STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 931
DOCKET NO. E-7, SUB 1032
DOCKET NO. E-100, SUB 179

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. E-2 Sub 931 In the Matter of Application by Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc., for Approval of Demand-Side Management and Energy Efficiency Cost Recovery Rider Pursuant to G.S. 62-133.9 and Commission Rule R8-69 Docket No. E-7, Sub 1032 In the Matter of Petition by Duke Energy Carolinas, LLC, for Approval of Modifications to Residential Service Load Control Rider Docket No. E-100, Sub 179 In the Matter of Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC, 2022 Biennial Integrated Resource Plans and Carbon Plan	**REPLY COMMENTS OF DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, LLC**

NOW COMES Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (together the "Companies" or "Duke Energy"), to submit Reply Comments pursuant to the North Carolina Utilities Commission's ("Commission") December 30, 2022 *Order Adopting Initial Carbon Plan and Providing Direction for Future Planning*, Docket No. E-100, Sub 179, implementing N.C.G.S. § 62-110.9, which was codified by the enactment of House Bill 951, Session Law 2021-165 ("Initial Carbon Plan Order"), and its

Order Granting Public Staff's Motion for Procedural Relief and Scheduling Technical Conference, dated October 30, 2023 (the "Scheduling Order").

I. Overview of Significant Progress Made Since Initial Comments

The Scheduling Order directed parties to provide initial comments on the issues identified in the Scheduling Order by January 26, 2024, and reply comments by March 29, 2024.[1] On January 26, 2024, the Companies provided their responses to the issues identified in the Scheduling Order and submitted for the Commission's approval revisions to the Companies' respective demand side management ("DSM") and energy efficiency ("EE") mechanisms. In addition to the initial comments submitted by the Companies, initial comments were submitted by Public Staff – North Carolina Utilities Commission ("Public Staff"); North Carolina Attorney General's Office ("AGO"); the Southern Alliance for Clean Energy, Natural Resources Defense Council, South Carolina Coastal Conservation League, Sierra Club, North Carolina Justice Center, North Carolina Housing Coalition, and North Carolina Sustainable Energy Association (collectively, "Efficiency Advocates"); the Carolina Industrial Group for Fair Utility Rates ("CIGFUR"); Walmart, Inc.; and the Carolinas Utility Consumer Association ("CUCA").

Most of the Companies' initial proposed revisions to the Mechanisms were either supported or unopposed by the parties, and several parties noted the Companies' success in obtaining savings through DSM/EE programs. Parties also made recommendations for certain further revisions.

[1] Given that March 29th was a state holiday, the Companies are submitting these Reply Comments on April 1, 2024.

After receipt of the parties' initial comments, the Companies continued to engage parties in discussions—including holding one additional formal stakeholder session and two bi-weekly meetings for focused discussions of discrete topics—to determine whether additional consensus could be achieved with respect to the revised Mechanisms. As a result of those discussions, and the months-long stakeholder engagement process preceding initial comments, there are only two remaining contested items in the Mechanisms before the Commission—Public Staff's objection to Mechanism revisions related to Active Load Management and AGO's objection to Mechanism revisions related to the proposed portfolio performance incentive ("PPI") tiering structure.

Other than those two issues involving only a single party for each issue, the Companies believe that consensus (either support or non-opposition) has been achieved with respect to the revisions in the Mechanisms. This consensus is a product of the constructive engagement of parties and includes the significant additional consensus achieved in this docket since the initial comments were filed. The Companies are pleased to present the revised Mechanisms that are attached as Exhibit A and Exhibit B (together, the "Mechanisms" and individually, the "DEC Mechanism" or the "DEP Mechanism") for Commission approval.[2]

As noted above, the revised Mechanisms are almost entirely uncontested. Therefore, and for the reasons set forth in these Reply Comments, the Companies respectfully request that the Commission approve the Mechanisms and grant any other relief as the Commission deems just and reasonable in the furtherance of the public interest.

[2] DEC's revised Mechanism is attached as Exhibit A and DEP's revised Mechanism is attached as Exhibit B. In each case, the exhibit contains a clean version of the revised Mechanism, along with a redlined version that shows the revisions against the existing, Commission-approved Mechanisms.

