

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-2, SUB 1320

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Application of Duke Energy Progress, LLC )  
for Approval of Renewable Energy and )  
Energy Efficiency Portfolio Standard ) ORDER APPROVING REPS AND  
(REPS) Compliance Report and Cost ) REPS EMF RIDERS AND 2022  
Recovery Rider Pursuant to North Carolina ) REPS COMPLIANCE REPORT  
General Statute § 62-133.8 and )  
Commission Rule R8-67 )

HEARD: Tuesday, September 19, 2023, at 9:05 a.m. (Public Witness Hearing) in the  
Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury  
Street, Raleigh, North Carolina

BEFORE: Commissioner Daniel G. Clodfelter, Presiding; Chair Charlotte A. Mitchell,  
and Commissioners ToNola D. Brown-Bland, Kimberly W. Duffley, Jeffrey  
A. Hughes, Floyd B. McKissick, Jr., and Karen M. Kemerait

APPEARANCES:

For Duke Energy Progress, LLC:

Robert W. Kaylor, Law Office of Robert W. Kaylor, 353 East Six Forks Road,  
Suite 260, Raleigh, North Carolina 27609

For Carolina Industrial Group for Fair Utility Rates II:

Douglas D.C. Conant, Bailey & Dixon, LLP, 434 Fayetteville Street, Suite  
2500, Raleigh, North Carolina 27601

For Carolina Utility Customers Association, Inc.:

Amanda Hawkins, Brooks, Pierce, McLendon, Humphrey, & Leonard, LLP,  
1700 Wells Fargo Capitol Center, Raleigh, North Carolina 27601

For the Using and Consuming Public:

William E.H. Creech and William S.F. Freeman, Staff Attorneys, Public Staff of the North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699-4300

BY THE COMMISSION: On June 13, 2023, Duke Energy Progress, LLC (DEP or the Company) filed its 2022 Renewable Energy and Energy Portfolio Standard (REPS) Compliance Report<sup>1</sup> and an application seeking an adjustment to its North Carolina retail rates and charges pursuant to N.C. Gen. Stat. § 62-133.8(h) and Commission Rule R8-67, which require the Commission to conduct an annual proceeding for the purpose of determining whether a rider should be established to permit the recovery of the incremental costs incurred to comply with the requirements of the REPS statute, N.C.G.S. § 62-133.8(b), (d), (e), and (f), and to true up any under recovery or over recovery of compliance costs. DEP's application was accompanied by the testimony and exhibits of Kimberly A. Presson, Renewable Compliance Manager, and Veronica I. Williams, Rates and Regulatory Strategy Manager. In its application and pre-filed testimony, DEP sought approval of its proposed REPS Rider, which incorporated DEP's proposed adjustments to its North Carolina retail rates.

On June 30, 2023, the Commission issued an Order Scheduling Hearing, Requiring Filing of Testimony, Establishing Discovery Guidelines, and Requiring Public Notice (June 30, 2023 Order), in which the Commission set this matter for hearing; established deadlines for the submission of intervention petitions, intervenor testimony, and DEP rebuttal testimony; required the provision of appropriate public notice; and mandated compliance with certain discovery guidelines.

The Carolina Industrial Group for Fair Utility Rates II (CIGFUR) and the Carolina Utility Customers Association, Inc. (CUCA), filed separate petitions to intervene in this docket, and the interventions were allowed by the Commission. The intervention and participation by the Public Staff are recognized pursuant to N.C.G.S. § 62-15(d) and Commission Rule R1-19(e).

On August 24, 2023, DEP filed the supplemental testimonies and revised exhibits of witnesses Presson and Williams.

On August 29, 2023, the Public Staff filed the testimony of Jay B. Lucas, Manager of the Electric Section – Rates and Energy Services in the Energy Division of the Public

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<sup>1</sup> Pursuant to Session Law 2023-138, effective October 10, 2023, the Renewable Energy and Energy Efficiency Portfolio Standard (REPS) is now titled the Clean Energy and Energy Efficiency Portfolio Standard (CEPS). Because this filing uses both a historic test period and a prospective billing period, the Commission will refer to this matter as the REPS Rider, while noting that this will be titled the CEPS Rider in the upcoming 2024 calendar year filings.

Staff, and the affidavit of David L. Lentz, Public Utilities Regulatory Analyst in the Accounting Division of the Public Staff.

On September 11, 2023, DEP and the Public Staff filed a joint motion to excuse all witnesses from the evidentiary hearing.

On September 13, 2023, the Commission issued an order granting the motion to excuse both DEP and the Public Staff witnesses from the evidentiary hearing; canceling the expert witness hearing; receiving into evidence all prefiled testimony, exhibits, and affidavits from the DEP and Public Staff witnesses; and directing that proposed orders be filed by October 19, 2023.

On September 18, 2023, DEP filed the required affidavits of publication for the public notice in accordance with the Commission's June 30, 2023 Order.

On October 19, 2023, DEP and the Public Staff filed a joint proposed order.

