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March 3, 2017

VIA ELECTRONIC FILING

Ms. Jocelyn Boyd
Chief Clerk & Administrator
Public Service Commission of South Carolina
Synergy Business Park, Saluda Building
101 Executive Center Drive, Suite 100
Columbia, SC 29210

Re: McCutcheon v. Duke Energy Carolinas, LLC
Docket No. 2017-32-E

Dear Ms. Boyd:

Enclosed for filing please find Duke Energy Carolinas, LLC's Answer to Complaint in the referenced docket. A copy of the Answer is being served on the parties of record by electronic mail. Should you have any questions, please contact me.

Yours truly,

Frank R. Ellerbe, III

FRE:tch

Enclosure

cc w/enc: Alexander G. Shissias, Esquire (via email)
John J. Fantry Jr., Esquire (via email)
Jeffrey M. Nelson, Chief Counsel, Director-Legal Services (via email)
Heather Shirley Smith, Deputy General Counsel (via email)
Rebecca J. Dulin, Senior Counsel (via email)
Kim H. Smith, Regulatory Affairs (via email)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
Docket No. 2017-32-E

In Re:	)	
	)	
Tommy McCutcheon,	)	
	)	
Complainant/Petitioner,	)	**DUKE ENERGY CAROLINAS, LLC'S ANSWER TO COMPLAINT**
	)	
v.	)	
	)	
Duke Energy Carolinas, LLC	)	
	)	
Defendant/Respondent.	)	
	)	

Pursuant to the Notice issued by the Public Service Commission of South Carolina ("Commission") on February 2, 2017, and 26 S.C. Regs. 103-826, and other applicable South Carolina law, Duke Energy Carolinas, LLC ("DEC") answering the Complaint of Tommy McCutcheon ("McCutcheon") responds as follows:

FOR A FIRST DEFENSE

1. DEC denies each and every allegation of the Complaint except as hereinafter admitted.

FOR A SECOND DEFENSE

2. Answering the allegations of the complaint stated under the heading "Complainant and Defendant," DEC would show that it is a North Carolina limited liability company that provides electric service to McCutcheon at a drive-in theater located on Highway 25 South in Greenwood.

3. Answering the allegations of numbered paragraph 1, DEC is informed and believes that McCutcheon began operating the theater in 2008.

4. Answering the allegations of paragraph 2, DEC admits that Mr. McCutcheon established service at this location on March 22, 2008.

5. Answering the allegations of paragraphs 3 and 4 DEC admits that McCutcheon was on the Greenwood Rate through June 2015 and that all bills were paid by McCutcheon on a timely basis.

6. Answering the allegations of paragraph 5, DEC admits only that McCutcheon used the Property as a drive-in movie theater and that it had been used as a drive-in movie theater by a prior owner.

7. The allegations of paragraph 6 are denied.

8. Answering the allegations of paragraph 7, DEC has no knowledge of McCutcheon's intent in purchasing equipment to use in its drive-in theater.

9. The allegations of paragraph 8 are denied as stated. Further answering the allegations of paragraph 8, DEC would show that the two "service interruptions" in June 2015 occurred when McCutcheon's load was too large for the thermal capacity of the lines connecting to McCutcheon's premise and that on both occasions service was interrupted because the service lines became so overheated that their insulation melted causing a fuse in the transformer to trip.

10. Answering the allegations of paragraphs 9, 10 and 11 of the Complaint, DEC would show that, after the two outage incidents, representatives of the Company, Tommy Fowler and Theo Lane, met with McCutcheon and informed him that the facilities connecting the drive-in to DEC needed to be upgraded to safely handle the load needed to serve the premise, that McCutcheon objected to the upgrade because it would mean that he would no longer qualify for the Greenwood rate, and that Fowler and Lane informed McCutcheon that, without an upgrade, service would not be provided.

11. Answering the allegations of paragraph 12, DEC is aware of calls by McCutcheon to the Office of Regulatory Staff and to the Commission but no formal complaint was ever filed and DEC never received notification from the Office of Regulatory Staff or the Commission that a formal complaint had been filed.