II. Responses to Initial Comments of Other Parties

The Companies provide the following reply comments which are divided into four groups: (1) comments on sections for which there is now either support or no opposition among the parties; (2) comments reflecting the Companies' agreement with Efficiency Advocates to revise to certain sections to provide for an ALM component; (3) comments regarding the Companies' proposed PPI tiering structure; and (4) responses to other general comments unrelated to proposed Mechanisms.

A. Comments on Sections that are Either Supported or Unopposed by All Parties

1. *Portfolio Performance Incentive (Measure Life Adjustment Factor)*

In the initial comments and in discussions with stakeholders after the filing of initial comments, the Companies heard a clear desire from several stakeholders, including the Public Staff, to emphasize and recognize the Companies' efforts to increase the amount of annual EE savings achieved through customer adoption of longer-lived measures. Specifically, the Public Staff stated its belief that "there is value in incentivizing the Companies to increase the percentage of savings attributable to long-lived measures that constitute the overall portfolio" and that "a bonus incentive (potentially tiered) could be granted upon a specified and meaningful increase in the percentage of savings attributable to long-lived programs in the overall portfolio."[3] And, the Efficiency Advocates suggested seeking weighting inputs to a scaled PPI calculation so that a performance metric based on another performance goal, such as persistence of savings, would account for a portion of

[3] Public Staff's Comments, at p. 53.

the incentive.[4] According to the Efficiency Advocates, "[t]he goal of this element of the [PPI] would be to motivate Duke Energy to achieve a smaller portion of its overall efficiency savings from short-lived measures . . . and a greater portion of its savings from longer-lived measures that deliver more persistent savings over time . . . ."[5]

After several conversations around this desired goal, an additional performance-based modifier to the overall PPI earned for EE measures was developed to expressly recognize customer participation in long-lived measures based on the impact it has on the weighted average measure life of EE measures installed in a vintage year.

Beginning with Vintage Year 2025, the dollar amount of the pre-tax PPI associated with EE Programs will be subject to a Measure Life Adjustment Factor ("MLAF") determined by comparing the weighted average measure unit life of EE measures for the vintage year with the weighted average measure unit life of EE measure installed in Vintage Year 2023 ("MLAF Baseline"). *See* revisions to Paragraphs 14 and 75 of the DEC Mechanism and Paragraphs 13 and 81 of the DEP Mechanism attached in Exhibits A and B respectively. If the weighted average measure unit life of EE Measures in a vintage year decreases by more than 10% or increases by more than 20% when compared to the MLAF Baseline, that vintage year will replace Vintage Year 2023 as the new vintage year used in the MLAF Baseline. The MLAF shall be applied during the true-up of a Vintage Year PPI and will be based on the following table until the vintage year used in the MLAF Baseline is updated or next Mechanism review:

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[4] Joint Comments of Southern Alliance for Clean Energy, Natural Resources Defense Council, South Carolina Coastal Conservation League, Sierra Club, North Carolina Justice Center, North Carolina Housing Coalition, and North Carolina Sustainable Energy Association on Duke Energy's Proposed Changes to the Demand-Side Management/Energy Efficiency Mechanism, at p. 10.

[5] *Id.*

Measure Life Adjustment Factor Matrix for PPI						
	Baseline	**PPI Adjustment Thresholds**				
	Weighted Average Measure Life of EE Measures Installed for Vintage 2023	≥ 10% Decrease in Weighted Average Measure Life	≥ 5% Decrease in Weighted Average Measure Life	< 5% Decrease or < 10% Increase in Weighted Average Measure Life	≥ 10% Increase in Weighted Average Measure Life	≥ 20% Increase in Weighted Average Measure Life
DEC	**6.81**	6.129	6.4695		7.491	8.172
DEP	**8.03**	7.227	7.6285		8.833	9.636
PPI Multiplier		**0.95**	**0.975**	**1**	**1.025**	**1.05**

The MLAF matrix and associated revisions are included Paragraph 75 of the DEC Mechanism and Paragraph 81 of the DEP Mechanism attached in Exhibits A and B respectively.

2. *Program Return Incentive*

Although the Public Staff proposed a tiered structure for the PPI in initial comments, the Public Staff did not propose a tiered structure for the PRI. Instead, the Public Staff proposed that "the incentive applied to the PRI be equal to the respective company's WACC." Public Staff asserted that "this approach align[ed] the two utility incentives while continuing to encourage low-income programs that are historically not cost effective."