Based upon the foregoing, including the testimony, exhibits, and affidavits of the parties' witnesses, the records in the North Carolina Renewable Energy Tracking System (NC-RETS), and the entire record in this proceeding, the Commission makes the following:

### **FINDINGS OF FACT**

1. DEP is a duly organized limited liability company existing under the laws of the State of North Carolina; is engaged in the business of developing, generating, transmitting, distributing, and selling electric power to the public in North Carolina; and is subject to the jurisdiction of the North Carolina Utilities Commission as a public utility. DEP is lawfully before this Commission based upon its application filed pursuant to N.C.G.S. § 62-133.8 and Commission Rule R8-67.

2. For calendar year 2022, DEP must generally supply an amount of at least 12.5% of its previous year's North Carolina retail electric sales (Total Requirement) by a combination of renewable energy and energy reductions due to the implementation of energy efficiency measures. Also in 2022, energy in the amount of at least 0.20% of the previous year's total electric power sold by DEP to its North Carolina retail customers must be supplied by solar energy resources (referred to as the solar set-aside requirement).

3. Beginning in 2012, N.C.G.S. § 62-133.8(e) and (f) required DEP and other North Carolina electric suppliers in the aggregate to procure a certain portion of their renewable energy requirements from electricity generated from swine and poultry waste, with the poultry waste requirement being based on each electric power supplier's respective pro-rata share derived from the ratio of its North Carolina retail (NC retail) sales as compared to total statewide NC retail sales. In its March 4, 2022 Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief (March

2022 Delay Order) in Docket No. E-100, Sub 113, the Commission set the 2022 and 2023 poultry waste set-aside requirements at 700,000 MWhs and 900,000 MWhs, respectively. On December 20, 2022, the Commission issued two additional orders in Docket No. E-100, Sub 113. The first was the Order Ruling on Motion for Clarification and Request for Declaratory Ruling Regarding Cost Cap, Modifying Swine and Poultry Waste Set-Aside Requirements, and Providing Other Relief (December 2022 Delay Order) in which the Commission: (1) established that the statewide aggregate poultry waste set-aside requirement for calendar years 2022 and 2023 would remain unchanged from its March 2022 Delay Order; and (2) set the 2022 swine waste set-aside requirement at 0.05% of total NC retail sales for electric public utilities, and 0.00% for electric membership corporations and municipalities. The second was its Order Establishing 2022, 2023, and 2024 Poultry Waste Set-Aside Requirement Allocation (2022 Poultry Order), which reset each electric power supplier and utility compliance aggregator's load ratio share of the annual aggregate poultry waste set-aside requirement.

4. DEP complied with the 2022 solar set-aside requirement by submitting for retirement 73,157 renewable energy certificates (RECs) procured or generated from solar electric facilities and metered solar thermal energy facilities. DEP also complied with the 2022 poultry waste set-aside requirement by submitting for retirement 193,343 poultry waste RECs. DEP complied with the 2022 swine waste set-aside requirement by submitting for retirement 18,290 swine waste RECs. Finally, DEP submitted for retirement 4,287,479 general requirement RECs, representing the Company's 2022 Total Requirement of 4,572,269 RECs net of the solar, swine waste, and poultry waste set-aside requirements detailed in the preceding paragraphs.

5. DEP met its total 2022 REPS obligations, except for those from which it has been relieved under the Commission's Orders in Docket No. E-100, Sub 113.

6. DEP expects to comply with its poultry waste set-aside requirement in 2023. Longer-term compliance is dependent on the performance of poultry waste-to-energy developer projects under current contracts, particularly achievement of projected delivery requirements and commercial operation milestones.

7. DEP will not be able to comply with the swine waste set-aside requirement for 2023 at the required 0.14% level. Compliance with the swine waste set-aside for 2024 and beyond is uncertain and will be difficult to meet as the swine waste obligation increases. DEP's near-term compliance capability will be determined by the levels of renewed production volumes from a facility that is currently offline, new facilities coming online within the time frames expected, and all facilities producing to their full contracted REC levels.

8. DEP's REC inventory available for future use properly includes RECs generated from net metering non-time-of-use demand (NMNTD) customers.

9. For purposes of DEP's annual rider pursuant to N.C.G.S. § 62-133.8(h), the test period for this proceeding is the 12-month period beginning April 1, 2022, and ending

March 31, 2023 (Test Period). The billing period for this proceeding is the 12-month period beginning December 1, 2023, and ending November 30, 2024 (Billing Period).

10. DEP's other incremental REPS compliance costs, its Solar Rebate Program costs, and its projected Solar + Storage Residential Pilot Program costs are recoverable under N.C.G.S. § 62-133.8(h)(1)(a), N.C.G.S. § 62-133.8(h)(1)(d), and by Commission order, respectively, and will be approved for this proceeding.

11. The research activities funded by DEP during the Test Period are recoverable under N.C.G.S. § 62-133.8(h)(1)(b) and within the statute's \$1 million annual limit.

