BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-2, SUB 931
DOCKET NO. E-7, SUB 1032

DOCKET NO. E-2, SUB 931 In the Matter of: Application of Duke Energy Progress, LLC, For Approval of Demand-Side Management and Energy Efficiency Cost Recovery Rider Pursuant to N.C.G.S. § 62-133.9 and Commission Rule R8-69 DOCKET NO. E-7, SUB 1032 In the Matter of: Application of Duke Energy Carolinas, LLC For Approval of New Cost Recovery Mechanism and Portfolio of Demand-Side Management and Energy Efficiency Programs	)	JOINT REPLY COMMENTS OF NATURAL RESOURCES DEFENSE COUNCIL, SOUTHERN ALLIANCE FOR CLEAN ENERGY, SIERRA CLUB, SOUTH CAROLINA COASTAL CONSERVATION LEAGUE AND NORTH CAROLINA SUSTAINABLE ENERGY ASSOCIATION

Pursuant to the Commission's February 6, 2019 Order Requesting Comments, as extended by subsequent orders, the Natural Resources Defense Council, Southern Alliance for Clean Energy, the Sierra Club and the South Carolina Coastal Conservation League, together with the North Carolina Sustainable Energy Association (collectively, "Commenters")[1] submit the following joint reply comments on Duke Energy Carolinas, LLC's ("DEC") and Duke Energy Progress, LLC's ("DEP") (collectively, "the Companies") demand-side management and energy efficiency ("DSM/EE") cost recovery and incentive mechanisms (the "Mechanisms").

[1] The Natural Resources Defense Council, Southern Alliance for Clean Energy and the North Carolina Sustainable Energy Association are parties in both Docket No. E-2, Sub 931 and Docket No. E-7, Sub 1032. The Sierra Club and the South Carolina Coastal Conservation League are parties in Docket No. E-7, Sub 1032, only.

INTRODUCTION

Commenters support the proposed revisions to the Mechanisms filed today by Commenters, DEC, DEP, the Public Staff and the Attorney General's Office. Commenters offer these reply comments on certain related issues for the Commission's consideration, summarized as follows:

- The Commission should consider requiring a change in the discount rate used in cost-effectiveness testing of DSM/EE measures and programs from the utility Weighted Average Cost of Capital ("WACC") to a "low-risk" discount rate.

- The Commission should revisit whether customers who opt out of either Company's DSM/EE programs and rider should be required to report to DEC or DEP their stated and quantifiable goals for the DSM or EE measures they implement at their own expense, as well as the demand and/or energy savings from those measures.

- The Commission should request a report from the Governor's Office on the results of the Clean Energy Plan utility business model reform stakeholder process, and use the report to inform its own investigation into the use of decoupling.

- The Commission should request a copy of the DEQ report on carbon-reduction policy options, and use the report to inform its own investigation into whether an Energy Efficiency Resource Standard should be adopted in North Carolina.

A. The Commission should consider whether to require that the Companies use a "low-risk" discount rate in testing the cost-effectiveness of DSM/EE programs.

In our initial comments, Commenters recommended that the Commission should revise the Mechanisms to switch from the Total Resource Cost ("TRC") test to the Utility Cost Test ("UCT") as the primary test for cost-effectiveness testing, and that the switch to the UCT should be coupled with a shift of the discount rate from each Company's weighted average cost of capital ("WACC") to a low-risk discount rate (in the range of 0% to 3%). We made this recommendation with regard to the discount rate for several reasons. Use of the utility WACC as a discount rate creates an inherent bias towards the objectives of the utility over that of the consumer; reflects a shorter rate of time preference than that of the utility's customers or regulators; and does not reflect the cost of capital for DSM/EE resources, which is more akin to expenses.