The Companies agree with Public Staff that a tiered structure is not necessary for the PRI, and all parties either support or do not oppose the reduction of the PRI percentage from 10.6% to 9.5%. The 9.5% of the system benefit used in the determination of PRI will align with the middle PPI performance tier tied to achievement of 1% of eligible load modeling assumption used in the Carbon Plan Integrated Resource Plan ("CPIRP"). Aligning the PRI with the PPI percentage in this way also aligns with historical practice.

Importantly, customers will continue to maintain 90.5% of the system benefits created by the PRI eligible programs at this proposed 9.5% sharing. This revision is included in Paragraph 79 of the DEC Mechanism and Paragraph 85 of the DEP Mechanism attached in Exhibits A and B respectively. Further revisions to Paragraph 15 of the DEC Mechanism and Paragraph 14 of the DEP Mechanism attached in Exhibits A and B respectively have been made to clarify that net lost revenues are excluded from calculation of the PRI.

3. *Other Incentives*

The parties also either support or do not oppose the "Other Incentive" proposed by Efficiency Advocates. Under this proposal, the Companies will be eligible to receive an additional incentive for a vintage year based on their ability to increase the percentage of the annual kWh saved by the Companies' respective Residential EE Programs that are derived from income-qualified EE programs. Proposed incentive amounts are shown below:

	Baseline	**Other Incentive Performance Tiering**				
	Vintage 2024 Percentage Residential kWh Savings from Income Qualified Programs	≥ 5% Increase Percentage Residential kWh Savings from Income Qualified Programs	≥ 6% Increase Percentage Residential kWh Savings from Income Qualified Programs	≥ 7% Increase Percentage Residential kWh Savings from Income Qualified Programs	≥ 8% Increase Percentage Residential kWh Savings from Income Qualified Programs	≥ 10% Increase Percentage Residential kWh Savings from Income Qualified Programs
Other Incentive		**$ 100,000**	**$ 200,000**	**$ 300,000**	**$ 400,000**	**$ 500,000**

The baseline vintage year for determining the change in the percentage of residential EE kWh savings being derived from income-qualified EE programs will be Vintage Year 2024. The Companies' ability to earn PRI will not be impacted based on its ability to earn an Other Incentive.

The Companies have incorporated the "Other Incentive" in Paragraph 90 of the DEC Mechanism and Paragraph 96A of the DEP Mechanism attached in Exhibits A and B respectively.

4. *Updating system benefit inputs*

In their initial comments, the Companies maintained that system benefits must be updated if EE is to be a priority resource and proposed to use the most recently approved CPIRP to determine utility system benefits in the approved Mechanisms. The Companies proposed to use the projected EE portfolio hourly shape to determine the avoided energy benefit; however, to ensure that EE is primarily avoiding marginal fossil fuel generation, the Companies proposed to remove future incremental renewable energy resources from the CPIRP for purposes of determining the avoided energy benefit.[6] To determine avoided capacity benefits for DSM/EE resources, the Companies proposed to use the levelized costs over the recognized life of a Hydrogen-Capable Advanced Class CT (including fixed O&M, major maintenance and intrastate fuel transportation costs) until an alternative dispatchable clean-energy capacity resource is identified in future CPIRPs.

The Public Staff agreed in initial comments that "the use of an advanced class CT may be appropriate for calculating avoided capacity benefits," but suggested that "there may be energy benefits that accompany the use of an advanced class CT that should be considered and potentially deducted from the avoided capacity, if the energy value is

[6] In in initial comments, the Companies stated that it is appropriate to remove "all future incremental renewable energy resources" from the CPIRP when determining the avoided energy benefit rather than only removing a portion of renewable energy resources. Removing only a portion of the renewables from the portfolio to determine the avoided energy benefit would undermine the purpose of the enabler because it would lessen the avoided energy benefits of DSM/EE. Leaving renewables in the portfolio allows the marginal units, which determine the value of the EE, to be dispatched more efficiently, thereby lessening pressure on marginal costs, and resulting in a lower avoided energy value for EE. On the other hand, when all renewables are removed as proposed by the Companies, the marginal resources that will determine the value of EE are resources that closely follow the fuel prices.