12. N.C.G.S. § 62-133.8(h) authorizes an electric power supplier to recover the "incremental costs" of compliance with the REPS requirement through an annual REPS rider. The "incremental costs," as defined in N.C.G.S. § 62-133.8(h)(1), include the reasonable and prudent costs of compliance with REPS "that are in excess of the electric supplier's avoided costs other than those costs recovered pursuant to N.C.G.S. § 62-133.9." The term "avoided costs" includes both avoided energy costs and avoided capacity costs.

13. Under Commission Rule R8-67(e)(2), the total costs reasonably and prudently incurred during the Test Period to purchase unbundled RECs constitute incremental costs. The projected costs to purchase such RECs during the Billing Period constitute forecasted incremental costs.

14. DEP appropriately calculated its avoided costs and incremental REPS compliance costs for the Test Period and Billing Period.

15. For purposes of establishing the REPS experience modification factor (EMF) rider in this proceeding, DEP's incremental REPS compliance costs for the Test Period were \$39,231,337, and these costs were reasonably and prudently incurred. DEP's total incremental REPS costs estimated to be incurred for the Billing Period are \$39,202,979 and are reasonable and appropriate.

16. DEP's Test Period REPS expense under collections by customer class were \$707,941 for residential and \$26,181 for general service, with an overcollection including interest of \$2,726 for the industrial class. In addition, DEP credited to customers amounts received from REC suppliers during the Test Period related to contract amendments, penalties, and other conditions of the supply agreements. Contract-related receipts credited to each customer class are (\$1,802,958) for residential, (\$1,618,464) for general service, and (\$94,277) for industrial. Total net Test Period overcollections by customer class, including offsetting credit totals for contract-related receipts, are (\$1,095,016) for residential, (\$1,592,283) for general service, and (\$97,003) for industrial. All amounts exclude the North Carolina regulatory fee regulatory fee.

17. DEP's prospective Billing Period costs for use in this proceeding are \$20,249,084, \$17,966,196, and \$987,700, for the residential, general service, and industrial classes, respectively, excluding the regulatory fee.

18. The appropriate monthly REPS EMF riders to be credited to customer accounts during the upcoming Billing Period are \$0.07 for residential accounts, \$0.63 for general service accounts, and \$4.73 for industrial accounts, excluding the regulatory fee.

19. The appropriate prospective REPS riders per customer account, excluding the regulatory fee, to be collected during the Billing Period are \$1.29 for residential accounts, \$7.14 for general service accounts, and \$48.16 for industrial accounts.

20. The combined REPS and REPS EMF rider charges per customer account, excluding the regulatory fee, to be collected each month during the Billing Period are \$1.22 for residential accounts, \$6.51 for general service accounts, and \$43.43 for industrial accounts. Including the regulatory fee, the combined monthly REPS and REPS EMF rider charges per customer account to be collected during the Billing Period are \$1.22 for residential accounts, \$6.52 for general service accounts, and \$43.49 for industrial accounts.

21. DEP's REPS incremental cost rider, including the regulatory fee, to be charged to each customer account for the twelve-month Billing Period is within the annual cost cap established for each class in N.C.G.S. § 62-133.8(h)(4).

### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-3**

The evidence supporting these findings of fact appears in DEP's application, DEP's 2022 REPS Compliance Report, in the direct testimony of DEP witness Presson, and in the testimony of Public Staff witness Lucas. These findings of fact are essentially informational, jurisdictional, and procedural in nature and are not contested.

N.C.G.S. § 62-133.8(b)(1) establishes a REPS requirement for all electric public utilities in the State. The statute requires each electric public utility to provide a certain percentage of its NC retail sales from various renewable energy or energy efficiency resources, including by means of the following: (a) generating electric power at a new renewable energy facility; (b) using a renewable energy resource to generate electric power at a generating facility other than the generation of electric power from waste heat derived from the combustion of fossil fuel; (c) reducing energy consumption through the implementation of energy efficiency measures; (d) purchasing electric power from a new renewable energy facility; (e) purchasing RECs from a new renewable energy facility; (f) using electric power that is supplied by a new renewable energy facility or saved due to the implementation of an energy efficiency measure that exceeds the requirements of the REPS in any calendar year as a credit toward the requirements of the REPS in the following calendar year; or (g) electricity demand reduction. Each of these measures is subject to additional limitations and conditions. For 2022, DEP was required to meet a

total REPS requirement of 12.5% of its previous year NC retail electric sales by a combination of these measures.

N.C.G.S. § 62-133.8(d) requires a certain percentage of the total electric power sold to retail electric customers in the State, or an equivalent amount of energy, to be supplied by a combination of new solar electric facilities and new metered solar thermal energy facilities. The percentage requirement for solar resources in 2022 is 0.20%.

