a uniform 10% reduction in variance because of its simplicity.[14] But simplicity does not necessarily ensure that "interclass

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[10] Tr. vol. 17, 149.
[11] Tr. vol. 17, 48, 76.
[12] E.g., Tr. vol. 17, 169.
[13] Tr. vol. 17, 175-76.
[14] Tr. vol. 17, 175-76.

subsidization of ratepayers is minimized to the greatest extent practicable by the conclusion of the MYRP period."[15] As the party with the burden of proof, it was DEC's duty to show that its uniform 10% variance reduction achieves the greatest reduction of subsidies that is practicable. However, the evidence shows that DEC considered only two possibilities: a uniform 25% reduction (the results of which are not in evidence) and a uniform 10% reduction.[16] The fact that DEC presents only one possible calculation is not sufficient evidence to conclude that the method results in the greatest reduction in subsidies practicable. For instance, there is no evidence that an 11% uniform reduction, 15% uniform reduction, or 19% uniform reduction would be unworkable, or that a different percentage for each class would be unworkable. The evidence before the Commission simply does not show that the requirements of section 62-133.16(b) have been satisfied.

Accordingly, the Commission should reject the proposed MYRP.

CONCLUSION

In sum, CUCA respectfully requests that the Commission:

(1) Authorize a return on equity of less than 9.8%;

(2) Reject DEC's proposed MYRP, including because it fails to satisfy the requirement that interclass subsidies be minimized to the greatest extent practicable; or, in the alternative,

(3) Exclude from the MYRP any and all projects that DEC has failed to show are "discrete and identifiable" capital spending projects, including "Distribution Hazard Tree Removal," "Hardening & Resilience: Public Interference,"

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[15] N.C.G.S. § 62-133.16(b).
[16] Tr. vol. 10, 5

"Infrastructure Integrity," "Cathodic Protection," "Targeted Wood Pole Upgrade," and "Transmission Hazard Tree Removal";

(4) Exclude from the MYRP any and all projects for which DEC has not provided a calculation of net operations benefits, including but not limited to Distribution Automation, ADMS, Capacity Upgrade projects, Distribution Hazard Tree Removal, Breaker Upgrades, Capacity & Customer Planning, Transmission Substation H&R, Transmission System Intelligence, Transmission Line H&R, Transmission Transformers, or Transmission Vegetation Management;

(5) Require DEC to submit alternative rates further minimizing interclass subsidies by allowing the amount of subsidy reduction to vary by class;

(6) Exclude the costs of DEC's Self-Optimizing Grid deferred spending from authorized rates;

(7) Refine the rates proposed by DEC as set forth herein, including by:

(a) Extending time-of-use peak periods to eight hours;

(b) Rejecting DEC's unfounded proposal to increase its Incentive Margin under Schedule HP by 20%;

(c) Eliminating DEC's proposed mandatory CBL reset; and

(d) Confining contribution to the Customer Assistance Program to the Residential Customer class; and

(8) Granting such other relief as necessary to ensure just and reasonable rates.

Respectfully submitted, this 6th day of November, 2023.

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Certificate of Service

I hereby certify that a copy of the foregoing CUCA'S SUPPLEMENTAL POST-HEARING BRIEF has been served this day upon all parties of record in this proceeding, or their legal counsel, by electronic mail.

This the 6th day of November, 2023.

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