significant as determined by the annual capacity factor."[7] The Public Staff further stated that "the net capacity credits should be based on the annual capacity costs over the operational life approved in the most recent CPIRP . . . and be allocated to summer and winter seasons based on the loss of load hours from the most recent Resource Adequacy study."[8] Public Staff asserted that "[r]emoving [2,300 MW of solar capacity and 175 MW of wind capacity] from both the change case and the base case models would be a reasonable method of estimating the avoided energy benefit of DSM/EE measures."[9]

Walmart stated that it "largely agree[d] with the language changes proposed by the Companies in the[] three paragraphs [related to the calculations of avoided energy and capacity]" but that it "support[ed] Public Staff's language on the [approved operational] life of the [selected] resource as it will allow greater flexibility as the Mechanism is implemented."[10]

After the filing of the initial comments, the Companies and Public Staff continued discussions to reach a proposal on the mechanism revisions that all parties could either support or not oppose—including the updates to the cost benefit inputs. Based on those discussions, the Companies have further revised the updates to system benefit inputs to provide the following:

- The projected EE portfolio hourly shape will still be used to determine the system energy benefit against the CPIRP Reference Portfolio.
- Because that energy value does not capture the full benefits of clean energy on the system through EE, and in lieu of removing incremental renewables as

[7] Public Staff's Comments, at p. 22.
[8] *Id*. at p. 22-23.
[9] *Id*. at p. 25.
[10] Initial Comments of Walmart, Inc., at p. 9, ¶ 23.

proposed in the Companies' initial comments, a Clean Energy Proxy Value for DSM/EE Resources ("CEPV") will be included in the calculation.

- The CEPV is approximated based on a levelized value of the currently available federal production tax credit associated with clean energy supply side resources.
- To determine system capacity benefit values used for DSM/EE Programs, a capacity resource capable of economic dispatch shall have its costs levelized over the operational life of the asset/resource approved in the most recently adopted CPIRP as of December 31 of the year preceding the date of the annual DSM/EE rider filing.
- A simple cycle combustion turbine that has been designated as a likely resource to be built by the Companies in the Commission-approved resource plan, including fixed O&M and intrastate fuel transportation costs, will be utilized as this capacity resource at this time.
- The system energy values calculated from the production cost modeling, the capacity value calculation, as well as the CEPV applied in the determination of energy benefit will be values developed for purposes of DSM/EE program evaluation and are specific to assessment of DSM/EE Programs only.

Accounting for a CEPV more fully represents the value DSM/EE energy should receive when compared to other clean energy being brought onto the system and it significantly simplifies the avoided energy calculation. Although the proposed revisions provide more details to the determination of avoided capacity benefits, these details do not materially change the Companies' proposal regarding the determination of avoided capacity benefits submitted in the Companies' initial comments.

These revisions are either supported or unopposed by all parties and are incorporated in Paragraphs 22(a) – (j) of the DEC Mechanism and Paragraphs 22, 22A, and 22B of the DEP Mechanism attached in Exhibits A and B respectively.

5. As-found baseline

In their initial comments, the Companies proposed to modify the Mechanisms to allow for an "as-found" baseline, which would determine energy savings impacts based upon how older equipment is found operating in the customer's residence (*i.e.*, level of efficiency, etc.) rather than simply utilizing the federal appliance standard as a baseline. As a result, an "as-found" baseline would allow the Companies to match higher energy savings with higher customer incentives, making it more affordable for customers to replace that equipment before it fails—providing increased and timely energy savings to the Companies' systems. The Companies noted that the recognition of "as-found" baselines for certain EE measures is appropriate because the measure of savings from early replacement of inefficient equipment should be calculated as compared to the equipment being replaced, not the efficiency standard in place at the time of replacement.

The Public Staff supported the Companies' proposed changes regarding the as-found baseline proposed enabler. However, Public Staff asserted that "the Companies should not be permitted to earn an incentive on the incremental gain from utilizing an As-Found savings baseline, unless it can be limited to the lesser of the savings calculated using the remaining life of the less efficient, replaced equipment or that would be produced over five years."[11]

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[11] Public Staff's Comments, at p. 27.