N.C.G.S. § 62-133.8(e) and (f) require DEP and the other North Carolina electric power suppliers, in the aggregate, to procure a certain portion of their renewable energy requirements from electricity generated from swine and poultry waste. The swine waste energy requirement is based on a percentage of retail sales, like the solar energy requirement. The poultry waste energy requirement is based on each electric power supplier's respective pro-rata share derived from the ratio of its NC retail sales as compared to total NC retail sales. Pursuant to the Commission's March 31, 2010 Order on Pro-Rata Allocation of Aggregate Swine and Poultry Waste Set-Aside Requirements and Motion for Clarification, issued in Docket No. E-100, Sub 113, DEP's share of the aggregate statewide set-aside requirements for energy from poultry waste is based on the ratio of its NC retail kilowatt-hour sales for the previous year divided by the previous year's total NC retail kilowatt-hour sales. In its March 2022 Delay Order, the Commission established modified aggregate statewide poultry waste set-aside requirements of 700,000 MWhs for 2022 and 900,000 MWhs for 2023. In its December 2022 Delay Order, the Commission confirmed the 2022 and 2023 poultry waste set-aside requirements established in its March 2022 Delay Order and modified the 2022 swine waste set-aside requirement to 0.05% of NC retail sales for DEP and other electric public utilities. The Commission's 2022 Poultry Order reset and determined each electric power supplier's specific load ratio share of the annual aggregate poultry waste set-aside requirement for REPS compliance years 2022-2024. Presson Exhibit No. 1 at 5-6.

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4-7**

The evidence supporting these findings of fact appears in DEP's 2022 REPS Compliance Report, which was admitted into evidence as Presson Exhibit No. 1, in the direct testimony of DEP witness Presson, and in the testimony of Public Staff witness Lucas. In addition, the Commission takes judicial notice of the information contained in NC-RETS. DEP's 2022 REPS Compliance Report provided the information required by Commission Rule R8-67(c).

Witness Presson testified that the Total Requirement for compliance year 2022 for DEP and the Wholesale Customers is 4,572,269 RECs, representing 12.5% of 2021 NC retail sales of 36,578,148 MWhs. Presson Exhibit No.1 at 5. Within this total, DEP submitted the following to meet the set-aside requirements: 73,157 solar RECs, 18,290 swine waste RECs, and 193,343 poultry waste RECs. Presson Direct at 8.

Witness Presson's testimony states that the Billing Period for this application spans two calendar years, with different requirements in each year. For compliance year 2023,

DEP estimates that it will be required to submit for retirement 4,839,224 RECs to meet its Total Requirement. Within this total, DEP estimates that it will be required to retire approximately 77,428 solar RECs, 54,200 swine waste RECs, and 248,585 poultry waste RECs to meet the requirements set out in N.C.G.S. §§ 62-133.8(d), (e), and (f), respectively. For compliance year 2024, DEP estimates that it will be required to submit for retirement 4,839,777 RECs to meet its Total Requirement. Within this total, DEP expects to be required to retire the following: 77,437 solar RECs, 77,437 swine waste RECs, and 248,585 poultry waste RECs, to meet the requirements set out in N.C.G.S. §§ 62-133.8(d), (e), and (f), respectively. Presson Direct at 8-9.

Witness Presson testified that DEP met the 2022 solar set-aside requirement of 73,157 solar RECs and that DEP submitted these RECs for retirement by transferring them from the NC-RETS Progress Energy Electric Power Supplier account to the Progress Energy Compliance Sub-Account. Presson Direct at 13.

Witness Presson testified that DEP met the 2022 poultry waste set-aside requirement of 193,343 RECs and that DEP submitted these RECs for retirement by transferring them from the NC-RETS Progress Energy Electric Power Supplier account to the Progress Energy Compliance Sub-Account. Presson Direct at 14.

Witness Presson testified that DEP met its 2022 swine waste set-aside requirement of 18,290 swine waste RECs. DEP submitted these RECs for retirement by transferring them from the NC-RETS Progress Energy Electric Power Supplier account to the Progress Energy Compliance Sub-Account. Presson Direct at 16.

Witness Presson further testified that the Company met its 2022 general requirement of 4,287,479 RECs. DEP transferred the RECs from the NC-RETS Progress Energy Electric Power Supplier account to the Progress Energy Compliance Sub-Account. Presson Direct at 9.

Witness Presson testified that DEP expects to comply with its poultry waste set-aside requirement in 2023, but compliance beyond 2023 is dependent on the performance of current poultry waste-to-energy contracts, particularly on achievement of projected delivery requirements and commercial operation milestones. She also stated that DEP expects to add two new poultry waste-to-energy contracts for projects coming online in the 2023-2024 timeframe. Presson Direct at 15. Witness Presson testified that DEP is taking various steps to secure poultry waste-to-energy resources to meet its future requirements, including: continuing direct negotiations for additional supplies of both in-state and out-of-state resources; continuing the pursuit of poultry-derived directed biogas from facilities located in North Carolina and directing such biogas to combined cycle plants for combustion and electric generation; working diligently to understand the technological, permitting, and operational risks associated with various methods of producing qualifying poultry RECs to aid developers in overcoming those risks; when the risks associated with producing poultry RECs cannot be overcome, working with developers via contract amendments to adjust for more realistic outcomes; evaluating out-of-state poultry REC opportunities when available; and funding a North Carolina



biogas utilization study through RTI International with hopes for future growth of poultry-derived directed biogas project development. Presson Direct at 15-16.

