

172 FERC ¶ 61,026
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

Duke Energy Carolinas, LLC

Docket No. ER20-1762-000

ORDER DISMISSING REQUEST FOR WAIVER

(Issued July 16, 2020)

1. On May 1, 2020, Duke Energy Carolinas, LLC (DEC) submitted a filing (Waiver Request) requesting waiver of applicable provisions of its now-cancelled formula rate power sales agreement with the Town of Prosperity, South Carolina (Prosperity) that was designated as DEC Rate Schedule No. 333 (Rate Schedule 333).¹ We dismiss the Waiver Request, as discussed below.

I. Background

2. DEC and Prosperity entered into Rate Schedule 333, effective January 1, 2018. Rate Schedule 333 provided rate discounts to Prosperity as a mechanism for DEC to return to Prosperity excess accumulated deferred income tax associated with certain reductions in the North Carolina corporate income tax rate.² Rate Schedule 333 provided that the rate discounts would need to be revised following DEC's North Carolina state tax return filing in the fourth quarter of 2019. After DEC filed its North Carolina state tax return, it determined that the rate discount for 2019 listed in Schedule 1B of Rate Schedule 333 should be changed from \$2.42/kW-year to \$2.53/kW-year. However, Rate

¹ See Duke Energy Carolinas, LLC, Tariffs, Rate Schedules and Service Agreements, Rate Schedule No. 333, Power Purchase Agreement – Town of Prosperity, Schedule 1B, Rate Discounts for North Carolina Excess Deferred Taxes (6.0.0). This rate schedule was cancelled, effective January 1, 2020, via a delegated letter order. *Duke Energy Carolinas, LLC*, Docket No. ER20-212-000 (Dec. 18, 2019) (delegated order).

² Waiver Request at 2 n.2 (citing *Duke Energy Carolinas, LLC*, Docket No. ER19-1722-000 (June 10, 2019) (delegated order)).

Schedule 333 was cancelled, effective January 1, 2020, because Prosperity became a load serving entity served by Central Electric Power Cooperative, Inc.³

II. DEC's Waiver Request

3. DEC states that it seeks this waiver of the now-cancelled agreement to allow it to update rate discounts that were included in Rate Schedule 333 now that the North Carolina corporate income tax rates have changed. DEC seeks waiver to ensure that Prosperity receives the benefit of the larger rate discounts for 2019, even though Rate Schedule 333 has been cancelled. DEC states that granting this waiver will permit DEC to provide Prosperity the benefit of the updated rate discounts without the need to revise and re-execute the cancelled Rate Schedule 333. DEC also states that it is authorized to state that Prosperity supports this Waiver Request.⁴

4. First, DEC argues that it is acting in good faith to avoid imposing additional administrative burdens on Prosperity to re-execute and re-file an amended version of the now-cancelled Rate Schedule 333 to reflect the rate discount update. Second, DEC asserts that the Waiver Request is limited in scope because its purpose is solely to address the update to Prosperity's rate discounts for 2019 and the unique situation in which Rate Schedule 333 was cancelled before the rate discount updates were determined. Third, DEC contends that the Waiver Request addresses a concrete problem in that, by granting this waiver, the Commission will permit DEC to factor in a rate discount of \$2.53/kW-year for 2019 in setting rates for Prosperity. Fourth, DEC states that granting the waiver will not have undesirable consequences, such as harming third parties, because the Waiver Request is unique to Rate Schedule 333 and is intended to provide Prosperity the benefit of the updated rate discounts for 2019.⁵

III. Notice of Filing and Responsive Pleadings

5. Notice of the filing was published in the *Federal Register*, 85 Fed. Reg. 27,410 (May 8, 2020), with interventions and protests due on or before May 22, 2020. None was filed.

³ *Id.* at 2 (citing *Duke Energy Carolinas, LLC*, Docket No. ER20-212-000 (Dec. 18, 2019) (delegated order)).

⁴ *Id.* at 1.

⁵ *Id.* at 3-4.

IV. Discussion

6. We dismiss DEC's request for waiver of provisions of Rate Schedule 333 because we find that DEC's Waiver Request is an inappropriate vehicle for refunding rate discounts to Prosperity. The rate schedule is now cancelled. As such, the applicable rate schedule is not on file with the Commission, and we, therefore, cannot grant DEC's request to waive it.

The Commission orders:

DEC's Waiver Request is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.