The Companies disagreed with the Public Staff's assertion because it disconnects the incentive from cost-effectiveness and creates a disincentive to improve these programs if the cost-effectiveness is misaligned; arbitrarily limits the incremental gain to the lesser of savings calculated using the remaining life of the less efficient, replaced equipment or five years;[12] and ignores the fact that the Commission approved an "as-found baseline" for the Companies' Smart$aver® Early Replacement and Retrofit Program and did not provide for any such limitation.[13]

After further discussions, and considering the new revised Mechanisms in their totality, all parties either support or do not oppose the Companies' revisions to Paragraph 24 of the DEC Mechanism and Paragraph 25 of the DEP Mechanism provided in the Companies' initial comments. The only change to this language from initial comments is simply an update to reference the "DSM/EE Innovation Program" instead of the "Efficiency Innovation Program"—a revision made at the request of another party in this proceeding.

6. *Definition of Low-income customer*

In their initial comments, the Companies' proposed revisions to the definition of low-income customer to allow the Companies to tailor income-qualified programs to reach the most appropriate range of customers—with the ultimate goal of effectively reaching low-income customers in all cases subject to the Commission's approval.

The Public Staff indicated that it supported the Companies' proposed changes, but expressed "concern[] that the Companies' current low-income offerings are not reaching

[12] Even if savings are only valid for the remaining life, recognition of those savings should not be limited to only five years. The savings above the baseline persist for the measure life.

[13] Order dated August 23, 2023, in Docket Nos. E-2, Sub 1308, and E-7, Sub 1278.

the target customer base effectively."[14] Public Staff suggested that "[i]f low-income eligibility is broadened . . . so that the percentage of the Companies' eligible customers increases beyond an appropriate level, then it would be appropriate for the Commission to consider whether those programs should be required to achieve cost-effectiveness results greater than 1.0."[15]

The Companies appreciate that Public Staff supports the proposed changes. As a result, the Companies have not changed the definition of low-income customer in Paragraph 4 of the DEC Mechanism and Paragraph 5 of the DEP Mechanism from what was provided in the Companies' initial comments. These revisions are either supported or unopposed by all parties.

However, the Companies disagree with the suggestion that it might be appropriate for the Commission to consider whether low-income offerings should be required to achieve cost-effectiveness results greater than 1.0. If the Commission were to require the low-income offerings to be cost-effective, fewer customers would be reached, and the number of measures or customer incentives that can be offered to low-income customers, who traditionally have a higher energy burden and to whom DSM/EE offerings can provide the most assistance, would be limited.

Any concerns about the projected amount of the portfolio that is not cost effective because of a high percentage of "low-income" customers may be addressed in a rider proceeding and as previously mentioned, any definition of low-income customers that

[14] Public Staff's Comments, at p. 29.
[15] *Id.* at pp. 29-30.

deviates from the DSM/EE Mechanism will be submitted for review and approval by Commission.

7. *Expedited Regulatory Approval*

In their initial comments, the Companies introduced a new Efficiency Innovation Program ("EIP") intended to further accelerate innovation. The EIP would enable the Companies to more efficiently evaluate potential non-DSM/EE rate designs, emerging technologies, and customer programs with an eye towards turning innovative prototyping concepts (or leveraging lessons learned) into pilots or programs, subject to any necessary modifications.

The Public Staff expressed its support for the Companies' proposal and asserted that the EIP "should be reviewed again no later than the next DSM/EE Mechanism review to assess whether or not it is appropriate to continue offering this program."[16]

In its initial comments, CIGFUR requested that the EIP be renamed and that the Mechanisms clarify that the EIP filings must specify which customer class(es) are eligible to participate.

After further discussions, the Companies propose to revise Paragraph 32 of the DEC Mechanism and Paragraph 32 of the DEP Mechanism to rename the EIP as the "DSM/EE Innovation Program" and to clarify in Section (c)(1) that the Companies must provide the "targeted customer class" for each project in its annual DSM/EE rider filings. The Companies do not object to the DSM/EE Innovation Program being reviewed during the next Mechanism review as requested by Public Staff. These revisions are either supported or unopposed by all parties.

[16] *Id.* at p. 30.

