

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2017-32-E - ORDER NO. 2018-101

FEBRUARY 13, 2018

RECEIVED

MAR 15 2018

SC Court of Appeals

IN RE: 3109 Hwy. 25 S., L.L.C. d/b/a 25 Drive-In)	ORDER DENYING
and Tommy McCutcheon,)	REQUEST FOR
Complainant/Petitioner v. Duke Energy)	RECONSIDERATION OR
Carolinas, LLC, Defendant/Respondent)	REHEARING

This matter comes before the Public Service Commission of South Carolina (“Commission”) pursuant to S.C. Code Ann. Section 58-27-2150 and 10 S.C. Code Ann. Regs. 103-825(A)(4), and applicable South Carolina law. Respondent Duke Energy Carolinas, LLC (“DEC” or the “Company”) petitioned the Public Service Commission of South Carolina (“Commission”) to rehear or reconsider its grant of relief in Order No. 2017-774. A hearing was held in this matter on April 5, 2017, and April 19, 2017, and the Commission served its Order on DEC on December 21, 2017. This Petition was filed January 2, 2018, with the Complainant responding in opposition to the Petition on January 5, 2018.

The Petition states that the factual findings of the Commission in Order No. 2017-774 do not provide a basis for the relief granted, but that is not the case. The Petition mischaracterizes our Order as requiring DEC to place the Complainant back on the Greenwood Rate “unless and until the demand of the Complainant’s business exceeds the capacity of the facilities that were replaced in June 2015.” However, the Commission Order requires that the Complainant be given access to the Greenwood Rate as long as he stays

within the original limitations of the equipment that was installed to serve the premises, which was in place at the time of Act 1293 of 1966, and the subsequent purchase of Greenwood County Electric Power Commission by Duke (at the time, Duke Power Company). We are limiting, in effect, the ability of the Complainant to exceed the facility capacity equal to the facility capacity available over 50 years ago at the site, unless the Complainant migrates off the Greenwood Rate. As a practical matter, this may be more restrictive than the previously unmonitored limitation, which used the electrical delivery facility's physical limits as its only load restriction.

The Commission's ruling, which is specific to the facts of this case, does not unjustly enrich the Complainant, nor unduly penalize the Respondent. It merely affords an active participant on the Greenwood Rate an opportunity to comply with the facility limitations that he had been unaware might have been strained. The Commission did not have testimony to support the position that the demand load was the same after installation of the new facilities as before. It is questionable whether the Commission could have been presented with credible testimony to that effect, since the demand load was not being measured or reported.

Additionally, Order No. 2017-774 is neither inconsistent with the *Payne v. Duke Power Co.*, 304 S.C. 447, 405 S.E.2d 399 (1991) Supreme Court Opinion, nor does it go further than to clarify, as applied to the facts and circumstances of this case, the Commission's own rulings from 1966 forward. DEC's Petition characterizes Act 1293, *Payne*, and prior Commission rulings as requiring that a change in a customer's needs that requires a change in the facilities used by the Company to provide service to that customer

means the customer is no longer eligible for the Greenwood Rate. We note that Act 1293 does not enumerate what constitutes a change in character of a connection, nor how such a change may originate. The Supreme Court's decision in *Payne* does not provide an exhaustive list of what is and is not considered a "change in character" of the connection. However, to the extent that a customer changes his service from single- to three-phase, or from a residential to commercial operation (or likewise the reverse of each), then the Court has spoken to the change of applicability of the Greenwood Rate.¹ We decline to address an expansion, contraction, or modification of previously established principles and interpretations of what constitutes a change in the character (or type) of the connection in this instance. Here, the Commission found an inadequacy of information available to make a determination as to whether such a change in character occurred. Such a finding is not a departure from prior interpretation of Act 1293 nor does it differ from the longstanding prior practice as recognized by the Court and the Commission.

The Commission agrees, as DEC points out, that Act 1293 does not provide an opportunity to re-qualify for the Greenwood Rate.² Nor has the Commission provided such an opportunity. Rather, the Commission simply concluded that inadequate information was available to determine that a change in character was necessitated in this case due solely to the actions of the Complainant.

¹ "[W]e agree with the trial court that a change in either the character of the connection (e.g. from single to three phase) or use of the premises (e.g. from **402 residential to commercial) constitutes a new connection effectuating a transfer to Duke rates." *Payne v. Duke Power Co.*, 304 S.C. 447 (1991)

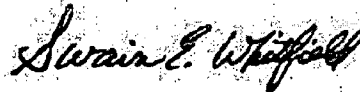
² "[The] PSC, the agency charged with administering Act 1293, has, without exception, construed it as establishing a closed rate schedule, that is, one precluding retransfer of customers." *Payne v. Duke Power Co.*, 304 S.C. 447 (1991)

The Commission has struck an appropriate balance between the needs of the utility to provide safe, reliable, and economic power, and the concerns of the consumer to make informed and self-determinative actions to exercise its rights under its approved electric tariff.

For these reasons the Commission denies the Petition for Rehearing or Reconsideration.

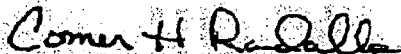
This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Swain E. Whitfield, Chairman

ATTEST:



Comer H. Randall, Vice Chairman