Witness Presson testified that DEP will not be able to comply with the swine waste set-aside requirement for 2023 at the current 0.14% level, and compliance for 2024 and beyond is uncertain and will be difficult to achieve as the swine waste obligation increases. She reported that existing swine waste-to-energy contracts have not reached contracted levels of production and that new contracts have failed to come online in the timeframe originally planned and have taken longer than expected to ramp up production. She further testified that two facilities previously online and producing swine RECs were offline for a portion of the Test Period and experienced significant challenges resuming operations, resulting in significantly lower production expectations affecting DEP's ability to comply with the 2023 swine-waste set-aside requirement. Witness Presson testified that the compliance levels DEP can meet in the near term will depend on the ability of the one facility that was still offline to begin producing again, new facilities to come online as expected, and for all facilities to produce their full contracted REC quantities. Presson Direct at 17-18. Finally, witness Presson outlined the challenges associated with development of swine waste-to-energy projects and the actions taken by DEP to procure RECs from, or aid in the development of, such projects for purposes of meeting its swine waste set-aside requirement. DEP referred to its Joint Semiannual Progress Report, filed on June 1, 2023, in Docket No. E-100, Sub 113A for additional details. Presson Direct at 18-20.

Public Staff witness Lucas stated that for 2022 compliance, DEP needed to pursue enough general requirement RECs, energy efficiency certificates (EECs), and RECs derived from other eligible sources so that the total equaled 12.5% of DEP's 2021 NC retail electricity sales. Witness Lucas additionally stated that DEP needed to pursue retirement of sufficient solar RECs to match 0.20% of its retail sales in 2021, sufficient swine waste RECs to match 0.05% of retail sales in 2021, and sufficient poultry waste RECs to match their pro-rata share of 700,000 MWh (or the thermal equivalent). Public Staff witness Lucas recommended that the Commission approve DEP's 2022 REPS Compliance Report. Lucas Testimony at 3-4.

No party disputed that DEP had fully complied with the applicable REPS requirements or argued that DEP's 2022 REPS Compliance Report should not be approved.

Based on the evidence presented and the entire record herein, the Commission finds and concludes that DEP fully complied with the REPS requirements for 2022, as modified by the Commission's March 2022 Delay Order, December 2022 Delay Order, and 2022 Poultry Order, and that DEP's 2022 REPS Compliance Report should be approved. The Commission further concludes that the RECs and EECs in the related NC-RETS compliance sub-accounts should be permanently retired.

## **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8**

The evidence supporting this finding of fact appears in the direct testimony and exhibits of DEP witness Presson.

Witness Presson explained that under the current Net Metering for Renewable Energy Facilities Rider offered by DEP (Rider NM), a customer receiving electric service under a schedule other than a time-of-use schedule with demand rates (NMNTD Customer) shall provide any RECs to DEP at no cost. She further stated that per the Commission's June 5, 2018 Order Approving Rider and Granting Waiver Request in Docket Nos. E-2, Sub 1106 and E-7, Sub 1113, for NMNTD Customers, DEP may use the PVWatts™ Solar Calculator developed by the National Renewable Energy Laboratory for estimating the generation from NMNTD customers' solar facilities as permitted by Commission Rule R8-67(g)(2). The RECs associated with these net metering facilities are currently in DEP's REC inventory and available for use in meeting future compliance requirements. Presson Direct at 10-11.

Witness Presson further testified that generation for customers served under DEP's revised net energy metering (NEM) tariffs will not contribute RECs to DEP's REPS portfolio. Under DEP's revised net metering tariffs filed in Docket No. E-100, Sub 180 and approved by the Commission in its March 23, 2023, Order Approving Revised Net Metering Tariffs in the same docket, NEM customers served under the new Residential Solar Choice Rider, as well as the Net Metering Bridge Rider, retain all RECs produced by the associated NEM facilities. DEP will continue retaining only the RECs produced by NMNTD customers on Rider NM until that tariff expires for residential customers after December 31, 2026. Presson Direct at 11-12. No party to this proceeding contested this testimony.

Based on the foregoing and the entire record herein, the Commission finds and concludes that the eligible RECs generated by the net metering facilities as described above are properly included in DEP's inventory of RECs available for future REPS compliance.

## **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9**

The evidence supporting this finding of fact is procedural in nature, found in the testimony and exhibits of DEP witness Williams and the affidavit of Public Staff witness Lentz, and is not contested.