8. *Recovery of Net Lost Revenues*

In their initial comments, the Companies revised the Mechanisms to appropriately reflect the Commission's approval of residential revenue per customer decoupling and to clarify that, to the extent a revenue decoupling mechanism is adopted for customers served by the Companies, the NLR—based on kWh sales reductions and kW savings verified by the EM&V process and approved by the Commission for a vintage year for customers included in decoupling—shall be included in the calculation of the revenue decoupling mechanism.[17] The revisions ensure that NLR recovered through the DSM/EE riders continue to be directly tied to verified results of EE programs but are not double-recovered from NLR that are recovered from customers included in the revenue decoupling mechanism.

In its initial comments, the Public Staff opposed the recovery of NLR through the Mechanisms. According to Public Staff, the Companies' current approach is inappropriate because it relies on estimates. Public Staff asserted that, when the Companies have a rate decoupling mechanism ("RDM") in effect, "the residential DSM/EE NLRs be deemed recovered through the RDM and not separately be eligible for recovery through the Companies' DSM/EE riders." In this way, Public Staff argued that the Companies will recover actual NLRs through the RDM when a PBR and RDM are in effect, eliminating the need for any true-up.[18] The AGO supported the Public Staff's position, agreeing with

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[17] Order Accepting Stipulations, Granting Partial Rate Increase, Requiring Public Notice, and Modifying Lincoln CT CPCN Conditions, dated December 15, 2023, in Docket Nos. E-7, Sub 1134, and E-7, Sub 1276, at p. 274 (ordering that "DEC's proposed residential decoupling mechanism is consistent with N.C.G.S. § 62-133.16 and Commission Rule R1-17B, and the proposed tariff for the associated rider, shall be, and is hereby approved"); Order Accepting Stipulations, Granting Partial Rate Increase, Requiring Public Notice, dated August 18, 2023, in Docket No. E-2, Sub 1300, at p. 244 (ordering that "DEP's proposed residential decoupling mechanism is consistent with N.C.G.S. § 62-133.16 and Commission Rule R1-17B, and the proposed tariff for the associated rider, shall be, and is hereby approved").

[18] Public Staff's Comments, at p. 34.

the Public Staff that "recovery of NLRs for residential DSM/EE programs is no longer appropriate whenever a decoupling rider is in place."[19]

After further discussions since initial comments were filed, the Companies and Public Staff reached a compromise that preserves a key building block of the state's successful regulatory construct with respect to DSM/EE, namely, that the Companies may continue to recover NLR resulting from its DSM/EE initiatives. The compromise proposal is unopposed and clarifies how such NLR should be recovered—both when an RDM is in place and when an RDM is not in place. Specifically, the Companies will continue to collect NLR during Vintage Years 2024 and 2025 through the DSM/EE rider. However, beginning with the projection of Vintage Year 2026 in the Companies' 2025 Annual DSM/EE Rider filings, to the extent an RDM is in effect for customers served by the Companies, the recoverable residential NLR based on kWh sales reductions for the months within any vintage years that align with the RDM shall be implicitly recovered through the RDM and will not be included in the Annual DSM/EE Rider filing. The applicable NLR will be included in the RDM by not subtracting them in the RDM template calculation. The inclusion of NLR for recovery in the RDM will ensure that NLR continue to be directly tied to verified results of EE programs but are not double recovered from customers included in the RDM. If an RDM is only in effect for a partial DSM/EE rate period, the parties will engage in good faith discussions to determine the appropriate DSM/EE rider or revenue decoupling rider proceeding in which the Companies will recover residential NLR. The Companies will continue to calculate residential NLRs in the manner consistent with

[19] Initial Comments of the Attorney General's Office, at p. 8.

the methodology used in the 2023 DSM/EE Annual Rider proceeding and report this information in its annual DSM/EE rider proceeding.

Beginning with the projection of Vintage Year 2027 in the Companies' 2026 Annual DSM/EE Rider filings and in any subsequent Annual DSM/EE Rider filings under the Mechanisms, if an RDM is pending before the Commission at the time of such rider filings, the Companies will include in that filing projections of DSM/EE rates reflecting recovery both with and without NLR for the months and rate schedules subject to the RDM.

Under this the compromise proposal, residential NLR for the DSM/EE programs will continue to be (i) calculated by the Companies and subject to verification of the calculation and review of the inputs by interested parties and included for recovery in either the RDM or the Annual DSM/EE Rider filing; (ii) eligible for recovery pursuant to Commission Rule R8-69(a)(2); and (iii) excluded from earnings in the Earnings Sharing Mechanisms.

