Attachment A

Review of The Companies' Reply Comments and Recommendations Regarding NEM Tariff Revision Application

NCUC Docket No. E-100, Sub. 180

SURREPLY REPORT

OF

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Rábago Energy, LLC

MAY 27, 2022

QUALIFICATIONS

I am an expert in electric utility regulation, organizations, including distribution and generation and transmission ("G&T") companies, operations, and rate making. I am principal and sole employee of Rábago Energy LLC, a Colorado Limited Liability Company with a business address of 2025 East 24th Avenue, Denver, Colorado.

I am the same Karl R. Rábago who previous submitted a report in this proceeding, dated March 29, 2022, and a reply report, dated May 6, 2022. Those reports included detailed information relating to my qualifications and my review of and recommendations concerning issues in this proceeding.

ASSIGNMENT

I have been retained by the Environmental Working Group ("EWG") to review the Joint Application of Duke Energy Carolinas, LLC and Duke Energy Progress, LCC (collectively referred to as the "Companies") for Approval of Net Energy Metering Tariffs (the "Application") to modify existing tariffs, filed on November 29, 2021, in the above referenced docket before the North Carolina Utilities Commission (the "Commission"). I have previously opined on the fatal deficiencies in the Application and provided recommendations for a lawful, just, and reasonable path forward for the Commission. In my reply report, I focused on the comments filed by the Commission Staff and highlighted comments filed by other parties.

For this SURREPLY REPORT, I have been asked by EWG to address the joint reply comments filed on May 20, 2022 by Duke Energy Carolinas and Duke Energy Progress ("Companies").

SUMMARY OF OPINIONS

My overall opinion is that the Application fails to meet the requirements of industry best practices and the North Carolina statutory framework in several regards. I reviewed the Companies' joint reply

comments and find that those comments fail to rebut or overcome the failures that I have identified in the Application. The Companies provide no new information or analysis that changes those findings. My original recommendations remain, primarily, that the Commission should direct the investigation of the costs and benefits of customer-sited generation in accordance with the law and under a comprehensive Benefit-Cost Analysis framework.

I further point out that the Companies have failed to provide any rebuttal to my conclusion that the rates proposed by the Companies would result in rates for solar facilities that are unjust, unreasonable, and improperly discriminatory under both state and federal law.

I reserve the right to change, supplement or modify my opinions based on additional information obtained through the discovery process, including data requests and other information.

I. THERE ARE NO NEW ISSUES RAISED IN THE COMPANIES' REPLY COMMENTS

Notwithstanding the fact that the Companies' lawyers used more than 40 pages to do so, the Companies' Reply Comments bring nothing new to this proceeding with the exception of a proposed patch on the deeply flawed application that resulted from secret and last-minute negotiations with a small number of the parties in this proceeding.

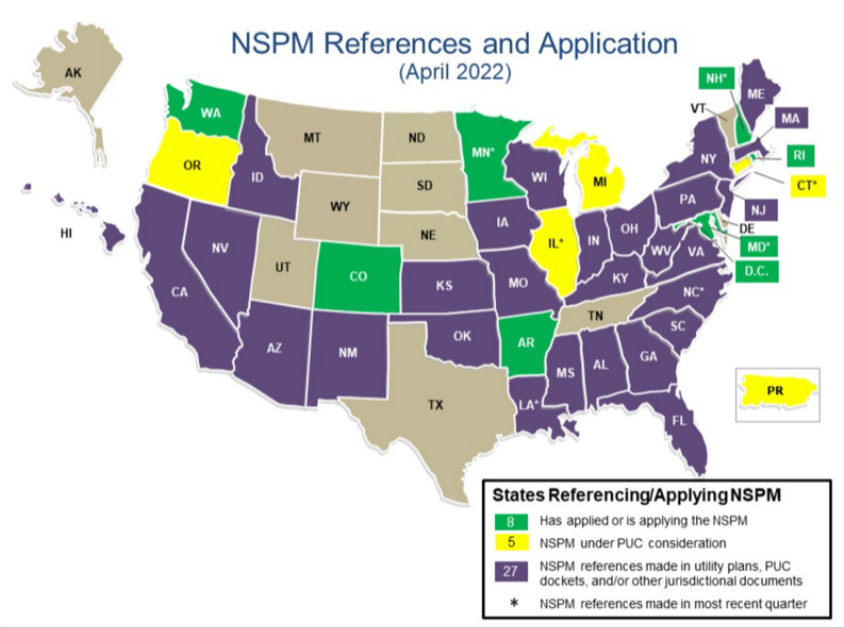
The application remains fatally flawed in many ways, as summarized in the following sections of this report. These flaws were identified and described in detail in prior reports and are incorporated by reference and not repeated here.