Commission Rule R8-67(e)(3) provides that the test period for REPS rider proceedings shall be the same as that used by the utility in its fuel charge adjustment proceedings, which is specified in Commission Rule R8-55(c) for DEP to be the twelve-month period ending March 31 of each year. DEP witness Williams testified that the Test Period or EMF period used for this proceeding was the twelve months beginning on April 1, 2022, and ending on March 31, 2023. Williams Direct at 3. Commission Rule R8-67(e)(5) provides that "the REPS EMF rider will reflect the difference between

reasonable and prudently incurred incremental costs and the revenues that were actually realized during the test period under the REPS rider then in effect.” Witness Williams further stated that the rider includes the REPS EMF component to recover the difference between the compliance costs incurred and revenues realized during the Test Period. Williams Direct at 4-5. Witness Williams also testified that the Billing Period for the REPS rider requested in DEP’s application is the twelve months beginning on December 1, 2023, and ending on November 30, 2024. Williams Direct at 3. Witness Williams stated that, in addition to an EMF component, the current proposed rider includes a component to recover the costs expected to be incurred for the Billing Period. Williams Direct at 5. The Test Period and the Billing Period proposed by DEP were not challenged by any party.

Based on the foregoing and the entire record herein, the Commission concludes that, consistent with Commission Rule R8-67(e)(3), the Test Period for this proceeding is the twelve months from April 1, 2022, through March 31, 2023. The Commission also concludes that the Billing Period for this proceeding is the twelve months beginning on December 1, 2023, and ending on November 30, 2023.

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10-11**

The evidence for these findings of fact can be found in the direct and supplemental testimonies and exhibits of DEP witnesses Presson and Williams, and the testimony and affidavit of Public Staff witnesses Lucas and Lentz, respectively.

Witness Presson included Confidential Presson Exhibit Nos. 2 and 3 with her testimony, wherein she identified the renewable energy and REC costs, as well as “Other Incremental”, and “Research” costs that DEP has incurred or expects to incur in association with REPS compliance, in addition to “Solar Rebate Program” and “Solar + Storage Residential Pilot Program” costs incurred and expected to be incurred. With respect to research costs, Revised Presson Exhibit No. 3 shows that total research costs are under the \$1 million per year cap established in N.C.G.S. § 62-133.8(h)(1)(b).

In her testimony, witness Presson described “Other Incremental” costs of REPS compliance as including labor costs associated with REPS compliance activities and non-labor costs associated with administration of REPS compliance. Among the non-labor costs associated with REPS compliance are DEP’s subscription to NC-RETS, and accounting and tracking tools related to RECs, reduced by agreed-upon liquidated damages paid by sellers for failure to meet contractual milestones as well as amounts paid for administrative contractual amendments requested by sellers. Presson Direct at 21. Other Incremental costs included for recovery in the REPS EMF, and REPS riders in this proceeding were not contested by any party.

Witness Presson also testified that, as required by N.C.G.S. § 62-155(f), DEP developed a Solar Rebate Program. She described the program and discussed the procedures in place to pay rebates, and the resulting effect on the payments made each year, as well as the rollover allocation process related to unsubscribed capacity remaining

at the end of 2022. Presson Direct at 21-22. She further testified that the incremental costs incurred to “provide incentives to customers, including program costs, incurred pursuant to N.C. Gen. Stat. § 62-155(f)” are allowed to be recovered under N.C.G.S. § 62-133.8(h). DEP included for recovery in this filing such costs related to the implementation of the Solar Rebate Program incurred during the EMF period and projected to be incurred in the Billing Period. These costs include the annual amortization of incentives paid to customers and program administration costs, which include labor, information technology, and marketing costs, offset by any early termination fees assessed. Presson Direct at 22-23. Solar Rebate Program costs included for recovery in the REPS EMF, and REPS riders in this proceeding were not contested by any party.

Witness Presson testified that DEP also included for recovery estimated Billing Period costs for the Solar + Storage Residential Pilot Program, pursuant to the Commission’s March 23, 2023, Order Declining to Approve Proposed Smart Saver Solar Program and Requiring Development of Pilot Program in Docket No. E-2, Sub 1287. Witness Presson further described the pilot program and the mechanism in place for recovery of all reasonable and prudently incurred costs related to the program through the REPS rider. She testified that DEP included total costs projected to be incurred in the Billing Period related to the implementation of the Solar + Storage Residential Pilot Program as reflected on Revised Presson Exhibit No. 3, which included the annual amortization of incentives projected to be paid to customers as well as program administration costs including labor, information technology, and marketing costs. Presson Direct at 24-25. Other Incremental, Solar Rebate Program, and Solar + Storage Residential Pilot Program costs included for recovery in the REPS EMF and REPS riders in this proceeding were not contested by any party.

Consistent with the Commission’s orders in prior REPS proceedings, witness Presson provided testimony and exhibits on the results and status of various studies, the costs of which DEP is including for recovery as research in its incremental REPS cost for the Test Period. Presson Direct at 26-36. In her supplemental testimony, witness Presson included details for an additional research study and described two corrections made that resulted in a net reduction of Test Period research costs, reflected in total research cost shown on Revised Presson Exhibit No. 3. Presson Supplemental at 2-4.

