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February 17, 2020

FILED

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Clerk's Office
N.C. Utilities Commission

Ms. Kim Campbell, Chief Clerk
North Carolina Utilities Commission
Dobbs Building, Fifth Floor
430 North Salisbury St.
Raleigh, NC 27602

VIA HAND DELIVERY

Re: Docket No. E-2, Sub 931; Application of Duke Energy Progress, LLC, for
Approval of Demand-Side Management and Energy Efficiency Cost Recovery
Rider Pursuant to N.C.G.S. §62-133.9 and Commission Rule R8-69
and
Docket No. E-7, Sub 1032; Application of Duke Energy Carolinas, LLC, for
Approval of New Cost Recovery Mechanism and Portfolio of Demand-Side
Management and Energy Efficiency Programs

Dear Ms. Campbell:

Pursuant to the Commission's Rules of Practice and Procedure, we enclose for filing in the above-referenced matter, on behalf of Carolina Utility Customers Association, Inc. ("CUCA"), an original and 33 copies of CUCA's Initial Comments and Reply Comments. Kindly date-stamp and return to us via our courier the three (3) additional enclosed copies. Please let me know, at your early convenience, if you have any questions concerning this filing.

Very truly yours,

CRISP & PAGE, PLLC


Robert F. Page

RFP/scm

Enclosure

cc: Mr. Kevin Martin
Mr. Dave Lyons
Parties of Record

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WILLIAM T. CRISP II
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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 931
DOCKET NO. E-7, SUB 1032

DOCKET NO. E-2, SUB 931)	
)	
In the Matter of:	)	INITIAL COMMENTS
Application of Duke Energy Progress, LLC,	)	OF CAROLINA UTILITY
For Approval of Demand-Side Management	)	CUSTOMERS ASSOCIATION,
and Energy Efficiency Cost Recovery Rider	)	INC. AND
Pursuant to N.C.G.S. §62-133.9 and	)	REPLY COMMENTS TO
Commission Rule R8-69	)	NATURAL RESOURCES
	)	DEFENSE COUNCIL,
DOCKET NO. E-7, SUB 1032	)	SOUTHERN ALLIANCE FOR
	)	CLEAN ENERGY, SIERRA CLUB,
In the Matter of:	)	SOUTH CAROLINA COASTAL
Application of Duke Energy Carolinas, LLC,	)	CONSERVATION LEAGUE, AND
For Approval of New Cost Recovery	)	NORTH CAROLINA
Mechanism and Portfolio of Demand-Side	)	SUSTAINABLE ENERGY
Management and Energy Efficiency	)	ASSOCIATION
Programs)	

NOW COMES Carolina Utility Customers Association, Inc. ("CUCA"), by and through its undersigned counsel, and files initial comments pursuant to the Commission's Order Requesting Comments and Reply Comments, issued on January 16, 2020. In its Order, the Commission requested both initial and reply comments on proposed revisions to the new DSM/EE Cost Recovery Mechanism of Duke Energy Progress, LLC ("DEP") and Duke Energy Carolinas, LLC ("DEC"). Initial comments were requested for February 17, 2020 and Reply Comments are due to be filed on March 9, 2020.

I. Procedural Background

On February 6, 2019, the Commission issued an Order Requesting Comments on the following three topics: (1) Whether the incentives in the existing DEP and DEC Mechanisms are producing significant DSM and EE results; (2) Whether the customer

rate impacts of DSM/EE riders are reasonable and appropriate; and (3) Whether the overall DSM/EE program portfolio performance targets should be adopted. The Commission noted that these three issues should be addressed, "...in addition to other relevant issues."

On January 15, 2020, the parties filed Proposed Revisions to the DSM/EE Cost Recovery Mechanisms and requested another comment cycle. On January 16, 2020, the Commission issued an Order requesting further initial and reply comments. The following are CUCA's initial comments and CUCA's response to the Joint Reply Comments filed on January 15, 2020 by the Natural Resources Defense Council, Southern Alliance for Clean Energy, Sierra Club, South Carolina Coastal Conservation League and North Carolina Sustainable Energy Association ("Joint Commenters").

