

NORTH CAROLINA
UTILITIES COMMISSION
DOCKET NO. E-7, SUB 1276

In the Matter of)	
Application of Duke Energy Carolinas, 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 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.¹ Indeed, two of the top three, and three of the top fourteen, private employers in the state are members of the Commercial Group. Id. at 4. In addition, both Food Lion and Ingles have their headquarters in North Carolina. Id.

In this brief, the Commercial Group argues that the Commission should approve the stipulation agreed to by Duke Energy Carolinas, LLC (“DEC” or the “Company”), the Commercial Group, and Harris Teeter/Kroger concerning OPT-V Secondary rates (“Commercial Settlement”).² This settlement would make minor adjustments to the OPT-V Secondary rate schedule that would move the schedule’s unit charges more in line with unit cost. Further, the Commission should move class rates at least 10 percent of the way to cost during the Multi-Year Rate Plan (“MYRP”) and adopt DEC’s proposal to eliminate the generation reserve charge requirement in the Supplementary

¹ Direct Testimony of Steve W. Chriss (“Chriss Direct”), pp. 4-5 (Tr. vol. 15:1005).

² This settlement agreement was filed on Aug. 25, 2023, and admitted at Tr. Vol.7:43-44.

and Firm Standby Service Rider SS (“Rider SS”) for customers with resources that have planning capacities below 60 percent. Finally, with respect to revenue issues, the Commercial Group urges the Commission to adopt a return on equity (“ROE”) that is more in line with decisions on ROE made recently by this Commission, by other commissions regulating Duke affiliates, and by commissions nationwide than DEC’s proposed ROE of 10.4 percent.

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I. PROCEDURAL BACKGROUND

In this proceeding, the Commercial Group presented the direct testimony of Steve W. Chriss (pp. 5-6) that contained three main recommendations (Tr. vol. 15:1009-1010):

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; (3) recent rate case ROEs awarded to DEC sister companies; and (4) recent rate case ROEs approved by commissions nationwide.
2. The Commission should move OPT-V Secondary rates closer to cost and, if the Commission determines that the appropriate revenue requirement for this rate schedule is less than that proposed by the Company, the Commission should reduce OPT-V Secondary energy charges to achieve such reduction in revenue requirement.
3. The Commission should approve DEC's proposed elimination of a Rider SS generation reserve charge requirement.

DEC reached the Commercial Settlement with the Commercial Group and Kroger/Harris Teeter in which would increase the amount of fixed cost recovery through demand charges within the OPT-V Secondary sub-class by five percent of total revenues, relative to current rates. Commercial Settlement, p.4. As demonstrated more fully below, this Commercial Settlement is in the public interest and should be approved.

II. THE COMMISSION SHOULD APPROVE THE COMMERCIAL 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. Both the Commercial Group and Kroger/Harris Teeter raised the issue of OPT-V Secondary unit charges being out of step with unit cost. See, e.g., Chriss Direct at 22 (Tr. vol. 15:1026). Rather than litigate these issues at the hearing, the parties reached a good faith, amicable resolution that would make a modest adjustment toward unit cost and waived rights to cross-examine witnesses of settling parties on these issues.

B. The Modest Adjustments the Commercial Settlement Would Make to OPT-V Secondary Rates Are Reasonable and Would Move Unit Charges Closer to Unit Cost

In his direct testimony (pages 18, 22), Mr. Chriss showed that DEC's class cost of service results show that "OPT customers currently pay over \$55 million a year in subsidies to other customer classes" and "proposed demand charges for each service level of OPT-V are well below their respective unit rates per the Company's cost of service study results." Mr. Chriss proposed that any reduction from DEC's proposed OPT revenue requirement should be applied proportionately to lower energy charges. Id., at 24. While this proposal would not bring OPT unit charges to unit cost, it would make a modest move in that direction. In the Commercial Settlement (page 4), DEC agreed to increase the proportion of total revenues recovered through demand charges for the Schedule OPT-V-Secondary sub-class by 5% (relative to current rates) in Year 1 of the Multiyear Rate Plan, with a corresponding revenue neutral decrease to the proposed on-peak, off-peak, and discount energy charges. Then in Year 2 and Year 3 of the Multiyear Rate Plan, each of the demand and energy charges would be increased by an equal percentage in order to recover the target revenue requirement.