Public Staff witness Lentz described the Public Staff’s procedures for its review of DEP’s Test Period incremental costs and revenues, including research cost, and recommended approval of the DEP’s proposed annual EMF riders and monthly EMF riders as reflected on Revised Williams Exhibit No. 4. Lentz Affidavit at 3-4. Public Staff witness Lucas discussed research costs DEP included for cost recovery and concluded that the costs qualify as recoverable as REPS compliance costs consistent with N.C.G.S. § 62-133.8(h)(1)(b). Lucas Testimony at 4-5.

The Commission concludes based on the foregoing and the entire record herein that the costs identified as Other Incremental, Solar Rebate Program, and Solar + Storage Residential Pilot Program costs are properly recoverable in the REPS EMF and REPS riders calculated in this proceeding. The Commission also concludes that the research

activities funded by DEP during the Test Period are renewable research costs recoverable under N.C.G.S. § 62-133.8(h)(1)(b), and that such research costs included in the Test Period are within the \$1 million annual limit provided in that statute. The Commission further concludes that DEP has complied with prior Commission orders requiring the filing of the results of such research studies. In addition, the Commission finds that the research information DEP provided is helpful. Therefore, the Commission finds that DEP should continue to file this information with future REPS compliance reports and to provide procedures for third parties to access the results of studies that are subject to confidentiality agreements. For research projects sponsored by the Electric Power Research Institute, DEP should provide the overall program number and specific project number for each project, as well as an internet address or mailing address that will enable third parties to inquire about the terms and conditions for access to any portions of the study results that are proprietary.

### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12-15**

The evidence for these findings of fact is found in DEP's application and in the direct and supplemental testimonies and exhibits of DEP witnesses Presson and Williams, and the testimony and affidavit of Public Staff witnesses Lucas and Lentz, respectively.

N.C.G.S. § 62-133.8(h)(4) requires the Commission to allow an electric power supplier to recover all its incremental costs incurred to comply with N.C.G.S. § 62-133.8 through an annual rider. N.C.G.S. § 62-133.8(h)(1) provides that "incremental costs" means all reasonable and prudent costs incurred by an electric power supplier to comply with the REPS requirements that are more than the electric power supplier's avoided costs other than those costs recovered pursuant to N.C.G.S. § 62-133.9. The term "avoided costs" includes both avoided energy and avoided capacity costs. Commission Rule R8-67(e)(2) provides that the "cost of an unbundled renewable energy certificate to the extent that it is reasonable and prudently incurred is an incremental cost and has no avoided cost component."

DEP witness Williams testified regarding the calculation of DEP's various incremental costs of compliance with REPS requirements, and the costs associated with the DEP's Solar Rebate Program and its Solar + Storage Residential Pilot Program, based on detailed incurred and projected costs provided by witness Presson. Williams Direct at 6. Witness Williams also described the methods DEP used to determine the appropriate avoided costs to apply to REPS compliance purchased power agreements and biogas costs to calculate the incremental costs for recovery through the REPS rider. Witness Williams further states that the total costs of REC-only purchases are included as incremental cost with no avoided cost components. Williams Direct at 5. In her supplemental testimony, Witness Williams testified to the correction of estimated avoided cost rates applicable to three energy/capacity and REC contracts, resulting in a decrease in projected Billing Period incremental compliance cost. Williams Supplemental at 3.

Revised Williams Exhibit No. 2, page 1, identified total Test Period incremental REPS costs of \$39,231,337. Revised Williams Exhibit No. 3, page 1, identified total estimated Billing Period incremental REPS costs of \$39,202,980.

In his affidavit, witness Lentz described the Public Staff's investigation and review of DEP's filing, including its evaluation of DEP's per books incremental costs and revenues, as well as the annual revenue cap for REPS requirements, for the Test Period. Lentz Affidavit at 3. Based on his review of costs submitted for recovery, witness Lentz recommended approval of DEP's revised proposed monthly and annual REPS EMF decrement riders for the residential, general service, and industrial customers. Lentz Affidavit at 3-4. In his testimony, Public Staff witness Lucas stated he agreed with the monthly Billing Period and EMF rates in DEP's supplemental filing and that the monthly rates are below the cost caps set forth in N.C.G.S. § 62-133.8(h)(4). Lucas Testimony at 6-7.

Based on the foregoing and the entire record herein, the Commission concludes that the correct incremental REPS costs for the April 1, 2022, through March 31, 2023, Test Period are \$39,231,337, and are reasonable and prudently incurred. The Commission further concludes that the appropriate estimated incremental REPS costs for the Billing Period are \$39,202,980.

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 16-21**

The evidence supporting these findings of fact appears in DEP's application, the direct and supplemental testimony and exhibits of DEP witness Williams, and the testimony and affidavit of Public Staff witnesses Lucas and Lentz, respectively.

Revised Williams Exhibit No. 2, Page 2 shows EMF Period under collections of \$707,941 for the residential class and \$26,181 for the general service class, and an overcollection including interest of (\$2,726) for the industrial class.