While the proposed revisions to the Mechanisms include the switch to the UCT, they are silent on the discount rate to be used when conducting the test. Commenters recommend that the Commission consider whether to require the use of a discount rate that better aligns with customer objectives, reflects the time preference of customers and the Commission, and reflects the "cost of capital" for DSM/EE investments. The National Standard Practice Manual ("NSPM") offers a step-wise framework to assist regulatory bodies and jurisdictions in making the discount rate determination;[2] Commenters suggest that this framework would serve as a useful guide for the Commission in determining whether to require the use of a discount rate different from the utility's WACC.

B. The Commission should review whether a reporting requirement is necessary for customers who opt out of either Company's DSM/EE programs and rider.

North Carolina law allowing industrial customers to opt out DSM/EE programs, which also applies to large commercial customers via NCUC Rule R8-69(d)(1), requires a customer to notify its electric power supplier that

> at the industrial customer's own expense, the industrial customer has implemented at any time in the past or, *in accordance with stated, quantified goals for demand-side management and energy efficiency*, will implement alternative demand-side management and energy efficiency measures.

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[2] National Efficiency Screening Project, *National Standard Practice Manual for Assessing Cost-Effectiveness of Energy Efficiency Resources* (May 2017), available at https://nationalefficiencyscreening.org/national-standard-practice-manual/.

N.C. Gen. Stat. § 62-133.9(f) (emphasis added). In the rulemaking proceeding to implement Senate Bill 3, the Commission considered whether Rule R8-69 should require customers to make any kind of showing in order to opt out of utility DSM/EE programs, and decided that it should not.[3] As a result of this determination, NCUC Rule R8-69(d)(1) simply incorporates the language of the statute, requiring any industrial and large commercial customer wishing to opt out of DSM/EE programs and rider to notify its electric power supplier that "it has implemented or, *in accordance with stated, quantifiable goals*, will implement alternative demand-side management or energy efficiency measures." (Emphasis added.) In turn, the DEC and DEP opt-out notification forms simply parrot that language of the rule—they do not actually require customer to state and quantify any goals, let alone report the demand and/or energy savings from the measures they install.[4]

Over the decade since NCUC Rule R8-69 was promulgated, the rate of large non-residential customers opting out of the DEC and DEP DSM/EE programs and/or rider has remained persistently high. In 2018, 51% of DEC's North Carolina non-residential load opted out of the Company's energy-efficiency rider, and 55% of non-residential load opted out of DEP's energy-efficiency rider. The non-residential sector is energy-intensive and holds great potential for efficiency savings. On several occasions, the Commission has directed the Companies to take steps aimed at encouraging large customers to participate in their DSM/EE programs and rider. Although the Companies have worked to improve their non-residential program offerings and implemented other

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[3] Order Adopting Final Rules, Docket No. E-100, Sub 113 (Feb. 29, 2008) at 128-29.

[4] See Duke Energy Carolinas Energy Efficiency and Demand-Side Management Decision Form, available at https://www.duke-energy.com//_/media/pdfs/for-your-business/nc-ee-demand-side-management-decision-form.pdf; Duke Energy Progress opt-out notification form, available at https://www.duke-energy.com//_/media/pdfs/for-your-business/opt-out-letter-nc-fillable.pdf.

changes aimed at encouraging greater participation by large customers, these steps have not meaningfully reduced opt-outs. In light of the fact that opt-out customers receive the benefit of reduced system costs due to DSM/EE programs paid for by other customers, the Commission and the Companies have a right to understand what measures opt-out customers have implemented (or plan to implement) and what level of demand- and/or energy-reduction those measures are delivering (or will deliver).

The Commission should evaluate whether it should require the Companies' opt-out customers to report to DEC or DEP their stated and quantifiable goals for the DSM or EE measures they implement at their own expense, as well as the demand and/or energy savings from those measures. Questions the Commission may wish to consider include the following:

- Is a reporting requirement consistent with N.C. Gen. Stat. § 62-133.9(f)?
- If so, what information should customers be required to provide to the utility when notifying the utility of their decision to opt out?
- Is there some threshold level of DSM/EE goals and/or implementation that should be required to opt out?

