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July 20, 2020

**VIA ELECTRONIC FILING**
The Honorable Jocelyn G. Boyd
Chief Clerk/ Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

**Re: Randy and Cheryl Gilchrist v. Duke Energy Carolinas, LLC**
**Docket Number: 2020-147-E**

Dear Ms. Boyd:

Pursuant to S.C. Code Ann. § 58-27-1990, S.C. Code Ann. Regs 103-829 and 103-352, and applicable South Carolina law, Duke Energy Carolinas, LLC ("DEC" or the "Company") hereby replies to Complainants' response to DEC's Motion to Dismiss filed in the above-referenced proceeding on July 15, 2020 ("Response").

The Gilchrists filed a complaint in the above-referenced proceeding, which was docketed on June 8, 2020, expressing their objection to the installation of a smart meter. As explained in the Company's Motion to Dismiss, the Complaint fails to adequately allege any violation of a Commission-jurisdictional statute or regulation, and a hearing in this case is not necessary for the protection of substantial rights. Therefore, this matter should be dismissed.

In their Response, Complainants rely on two examples in support of their objections to installation of a smart meter: (1) insurance companies offering monitoring devices that collect data on a driver's activities and (2) law enforcement placing monitoring devices on a home or car. These examples are irrelevant to the Company's use of electric meters to measure its customers' electricity consumption.

Complainants' reference to optional monitoring devices offered by insurance companies does not apply in this case. Complainants have been provided multiple opportunities to elect to have a manually read meter installed and have failed to avail themselves of that option. As previously explained, there are additional costs to providing manual service as meter readers must physically visit the customer's premises. However, to the extent Complainants assert the existence

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of a medical condition that could be exacerbated by a smart meter, the associated fees may be waived pursuant to the terms of the MRM rider.

Complainants' assertion that the installation of smart meters is analogous to law enforcement use of monitoring devices is similarly flawed. First, customer electricity usage information is a business record necessary to determine how much the utility should bill the customer for use of the service. As previously explained, if the customer has not opted for a manually read meter and instead uses a smart meter, interval data is transmitted to the Company in order to enable certain customer benefits (e.g., giving customers more information about how they use energy, permitting customers to stay better informed during outages, control due dates, etc.). These customer benefits and the need to bill for electricity consumption are wholly divorced from the context and purpose of law enforcement investigations. Second, any constitutional claim concerning privacy rights may only be asserted against state actors, which the Company is not. The Commission recently addressed a similar complaint and concluded:

> Duke is not a state actor, and Complainant therefore has no constitutional right to privacy that is enforceable against Duke. In *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974), the Supreme Court of the United States rejected the argument now advanced by Complainant. In that case, the Court held that a Pennsylvania electric utility with the exclusive right to provide power to its service territory was not a state actor.

Order No. 2019-686, Docket No. 2019-230-E (Sept. 25, 2019). The Company is a private actor, and no state action is conducted in the Company's installation and use of smart meters. *See also Benlian v. PECO Energy Corp.*, No. CV 15-2128, 2016 WL 3951664, at *7 (E.D. Pa. July 20, 2016) ("The installation of smart meters, and the provision of electricity to customers such as Benlian, is a business activity, and not a state function or a state action.").

As previously explained in the Company's Motion to Dismiss, the customer does not have absolute choice as to the meter employed by the utility to measure its customers' electricity. This issue was recently addressed in a Commission order, which provides as follows:

> Commission Regulation 103-320 provides that meters shall be furnished by the utility. There is no provision in the applicable laws and regulations requiring utilities to use meters chosen by customers. . . . Duke's requirement that [a customer] choose between permitting the Company to install a smart meter and paying the fees to install a manually read meter does not violate any contract or other rights.

Order No. 2020-342 at 8, Docket No. 2019-331-E (June 30, 2020).

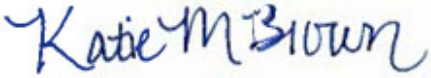
Finally, Complainants reassert that the Company trespassed on their property, and that the Commission lacks authority to permit a utility to carry out its necessary functions, including, for example, replacing the equipment it uses to measure service usage. To the contrary, South Carolina state law vests the Commission

> with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State.

S.C. Code Ann. § 58-3-140(A). Pursuant to this broad regulatory authority, the Commission has promulgated regulations 103-320, which is discussed above, and 103-344, which provides electric utilities with the right of access to premises supplied with electric service "for the purpose of reading meters, maintenance, repair, and for any other purpose which is proper and necessary in the conduct of the electrical utility's business." It is indisputable that the replacement of an analog meter that is no longer supported with either a smart meter or a manually read meter—if elected by the customer—is well within the scope of these grants of authority.

DEC restates its request that the Complaint be dismissed pursuant to S.C. Code Ann. § 58-27-1990, because the Complaint fails to allege any violation of a Commission-jurisdictional statute or regulation, and a hearing in this case is not necessary for the protection of substantial rights.

Sincerely,



Katie M. Brown

Enclosure

cc: Randy and Cheryl Gilchrist (via U.S. Mail)
Alexander Knowles, ORS (via email)
Carri Grube Lybarker, SC Department of Consumer Affairs (via email)
Frank R. Ellerbe, III (via email)
Roger P. Hall, SC Department of Consumer Affairs (via email)
Samuel J. Wellborn (via email)

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**BEFORE**

**THE PUBLIC SERVICE COMMISSION**

**OF SOUTH CAROLINA**

**DOCKET NO. 2020-147-E**

| | | |
|---|---|---|
| Randy and Cheryl Gilchrist, | ) | |
| | ) | |
| Complainant/Petitioner, | ) | **CERTIFICATE OF SERVICE** |
| | ) | |
| v. | ) | |
| | ) | |
| Duke Energy Carolinas, LLC, | ) | |
| | ) | |
| Defendant/Respondent. | ) | |

The undersigned, Samuel J. Wellborn, attorney at Robinson Gray Stepp & Laffitte, LLC, does hereby certify that he has served the persons listed below with a copy of the Reply to Complainants' Response behalf of Duke Energy Carolinas, LLC in the above-captioned proceedings via electronic mail or via U.S. Mail, with proper postage affixed thereto, at the addresses listed below on July 20, 2020.

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Dated this 20th day of July, 2020.

Samuel J. Wellborn