Revised Williams Exhibit No. 4 shows additional credits for contract receipts by customer class of (\$1,802,958) for residential, (\$1,618,464) for general service, and (\$94,277) for industrial. The total EMF period net overcollections by customer class are (\$1,095,016) for residential, (\$1,592,283) for general service, and (\$97,003) for industrial. As reflected on Revised Williams Exhibit No. 4, witness Williams calculated monthly per-account REPS EMF decrement riders excluding regulatory fee by customer class of (\$0.07) for residential, (\$0.63) for general service, and (\$4.73) for industrial. On Revised Williams Exhibit No. 3, page 1, witness Williams calculated projected Billing Period REPS costs by customer class of \$20,249,084 for residential, \$17,966,196 for general service, and \$987,700 for industrial, as carried forward to Revised Williams Exhibit No. 4. Revised Williams Exhibit No. 4 shows that the proposed monthly prospective REPS riders per customer account, excluding the regulatory fee, to be collected during the Billing Period are \$1.29 for residential accounts, \$7.14 for general service accounts, and \$48.16 for industrial accounts.

The combined monthly REPS and REPS EMF rider charges per customer account, excluding regulatory fee, to be collected during the Billing Period are \$1.22 for residential accounts, \$6.51 for general service accounts, and \$43.43 for industrial accounts. Including the regulatory fee, the combined monthly REPS and REPS EMF rider charges per customer account to be collected during the Billing Period are \$1.22 for residential accounts, \$6.52 for general service accounts, and \$43.49 for industrial accounts. Revised Williams Exhibit No. 4 shows that DEP's REPS incremental cost rider to be charged to each customer account for the twelve-month Billing Period is within the annual cost cap established for each customer class in N.C.G.S. § 62-133.8(h)(4).

Public Staff witness Lentz stated in his affidavit that as a result of its investigation, the Public Staff is recommending annual REPS EMF decrement riders of (\$0.84), (\$7.59), and (\$56.76) per customer account, excluding regulatory fee, for residential, general, and industrial customers, respectively. Excluding the regulatory fee, the corresponding monthly REPS EMF rider per-account amounts proposed by DEP and recommended for approval by witness Lentz are decrement riders of (\$0.07) for residential, (\$0.63) for general service, and (\$4.73) for industrial. Lentz Affidavit at 3-4.

Public Staff witness Lucas recommended that DEP's revised proposed prospective monthly REPS charges per customer account, excluding regulatory fee, of \$1.29 for residential, \$7.14 for general service, and \$48.16 for industrial, be approved. Combined with the monthly EMF rider amounts recommended by witness Lentz, witness Lucas recommended approval of the following total monthly REPS charge per customer account, excluding regulatory fee: \$1.22 for residential, \$6.51 for general service, and \$43.43 for industrial. Lucas Testimony at 6.

The Commission concludes that DEP's calculations of its REPS and REPS EMF riders are reasonable and appropriate. Accordingly, the Commission finds that DEP's Test Period REPS costs and associated monthly REPS EMF riders, as well as the projected Billing Period REPS costs and the corresponding monthly REPS riders, as set out in Revised Williams Exhibit No. 4, are appropriate. Finally, the Commission finds that these amounts are below the respective annual per-account cost caps as established in N.C.G.S. § 62-133.8(h)(4).

IT IS, THEREFORE, ORDERED as follows:

1. That DEP shall establish a REPS rider as described herein, in the amounts approved herein, and that this rider shall remain in effect for a 12-month period beginning on December 1, 2023 and expiring on November 30, 2024;
2. That DEP shall establish an EMF rider as described herein, in the amounts approved herein, and that this rider shall remain in effect for a 12-month period beginning on December 1, 2023, and expiring on November 30, 2024;

3. That DEP shall file the appropriate rate schedules and riders with the Commission in order to implement the provisions of this Order as soon as practicable, but not later than 10 days after the issuance of this Order;

4. That DEP shall work with the Public Staff to jointly prepare a proposed notice to customers of the rate adjustments ordered by the Commission in this docket, as well as in Docket Nos. E-2, Sub 1321, 1323, and 1324 (DEP Rider Dockets), and shall file the proposed notice to customers for Commission approval no later than three business days after the last Commission Order is issued in the DEP Rider Dockets;

5. That DEP's 2022 REPS Compliance Report is hereby approved and the RECs in DEP's 2022 compliance sub-accounts in NC-RETS shall be retired;


6. That DEP shall file in all future REPS rider applications the results of studies the costs of which were or are proposed to be recovered via its REPS EMF and REPS rider and, for those studies that are subject to confidentiality agreements, information regarding whether and how parties can access the results of those studies; and

7. That DEP shall continue to file a worksheet explaining the discrete costs that DEP includes as "other incremental costs" in all future REPS rider proceedings. DEP shall also continue to include details on its primary compliance cost exhibits of its renewable energy and REC purchases by REC type (e.g., thermal, electric), in addition to the established resource type and supplier breakdown.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of November, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "A. Shonta Dunston". The signature is written in a cursive, flowing style.

A. Shonta Dunston, Chief Clerk