A. *Private and Selective Analysis is Not Investigation*

The Companies continue to proffer their private Rate Design Study was the functional equivalent of an investigation of the costs and benefits of

customer-sited generation;[1] it was not. A cost of service study and marginal cost study that only looks to embedded costs or a limited set of marginal costs is not an investigation of benefits. Embedded and marginal cost studies do not address the same range of impacts as Value of Solar study or a comprehensive Benefit-Cost Assessment. The fact that marginal and embedded cost of service studies are described in any 30-year old NARUC manual on cost allocation is irrelevant to the fact that HB 589 requires an investigation of the benefits and costs of customer-sited generation.

The Companies incorrectly assert that the National Standard Practice Manual for Benefit-Cost Analysis of Distributed Energy Resources ("NSPM") has only been applied in three states, and the citation link does not work.[2] In fact, the NSPM has been referenced, and been applied, and is under consideration across most of the United State, as shown in this figure from the NSPM website:[3]



[1] Companies' Reply Comments ¶¶ 4-17.
[2] Companies' Reply Comments ¶ 8.
[3] National Energy Screening Project, *NSPM References and Application* (Apr. 2022), available at: https://www.nationalenergyscreeningproject.org/national-standard-practice-manual/state-references/.

A private study founded on lost revenues and ignoring the benefits of customer-sited generation is not an investigation. The Companies have failed to address the flaws identified with their private study approach in previous comments from EWG, NC WARN, and other parties.

The Companies' approach subverts the public interest in favor of private agreement, and as explained later in this report, fundamentally disenfranchises future customer-investors, entrenches discriminatory rate making, and narrows the range of cost-effective options available to support North Carolina's Carbon Plan. In its latest submission, the Company further modifies and complicates the proposed rates with a new confidentially negotiated proposal that non-settling parties have had only a few days opportunity to review, denying fundamental due process rights again.

The Companies' approach and proposals are beyond redemption in this proceeding because they have never and will never reflect a comprehensive, transparent investigation of the benefits and costs of customer-sited generation. They do not provide a foundation for customer and market confidence in public utility rates. They are not fair, just, or reasonable.

For all these reasons, the only path forward that can serve the public interest and ensure just and reasonable rates for customer-generators today and in the future is for the Commission to serve as an active substitute for the forces of competition and champion of the public interest. The Commission should take charge of the investigation, hire an independent evaluator, direct an public investigation of the costs and benefits, and send the bill to the Companies. A unanimous agreement may not be possible, but a trustworthy process for meeting the requirements of HB 589 still is.

In my professional experience, and in light of the good start on cost-side data that the Companies have provided, such an investigation would require no more than six months to conduct. The costs would be more than justified in terms of public confidence and honest analysis. The money spent by the Companies on analysis and data collection is, in my opinion,

prudently spent, though settlement negotiation costs and other costs related to proposing Commission approval of the partial settlement should be carefully reviewed for prudence.

B. *The Companies' Private and Secret Negotiations are Not a Public Process or an Investigation*

The Companies purport to have provided non-settling parties with the gift of avoiding a bitter fight, divisiveness, and acrimony by proposing a settlement crafted behind closed doors between a small group of parties.[4] The compromise between these parties, reached outside of a public process and not overseen by the Commission was not a confidence-inducing public process, and it was not an investigation as required by law. Contrary to any assertion that the stipulation filed in this proceeding "reflects the continued efforts by the Companies to engage stakeholders and build consensus,"[5] it was a procedural maneuver that put non-settling parties and the Commission in the impossible position of having to accept a privately negotiated outcome without the opportunity to have the issues and positions of parties aired and debated publicly.

C. *Confidential Settlement Negotiations Create Bitterness and Acrimony and Disenfranchises Future Customer-Investors*

The Companies assert that HB 589 does not require an investigation by or before the Commission.[6] This legalistic position fails to recognize that the objective of the law and utility regulation is the public interest, not just the interests of the Companies and their shareholders at the holding company. Public confidence in Commission decisions as to a topic that has

[4] Companies' Reply Comments at pp. 3-4.
[5] Companies' Reply Comments at p. 5.
[6] Companies' Reply Comments at ¶¶ 1-3.

been the subject of some controversy compels a rejection of the Companies' approach. A public process is essential.