II. Initial Comments and Responsive Comments of CUCA

1. The Joint Filing/Joint Agreement on proposed revisions to the cost recovery mechanism filed by the parties on January 15, 2020 are a redlined version of changes to the existing language of the cost recovery mechanism. There is no mention in the Joint Filing/Agreement about amending the current "Opt-Out" provisions in any way. The "Opt-Out" was a provision adopted by the General Assembly, as an integral part of Senate Bill 3, which allows industrial and manufacturing customers who have already provided, or who have plans to provide, their own DSM/EE programs from having to participate (and, thus, help pay for), the DSM/EE programs of DEP and DEC for which they have no need, having planned for their own DSM/EE programs.

2. In their Initial Comments, the Joint Commenters complained that neither DEP nor DEC have achieved the targeted energy savings which their DSM/EE programs

are intended to achieve. The Joint Commenters maintain that a greater effort is needed to ensure that the benefits of DSM and EE reach those customers who “need it the most” (i.e. the low-income customers). In both their Initial and Reply Comments, the Joint Commenters proposed that the Commission should review whether or not a new and unprecedented reporting requirement should be instituted for customers who “Opt-Out” of the DSM/EE programs and riders of DEC or DEP.

3. Specifically, the Joint Commenters recommend that the Commission should “revisit” whether customers who have opted out of either the DEC or DEP DSM/EE programs should be required to report to DEC (or DEP as the case may be) their “stated and quantifiable goals for the DSM or EE measures...” they have implemented or propose to “...implement at their own expense, as well as the demand and/or energy savings from those measures.”

4. There is no such legislative Opt Out reporting requirement contained in Senate Bill 3, specifically G.S. §62-133.9(f). Legislators went to great lengths in the Statute to allow the Opt Out for large industrial and manufacturing consumers. The Statute expressly states that “...None of the costs of new demand-side management or energy efficiency measures of an electric power supplier shall be assigned to any industrial customer that notifies the industrial customer’s electric power supplier that, at the industrial customer’s own expense, the industrial customer has implemented at any time in the past or, in accordance with stated, quantified goals for demand-side management and energy efficiency, will implement alternative demand-side management or energy efficiency measures and that the industrial customer elects not to participate in demand-side management or energy efficient measures under this section.” The Joint

Commenters appear to agree with CUCA that there is no language in the legislation which would authorize the Commission to institute any reporting requirements inconsistent with the clear Opt Out mandate contained in the General Statute. There is simply no legislative requirement for Opt Out customers to report to DEP, DEC, the Commission or anyone else regarding the specific DSM/EE measures which they have or propose to undertake. Further, there is no legislative requirement to report the demand and/or energy savings for those measures. Imposing such a reporting requirement, as requested by the Joint Commenters, would necessitate a change in the existing law. Therefore, the review proposed by the Joint Commenters is unnecessary and is prohibited, unless or until a statutory change is enacted by the General Assembly.

5. Neither DEP nor DEC have ever required industrial customers wishing to exercise their Opt Out rights to provide any “stated, quantifiable goals.” Indeed, the DEC and DEP Opt Out “notification” forms simply echo the language of the Commission’s Rule and these forms do not require the customer to state and quantify any goals, let alone report the demand and/or energy savings anticipated from the measures they install. CUCA clearly disagrees with the interpretation of the Statute and Rules presented by the Joint Commenters with regard to Opt Out customers.

6. Representatives of CUCA, DEP, DEC, and from a number of the Joint Commenters’ groups, and other stakeholders, were involved in the lengthy process of development of Senate Bill 3 (Session Law 2007-397) in which the Opt Out provision was negotiated. The negotiated and agreed-upon statutory language did not contemplate the disclosure of company-specific information to DEC, DEP, or any other entity. Indeed, CUCA members would consider the reporting of any such information to be

highly questionable, as such reporting would be in violation of customers' rights to protect their privileged, confidential and trade secret information. They would resist any such filing that would become a public record and, thus, subject to disclosure to the Joint Commenters and the competitors of the CUCA members. The negotiated and agreed-upon statutory language of Senate Bill 3 did not contemplate the disclosure of any company-specific information. Admittedly, on numerous occasions since its passage, representatives of the Joint Commenters have regularly attempted to reinterpret the Opt Out language to align with their specific interests, but DEC, DEP and the Commission have refused to entertain such requests.