12. Answering the allegations of paragraph 13, DEC acknowledges that it terminated service to the McCutcheon drive-in on June 17, 2015 because of the safety concerns that its representatives had explained to McCutcheon on several occasions. DEC denies that such termination was done in violation of S.C. Code Ann. Regulation 103-345.

13. Answering the allegations of paragraph 14, DEC states that it gave McCutcheon sufficient notice of when it planned to disconnect service that he could have prevented any food from being spoiled.

14. Answering the allegations of paragraphs 15, 16 and 17, DEC denies that Fowler and Lane discussed with McCutcheon proceeding with the ORS complaint, but would show that Fowler and Lane explained that service could and would only be reestablished if the connection was upgraded so that service could be provided safely, and that such upgrade would result in McCutcheon losing the Greenwood rate. As a result of this discussion, McCutcheon voluntarily and willingly agreed to the upgrade as evidenced by the agreement that he signed on June 17, 2015. DEC denies that McCutcheon signed the agreement under duress and denies that its employees did anything improper. DEC admits that following execution of the agreement, service was upgraded and restored and that McCutcheon has been paying pursuant to DEC's standard rate which is higher than the Greenwood rate.

15. The allegations of paragraph 18 are denied.

16. Answering the allegations of paragraph 19, DEC admits that Fowler and Lane were acting within the scope of their employment in their dealings with McCutcheon and denies that they acted improperly.

17. The allegations of the first paragraph 20 are legal assertions as to which no responsive pleading is required. DEC denies that McCutcheon was acting under duress as that term is defined under South Carolina law.

18. Answering the allegations of the second paragraph 20, DEC lacks sufficient information to know what McCutcheon is aware of concerning actions taken by the Office of Regulatory Staff.

19. Answering the allegations of paragraphs 21 and 22, DEC is aware that McCutcheon has filed an affidavit of James R. Calhoun, but DEC lacks information sufficient to determine whether Calhoun has the expertise to determine the cause of the electrical issues experienced by McCutcheon's drive-in and would show that his conclusion as stated in his affidavit are wrong. Further, DEC denies the conclusions stated in paragraph 22, and would show that the electrical outages were caused by service lines that were overloaded by the electrical demand of the drive-in.

20. DEC denies the allegations of paragraphs 23, 24, 25 and 26.

21. The allegations of paragraph 27 are legal conclusions as to which no responsive pleading is required. DEC denies that there is any basis for the Commission to make the findings described in S.C. Code Ann. §58-27-960.

22. Answering the allegations of paragraph 28, DEC admits that the Commission has jurisdiction over the matters alleged in McCutcheon's complaint.

23. No response is required to paragraph 29.

FOR A THIRD DEFENSE - WAIVER

24. McCutcheon's complaint is barred by the June 17, 2015 agreement by which he voluntarily and willingly agreed to an upgrade and relinquished any claim to remain on the Greenwood Rate.

FOR A FOURTH DEFENSE - ESTOPPEL

25. McCutcheon is estopped from asserting the claims in his complaint by his agreement to an upgrade in facilities while knowing that the upgrade would disqualify him from the Greenwood Rate.

WHEREFORE, Duke Energy Carolinas, having fully set forth its Answer, moves the Commission to deny the Complaint with prejudice, and requests such other relief as the Commission deems just and proper.

Dated this 3rd day of March, 2017.

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and

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Attorneys for Duke Energy Carolinas, LLC

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

Docket No. 2017-32-E

In Re:	)	
	)	
Tommy McCutcheon,	)	
	)	
Complainant/Petitioner,	)	**CERTIFICATE OF SERVICE**
	)	
v.	)	
	)	
Duke Energy Carolinas, LLC	)	
	)	
Defendant/Respondent.	)	
	)	

This is to certify that I, Toni C. Hawkins, a paralegal with the law firm of Sowell Gray Robinson Stepp & Laffitte, LLC, have this day caused to be served upon the person(s) named below Duke Energy Carolinas, LLC's Answer to the Complaint in the foregoing matter by electronic mail to the following addresses:

Alexander G. Shissias, Esquire
alex@shissiaslawfirm.com

Jeffrey M. Nelson, Esquire
jnelson@regstaff.sc.gov

John J. Fantry, Jr., Esquire
john@fantrylaw.com

Dated this 3rd day of March, 2017.

Toni C. Hawkins