Obviously, this five percent proposal is an even more moderate move than the proposal of Mr. Chriss in his direct testimony. In any event, such give-and-take is the hallmark of settlements and another indication that the Commercial Settlement is in the public interest and should be adopted. When combined with the modest moves DEC has proposed toward reducing the \$55 million subsidy embedded in current OPT rates (see discussion below), the Commercial Group appreciates this resolution of OPT-V secondary rate issues and urges the Commission's approval.

III. OTHER RATE DESIGN ISSUES

A. OPT Rates Should be Moved Modestly Toward Cost

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 cited above, OPT customers currently provide \$55 million in rate subsidies to other rate class customers. Chriss Direct at 18, lines 14-17 (Tr. vol. 15:1022). Accordingly, consistent with the Commission's principles of cost-causation and gradualism, a substantial move toward cost should be made in this proceeding.

DEC proposes to allocate revenue increases to classes and then apply a 10 percent decrease in variance from cost-based rates for the base year and each MYRP year. Id. at 19. On the other hand, CIGFUR would move class rates at least 25 percent of the way toward cost as was done in past DEC rate cases. Collins Direct p.17 (Tr. vol 15:965). The Commercial Group supports CIGFUR's approach, although in this first MYRP case, the Commercial Group does not oppose DEC's proposal.

B. DEC's proposal to eliminate the generation reserve charge requirement in Rider SS for certain customers should be adopted

DEC is proposing numerous changes to its Time of Use ("TOU") rates, including its OPT-V rates. DEC witness Beveridge testified in direct testimony (pages 34-35 [Tr. vol.10:152-153]) that these changes to TOU rates (that have demand charges) would provide DEC sufficient fixed cost recovery, thereby negating the need for additional Rider SS generation reserve charges. Accordingly, DEC would eliminate the generation reservation charge for Rider SS customers with resources that have planning capacities below 60 percent. Id. The Commercial Group agrees with this proposal and urges the Commission to adopt it.

IV. REVENUE ISSUE – DEC's Proposed Return on Equity is Unreasonably High

DEC's return on equity expert recommended an ROE for DEC of 10.4 percent. Morin Rebuttal at 3, line 16 (Tr. vol.7:296). This ROE is unreasonably high and out of line with industry returns, including those of DEC affiliates. Nor is there any justification to provide DEC an ROE higher than the ROE the Commission recently set for DEP.

In the event the Commission adopts an MYRP, ROE experts in this case recommended ROEs of 9.35 percent (Staff-Walters), 9.20 percent (CUCA-LaConte) and 6.15 percent (NCJC-Ellis). See, e.g., Morin Rebuttal, p.3 (Tr. vol.8:134).

It is well-settled that a fundamental aspect of establishing a utility's return on equity is to set ROE at a level commensurate with the returns achieved on similar investments. *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944). Mr. Chriss did not provide a pinpoint ROE recommendation, but instead, testified that comparisons to returns other utilities have been receiving provide an unbiased reference point for the Commission to use to evaluate the other ROE evidence. Chriss Direct at 13 (Tr. vol.15:1017). This is in line with a recent determination by the Minnesota Public Utilities Commission:

The Commission also notes that the national average return of vertically integrated utilities since 2018 is 9.66%. And, while the decisions of other jurisdictions are not binding and have limited persuasive value because of the fact-intensive nature of cost-of-equity decision-making, they do provide a check, of sorts, on reasonableness.³

Dr. Morin agreed with Mr. Chriss that average authorized ROEs can serve as a general gauge of reasonableness for witness ROE recommendations. Tr. vol. 7: 384-385. What unbiased yardsticks, then, are available for the Commission to evaluate the ROE proposals in this docket? First, the average authorized return over the past five years for electric utilities across the country is 9.49 percent. Chriss Direct, page 11 line 12 (Tr. vol. 15:1015) and Chriss Exhibit 2. Second, the average ROE for vertically integrated electric utilities over that period is 9.62 percent. Id. at 11-12. Third, the Commission itself has approved ROEs for electric utilities in the past three years that have averaged 9.67 percent. Id. at 9-10. Finally, DEC's sister companies (in South Carolina and Ohio) have been awarded ROEs averaging 9.55 percent in the past year. Id. at 10-11. Table 1 below summarizes the yardsticks the Commission could use as reference points of investor expectations.