7. Since the governing Statutes and Rules do not require such disclosure, the Joint Commenters have recommended that the Commission undertake a "process" to develop a "template" for the Opt Out customers to report to DEC or DEP their "stated and quantifiable goals" for the DSM/EE measures they have or intend to implement at their own expense. Again, establishment of such a process would be beyond the scope of the Statute, the Commission Rule, current utility practice, and the stakeholder process that led up to the Statute. The duty of the Commission, as it has done since 2007, is to implement the current Statutes and Rules, not reinterpret them as envisioned by the Joint Commenters.

8. The Joint Commenters complain that, over the decade since Commission Rule R8-69 was promulgated, the rate of large, non-residential customers opting out of the DSM/EE programs has remained greater than 50%. In 2018, 51% of DEC's non-residential load opted out of the DEC DSM/EE Rider, and 55% of DEP's non-residential load opted out. The Joint Commenters' perspective is that the "glass is half empty." If

one looks at the “glass” as being “half full,” one would recognize that 49% of DEC’s non-residential load and 45% of DEP’s non-residential load has “opted in.” Cost-effectiveness is at the center of prudent business decisions. If it is cost effective for a business to invest capital in a DSM or EE project (such that the “payback” period for recovering the investment and achieving future savings in electric bills is reasonable), then such investments will be made. Businesses should not be forced to invest in Duke’s DSM/EE programs if such investment does not make economic sense.

9. In a recent news report entitled “Duke Energy Key to North Carolina’s Strong Ranking in Energy Efficiency,” Mr. Forrest Bradley-Wright, Energy Efficiency Director for SACE (Southern Alliance for Clean Energy), states that: “Duke Energy is far and away the energy efficiency leader [in the region].” Additionally, SACE reports that North Carolina is the only Southeastern state to exceed the national average in EE savings. Furthermore, declining DSM/EE participation does not necessarily mean that DSM/EE programs are not working. To the contrary, it may mean that the previous DSM/EE programs have worked so well that North Carolina is becoming more energy efficient, thereby making future gains more difficult to achieve.

10. The Joint Commenters express an opinion that the “lack of reporting” by Opt Out customers somehow inhibits Duke’s ability to plan for meeting its future electric power and energy needs. However, the Joint Commenters fail to explain why this is the case (if, in fact, it is). DEP and DEC regularly file and update their Integrated Resource Plans and none of these IRP filings have ever mentioned the lack of Opt-Out customer data as an impediment to system demand and energy planning. The Joint Commenters’ allegation simply lacks merit or credibility.

11. Neither DEP nor DEC examines individual households, individual commercial operations, or individual industrial operations in preparation for their regular IRP filings. Instead, both DEP and DEC use trends for each entire rate class for planning purposes. The trends of the rate classes, including the industrial/manufacturing class, give the broad view necessary for planning purposes.

WHEREFORE, CUCA respectfully requests that the Commission:

1. Accept the foregoing as its Initial Comments and Response to the previous Initial and Reply Comments of the Joint Commenters;

2. Deny the request by the Joint Commenters (which is not requested by either DEC, DEP, the Public Staff or the Attorney General) that the Opt Out customers be required to file any report not specifically mandated by Senate Bill 3 and by the Commission's Rule, as previously interpreted;

3. That the Commission not require any information to be filed by Opt Out customers which could impinge upon the privacy of their confidential and trade secret information; and

4. For such other and further relief as may be appropriate under the circumstances.

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Respectfully submitted, this 17th day of February, 2020.

CAROLINA UTILITY CUSTOMERS ASSOCIATION, INC.

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CERTIFICATE OF SERVICE

I, the undersigned counsel for Carolina Utility Customers Association, Inc., do hereby certify that a copy of the foregoing Comments was served by electronic mail, hand delivery or by depositing a copy in the United States Postal Service, first class postage prepaid, and properly addressed to the parties of record listed on the North Carolina Utility Commission's official Service List in this Docket.

This, the 17th day of February, 2020.

Robert F. Page
Robert F. Page

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