The Companies approach of refusing to participate in an open, comprehensive, and transparent investigation of the costs and benefits of customer-sited generation ignores the interests of future potential customer generators. The Companies' embedded and marginal cost of service approach in its rate design study ignores future benefits, including reductions in fixed system costs over time, and thereby fails to result in rates that are just and reasonable. Rather than airing the facts and the issues before the Commission and giving proper attention to future costs and benefits, the Companies focused on sunk costs and potentially lost revenues. There remains no good reason to accept the Companies' packaged proposal without the benefit of a comprehensive and public investigation that can identify the ways in which future customer-generators can help avoid future system costs.

D. ***Backward Looking Cost of Service Studies Do Not Investigate Future Benefits of Customer-Sited Generation***

Even if cost of service studies and marginal cost of service studies capture a share of the costs avoided in the short term by generation from customer-sited facilities, they are fundamentally inconsistent with the investigation and identification of the costs *and benefits* of customer-sited generation. As a result, the Companies' repeated assertion that their lost revenues approach to characterizing costs is fundamental error—it fails to address avoidable costs and incremental benefits of customer-sited generation over the useful life of customer investments. As such, the Companies' repeated assertions that they have identified potential cost shifts are nothing new and remain unsubstantiated.[7]

[7] Companies' Reply Comments at ¶¶ 17-22.

E. *The Companies Have Yet to Conduct or Provide a Cost of Service Study Specific to Customer-Sited Generation*

Notwithstanding the Companies' assertions about what they found in their selective, biased, and secretive Rate Design Study, there is nowhere in the record of this case evidence of an objective and comprehensive cost of service study, Value of Solar study, or Benefit-Cost Analysis specific to customer-generators. There is, therefore, no investigation as required by HB 589 and insufficient evidence upon which to approve the proposed NEM rates.

F. *The Companies' Assumption That Customer-Generators are Wholesale Generators is Unreasonable*

The Companies' reply comments make it clear that the Companies would have the Commission view customer-generators as wholesale generators engaged in the business of generating electricity for sale.[8] This is a category error. Customer-generators are generators that export energy incidentally to generation for use. They are not in the business of generating electricity for sale to the utility for resale. As such, these customer-generators are primarily interested in offsetting personal consumption. Most importantly, their incidental energy injections occur in the distribution system, where the energy is most valuable to the system and which immediately serves the nearest unserved load, and as a result of which, the Companies' charge and recover full retail charges. Setting a net export credit rate for customer-generators with the intent of aligning that credit with wholesale rates for electricity sales is not only discriminatory against customer-generators but creates an unjust and unearned windfall for the monopoly Companies.

[8] Companies' Reply Comments at ¶¶ 23, 45.

G. *The Companies' Assumptions about Customer-Generator Costs and Avoided Costs Remain Unreasonable*

The premises of the Companies' rate design study as applied to customer-generators are unsound and inconsistent with the fundamental rate making principle that rates should be based on actual cost causation. First, the Companies continue to operate on the assumption that customer-generators that reduce their use below the average consumption level for their class create a cost-shift and a cross-subsidy. Second, they apply this assumption in a discriminatory fashion to customer-generators and not to any other customers that use less for other reasons. Third, they assume that the customer-generator using less than the average for the class did not start out as a customer that used more than average, and thereby reduced system costs. Fourth, the Companies rely on no information about the consumption levels of customers before they added generation, assuming instead that their usage would have been exactly equal to the class average consumption in the absence of generation equipment. With all these assumptions in place, the Companies continue to argue for rates that would impose charges on on NEM customers even when their facilities are not operating and that would impose regressive minimum charges even when such charges would not be usage-based.[9]

G. *The Proposed "Bridge" Option is Lipstick on a Pig—An Additionally Complicating Patch that Has Not Been Fairly Scrutinized or Justified and that Would Not Be Necessary But for the Flaws in the Application and Proposed Settlement*

For the first time in this proceeding, and notwithstanding vague assertions about "explor[ing] options to provide existing customers with a gradual transition" to the proposed NEM tariffs,[10] the Companies now

[9] Companies' Reply Comments at ¶¶ 36-44.
[10] Companies' Reply Comments at ¶ 48.

propose yet another term complicating their NEM proposals—as so-called "Proposed Bridge Rate."[11] No explicit tariff sheet proposal has been submitted. The patch on the proposed NEM tariffs is only proposed to be available to a limited number of participants.[12] In all, the proposed bridge rate is only required because of the deep flaws in the original proposal, and is, like the original proposal, the product of private, secret negotiations between a limited number of parties. It is not conducive to administratively simple, easy-to-understand, just, or reasonable rates. It has not been thoroughly examined and has not been subject to discovery.