C. The Commission should request a report from the Governor's Office on the results of the Clean Energy Plan utility business model reform stakeholder process, and use the report to inform its own investigation into the use of decoupling.

The revised Mechanisms proposed by Commenters continue to include provisions allowing for recovery of net lost revenues, and in accordance with their agreement on the overall Mechanisms, Commenters are not proposing a change to those provisions. Lost-revenue adjustment mechanisms ("LRAMs") are an inferior way to address the utility's inherent disincentive to pursue efficiency savings that will result in "lost" sales, however.

In its memo for the Attorney General's Office ("AGO"), Strategen pointed out that "Net Lost Revenues have been criticized by regulators and research bodies as being extremely complex." Strategen Memo at 11. Commenters agree that LRAMs can be cumbersome and difficult to administer. More fundamentally, with an LRAM, the utility's revenues remain linked to sales.

Revenue decoupling is an alternative way to remove the utility's disincentive to pursue efficiency savings. Decoupling involves adjusting rates upward or downward to allow a utility to recover—but not over- or under-recover—its authorized revenue requirement, despite fluctuations in retail sales due to utility DSM/EE programs or other factors.

Over a decade has passed since this Commission considered whether decoupling for electric utilities should be implemented in North Carolina. Senate Bill 3, enacted in 2007, required the Commission to "prepare an analysis of whether rate structures, policies, and measures, including decoupling, in place in other states and countries that promote a mix of generation involving renewable energy sources and demand reduction should be implemented in this State" and to submit the analysis to the Governor, Environmental Review Commission, and the Joint Legislative Utility Review Committee. In its report, the Commission determined that, having only issued its rules implementing Senate Bill 3 earlier that year, it was "premature to mandate new major changes to electric utility rate structures before it has been determined whether the incentives under Senate Bill 3 serve their intended purpose and are sufficient."[5] Accordingly, the Commission recommended that decoupling not be adopted at that time.

[5] Report of the North Carolina Utilities Commission to the Governor of North Carolina, the Environmental Review Commission and the Joint Legislative Utility Review Committee Regarding an Analysis of Rate

The time is right to revisit decoupling as a policy option to sever the link between sales and revenue and eliminate the disincentive to pursue efficiency. As the Commission is aware, the North Carolina Department of Environmental Quality ("DEQ") has recently developed a Clean Energy Plan ("CEP") to put the state on a path toward achievement of the greenhouse gas reduction goals in Governor Cooper's Executive Order 80.[6] One of the key recommendations in the CEP is for the Governor's Office to launch a stakeholder process to design policies that align regulatory incentives and processes with 21st Century public policy goals, customer expectations, utility needs, and technology innovation (generally, "utility business model reform"). The CEP recommends that this group address several policies, including revenue decoupling. As explained in the CEP, "[t]hrough this process, stakeholders can tackle pressing issues by identifying shared principles and priority action areas and then working together to develop specific policy recommendations for delivery to the NC General Assembly, NC Utilities Commission, and other bodies, as appropriate."[7] The CEP further recommends that, after this process has concluded, the Commission "[r]equire utilities to design pilots or other phased approaches to testing regulatory mechanisms that result from investigatory process on utility business model reform."[8]

Commenters recommend that the Commission request a report from the Governor's Office on the results of the utility business model reform stakeholder process, and use the report to inform its own investigation into the use of decoupling to eliminate

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Structures, Policies and Measures to Promote Renewable Energy Generation and Demand Reduction in North Carolina (Sept. 2, 2008) at 46, https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=3ab9a622-dab8-4f0b-b013-b7f9b99b0ff1.

[6] North Carolina Clean Energy Plan: Transitioning to a 21st Century Electric System (October 2019), available at https://files.nc.gov/ncdeq/climate-change/clean-energy-plan/NC_Clean_Energy_Plan_OCT_2019_.pdf (hereinafter "CEP").