Table 1 – Average ROE Yardsticks

	ROE
Electric utilities from 2019 – 2023	9.49
Vertically integrated electric utilities from 2019 – 2023	9.61
NC electric utilities past 3 years	9.67
DEC sister companies past year	9.55
Average of yardstick range of 9.48 to 9.67	9.59

³ In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota, MPUC Docket E-015/GR 21-335 (Feb. 28, 2023).

As seen clearly in Figure 1 of Chriss Direct, p.12, DEC's proposed ROE of 10.4 percent would be one of the highest ROEs in the country during the past five years. Reasonable investors would not expect such a high return for DEC, nor such a sharp increase from its current approved ROE. Instead, they would expect an ROE in the range of 9.49 percent to 9.67 percent, with the midpoint of these expectations being 9.59 percent.

This yardstick range is much more in line with the ROE recommendations of Staff witness Walters of 9.35 percent and DOE witness Reno of 9.20 percent, particularly as both of these witnesses lowered their pinpoint ROE recommendations because of risk-reducing measures DEC has in place or is proposing.

Dr. Morin suggested that despite these yardsticks indicating a lower ROE, ROEs have averaged 9.73 percent in 2023 and "have trended higher in more recent decisions." Morin Rebuttal, p.12. However, he provided no evidence for this allegation of higher trends in his direct testimony filed August 4th nor at the hearing when he appeared on August 28th and 29th. To the contrary, the Minnesota Public Utilities Commission set the ROE for Northern States Power Company of Minnesota (known as Xcel Minnesota) at 9.25 percent on July 17, 2023. CG Morin Direct and Rebuttal Cross Ex. 2 (page i). Xcel is one of Dr. Morin's proxy companies. Tr. vol. 7:388. Like DEC, Xcel Minnesota also has nuclear and coal assets while it transitions quickly to a more renewable-based generation portfolio. *Id.* Further, the July 17th Xcel Minnesota decision (affirmed just last week – see n.4 infra) was an MYRP rate case, like this current DEC MYRP case. CG Morin Direct and Rebuttal Cross Ex. 2 (page 1). Obviously, such a 9.25 percent decision would drive the average authorized ROE trendline lower, not higher as Dr. Morin testified.⁴

⁴ Dr. Morin tried to distinguish the Xcel Minnesota decision of July 2023 by stating that the Xcel case began in 2021. Tr. vol.8:51. But as is evident from the Xcel order (page 83), the utility updated its ROE analysis in

Further, the first reason Dr. Morin gave for why the Commission should reject the ROE recommendations of witnesses Walters and LaConte was because those recommendations of 9.55 percent and 9.40 percent (with no reduction for lower MYRP risk) both lie “outside the zone of currently authorized ROEs for vertically integrated electric utilities in the United States.” Morin Rebuttal, p.12, line 11; p.43, line 9. But when asked to define that zone, Dr. Morin was unable to do so at the hearing. Tr. vol. 7:386. But surely, an ROE of 9.25 percent for vertically integrated Xcel Minnesota would not only drive the recent ROE trendline downward, it would also set an edge for any ROE zone of reasonableness that is significantly below either 9.55 percent (Walters) or 9.40 percent (LaConte). And in any event, Dr. Morin agreed that these ROE recommendations of both witness Walters and witness LaConte were significantly closer to the 9.73 percent average ROE authorized this year than Dr. Morin’s 10.4 percent recommendation. Tr. vol. 7:389-390.

Finally, these yardsticks (all of which indicate an ROE below 9.8 is reasonable) also demonstrate why there is no basis for setting an ROE for DEC that is higher than the 9.8 percent the Commission recently set for DEP.

For all these reasons, the Commission should approve an ROE that is more in line with investor expectations than DEC’s proposed ROE and certainly, no higher than 9.8 percent.

September 2022 and provided additional testimony on the subject at the December 2022 hearings (page 2). Further, the Minnesota commission upheld its decision just this past week despite even more recent ROE data provided by Xcel. See Order Denying Petition For Reconsideration (MPUC Docket E-002/GR-21-630), Oct. 6, 2023.

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 11th day of October, 2023.

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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 by electronic delivery, hand delivery or via U.S. mail.

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