In the face of these problems, the Companies reject calls for transparency, engagement, and a public process. Instead, they engage in an *ad hominem* attack on intervenor NC WARN[13] and characterize a last-minute act of appeasement as "broad" and "continued" efforts to engage with stakeholders.[14] The experience with this latest proposal reinforces the need for the Commission to order a reset on the process that the Companies seek to rush forward.

H. ***The Companies' "Commitments" to Complete the Work Required by HB 589 and to Ensure Just and Reasonable Rates Continue to be Piece Meal Rate Making***

The Companies respond to several significant issues raised in intervenor comments with non-specific commitments to address issues in the future. The Companies assert that NEM customers might obtain the same or better savings under the proposed tariffs *if* they can figure out how to take advantage of time-of-use tariffs, and *if* they realize benefits from the Smart $aver Solar program.[15] The Companies have not optimized customer

[11] Companies' Reply Comments at ¶¶ 48-56.
[12] Companies' Reply Comments at ¶54.
[13] Companies' Reply Comments at ¶¶ 60-65.
[14] Companies' Reply Comments at ¶ 57.
[15] Companies' Reply Comments at ¶¶ 66-72.

information nor do they provide real-time consumption and pricing data to customers, nor do they support integration of Smart $aver Solar decisions in this proceeding.[16] The Companies assert that customer-generators will be able to increase savings by using complementary technologies, such as storage, electric vehicles, and smart thermostats, but leaves any substantive action for a later, unspecified date—and after it proposes to implement its proposed NEM tariffs.[17] The Companies also state that they are "committed" to addressing non-residential NEM tariff issues in future proceedings yet to be convened.[18] None of the fatal gaps in the record are enough for the Companies to support any claimed "stall in the momentum of this process."[19]

The Companies position is inapt. First, there is no time crunch under HB 589. The statute provides no set deadline for revision of NEM tariffs. Second, there is no momentum. Rather, there is only a self-serving settlement proposal. Third, there is no exemption in the statute for the momentum of partially-baked proposals. Finally, the claimed momentum is no excuse for the unjust and unreasonable piece meal approach proposed by the Companies.

I. ***The Companies Continue to Advocate for a Taking of Renewable Energy Credits/Certificates (RECs) from Customers Even Though They Propose No Credit for or Quantification of Environmental Benefit***

The Companies continue to propose a regulatory taking of the value of and claims rights associated with renewable energy credits/certificates ("RECs").[20] The basis for this position that by taking something of value,

[16] Companies' Reply Comments at ¶¶ 87-94.
[17] Companies' Reply Comments at ¶¶ 73-76.
[18] Companies' Reply Comments at ¶¶ 82-86.
[19] Companies' Reply Comments at ¶ 86.
[20] Companies' Reply Comments at ¶ 77.

even though the Companies do not propose to account or compensate for the environmental value of RECs, the Companies can mitigate the cross-subsidy that they have yet to prove exists.[21]

J. *The Companies' Continued Failure to Integrate Consideration of NEM Rates and the Development of the Carbon Plan under HB 951 is Administratively Inefficient and Unreasonably Discriminatory*

The Companies and settling parties appear so committed to rushing their NEM tariff modifications into existence that they are willing to forego the efficient and important integration of NEM tariff reform into the development of the North Carolina Carbon Plan required by HB 951, even though they concede that customer-generator resources should be fairly evaluated as part of Carbon Plan development.[22] The Companies do not appear to recognize that fair evaluation requires the full and fair investigation of benefits and costs that they have so far refused to do.

The Companies position that NEM tariff reform should not be integrated with development of the Carbon Plan is a further example of the piece meal rate making the Companies propose, and worse, reflects a commitment to a self-fulfilling prophesy that if the NEM market is sufficiently throttled by the rates the Companies propose, there will be no meaningful contribution to the Carbon Plan from customer-owned generation.

II. CONCLUSION

After review of the reply comments submitted by the Companies, I maintain the overall opinion that the Application fails to meet the

[21] *Id.*
[22] Companies' Reply Comments at ¶¶ 95-99.

requirements of industry best practices and the North Carolina statutory framework in several regards.

The proposed rates for NEM customers are unjust, unreasonable, and discriminatory and therefore do not merit approval by the Commission.

I therefore suggest that the Commission reject the Companies' applications for approval of the proposed NEM tariffs as not in the public interest. The Commission should take charge of the investigation, hire an independent evaluator, direct a public investigation of the costs and benefits, and send the bill to the Companies. I maintain and reiterate my recommendation of March 29, 2022 submitted on behalf of EWG, that the Commission direct the Companies to support a full investigation of the costs and benefits of customer-sited generation in accordance with the law and under a comprehensive Benefit-Cost Analysis framework.

This 27th day of May, 2022.

Karl R. Rábago