[7] Id. at 67.

[8] Id. at 69.

the disincentive to pursue DSM/EE savings. As contemplated in the CEP, this investigation should include a requirement that utilities design pilots or other phased approaches to testing the use of decoupling.

D. The Commission should request a copy of the DEQ report on carbon-reduction policy options, and use the report to inform its own investigation into whether an Energy Efficiency Resource Standard should be adopted in North Carolina.

In its Order Requesting Comments, the Commission asked parties to address whether overall DSM/EE program portfolio performance targets should be adopted. In our Initial Comments, Commenters recommended that the Commission initiate an investigation into whether an overall DSM/EE program portfolio performance target, in the form of an energy efficiency resource standard ("EERS"), should be adopted. The Attorney General's Office and its consultant, Strategen, recommended that the Commission set explicit savings targets for both DEC and DEP. To determine the level of the targets, the AGO suggested that the Commission may order that a potential study be conducted based on factors including market size as well as technical and economic potentials affecting the feasibility of DSM/EE measures. The AGO also identified methods other than a potential study which have been used by other states to set performance targets for DSM and EE programs. The Public Staff did not opine on a mandatory performance target such as an EERS.

Research has shown that an EERS is the single most effective policy to promote energy efficiency savings.[9] As Strategen put it, "Savings targets are a critical component of a holistic DSM/EE mechanism." Strategen Memo at 3.

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[9] Beyond Carrots for Utilities at 26 ("Of those states with shared net benefits performance incentives in place, seven of them have EERS and five do not. Those with EERS have twice the energy savings relative

The CEP requires DEQ to develop a report by December 31, 2020 that recommends policy designs that best advance the CEP's core values, such as GHG emission reductions, electricity affordability, and grid reliability.[10] A second recommendation in the CEP calls for establishment of an EERS by 2021.[11] To inform development of the report, DEQ has convened a working group composed of representatives from the utility and clean energy sectors to analyze several carbon-reduction and clean energy policy designs recommended in the CEP, including EERS.

Commenters recommend that the Commission request a copy of the DEQ report on policy options, and use the report to inform its own investigation into whether an EERS should be adopted in North Carolina. If the results of such an investigation support the adoption of an EERS, Commenters would support such a policy and recommend that the Commission, or the General Assembly, adopt an EERS.

CONCLUSION

Commenters make the following recommendations:

- The Commission should consider requiring a change in the discount rate used in cost-effectiveness testing of DSM/EE measures and programs from the utility Weighted Average Cost of Capital ("WACC") to a "low-risk" discount rate.

- The Commission should revisit whether customers who opt out of either Company's DSM/EE programs and rider should be required to report to DEC or DEP their stated and quantifiable goals for the DSM or EE measures they implement at their own expense, as well as the demand and/or energy savings from those measures.

- The Commission should request a report from the Governor's Office on the results of the Clean Energy Plan utility business model reform stakeholder process, and use the report to inform its own investigation into the use of decoupling.

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to sales, and more than double the electric energy efficiency budgets as a percentage of utility revenue than the states with no EERS or similar policy.").

[10] Recommendation A-1, CEP at 59.

[11] Id. at 130-31.

- The Commission should request a copy of the DEQ report on carbon-reduction policy options, and use the report to inform its own investigation into whether an Energy Efficiency Resource Standard should be adopted in North Carolina.

Respectfully submitted this 15th day of January, 2020.

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CERTIFICATE OF SERVICE

I certify that the parties of record on the service list have been served with the foregoing Joint Reply Comments of Natural Resources Defense Council, Southern Alliance for Clean Energy, Sierra Club, South Carolina Coastal Conservation League and North Carolina Sustainable Energy Association either by electronic mail or by deposit in the U.S. Mail, postage prepaid.

This the 15th day of January, 2020.

s/Gudrun Thompson