To ensure consistent application of this compromise and alleviate complexity on the parties, the Commission, and customers, the Public Staff and DEP will also jointly request and support a rule waiver allowing DEP to continue the RDM approved in its recent rate case for three months after the current performance-based rate period expires, *i.e.*, from October 1, 2026, to December 31, 2026. This will align with the DSM/EE rider rate period and facilitate the transition of the residential NLR to the RDM. This waiver will aid administrative efficiency by ensuring that the DEP will not have to utilize two or more recovery methods for NLR during the same year—which would occur if no waiver is granted given the misalignment between rider and PBR periods—thereby preserving the transparency in the new proposed method and avoiding what may be complex rate impacts given the novelty of the situation.

Finally, to further ensure alignment and transparency under the new proposal, and beginning with the Q2 2024 report filed in August of 2024, DEP and DEC will include schedules in its ES-1 quarterly report for DSM/EE that report NLR consistent with the reflection of NLR collected through the DSM/EE rider as net income to the extent that they are not removed through RDM. Taken together, the proposal will provide a predictable framework under which the Companies will be able to track NLR arising from DSM/EE in a consistent, transparent manner.

The changes are incorporated in Paragraph 66(f) – (h) of the DEC Mechanism and Paragraph 72(f) – (h) of the DEP Mechanism attached in Exhibits A and B respectively. These revisions are either supported or unopposed by all parties.

9. Non-Energy Benefits and Carbon Reduction Benefits

In their initial comments, the Companies proposed certain revisions regarding non-energy benefits. The Public Staff indicated that it "support[ed] Duke's proposed changes [regarding non-energy benefits]."[20] However, the Public Staff suggested that, with respect to separately accounting for carbon reduction benefits, the Commission "could approve a carbon reduction benefit of $0 in this proceeding as a placeholder for future determination in the Avoided Cost proceedings."[21]

The Public Staff further stated that the Utility Cost Test ("UCT"), Total Resource Cost Test ("TRC"), Participant Cost Test ("PCT"), and Rate Impact Measure Test ("RIM") test "have served the [parties] and the Commission well over the last decade and should

[20] Public Staff's Comments, at p. 43.
[21] *Id*. at pp. 44.

continue to be used" and that the UCT "is, and should continue to be, the prevailing test for determining the cost effectiveness of a program proposed for inclusion in the Companies' portfolio of DSM and EE programs."[22]

After further discussions, the parties either support or do not oppose the revisions to Paragraphs 11 and 16 of the DEC Mechanism and Paragraphs 12 and 17 of the DEP Mechanism provided with the Companies' initial comments.

The revisions reflect the fact that reference to or recognition of an explicit carbon benefit of $0 in this proceeding is simply unnecessary because (i) the updated system benefits inputs for DSM/EE reflect the value received by other supply side clean energy resources to aid in the clean energy transition and (ii) an implicit carbon value would be accounted for some Non-Energy Benefits recognized in the new revised Mechanism edits (*e.g.*, health benefits) already reflected in DSM/EE valuation, therefore double counting the benefit of DSM/EE. The Companies believe that it is more appropriate to consider attempting to identify carbon reduction benefits in the future and incorporate any Commission approved values in future Mechanism reviews, but it is premature and unnecessary to account for a carbon reduction benefit of $0 in this proceeding as a placeholder for future determination of the currently undefined value.

10. Collaborative

In their initial comments, the Companies proposed revisions to, among other things, ensure all parties, including counsel for such parties, have access to transparent, informative materials about the Collaborative meetings and provide for focused working groups of interested parties to further investigate initiatives and topics.

[22] *Id.* at p. 45.

The Public Staff indicated its support for the Companies' proposed revisions regarding the Stakeholder Collaborative, and Walmart stated in its initial comments that it "does not oppose the[] changes [related to the Stakeholder Collaborative] even though they will continue to prohibit attorney participation in the Carolinas EE Collaborative."[23]

The Companies appreciate the support expressed from Public Staff and Walmart. All parties either support or do not oppose the revisions to Paragraph 46 of the DEC Mechanism and Paragraph 29 of the DEP Mechanism offered in the Companies' initial comments. The Companies are responsive to Walmart's and CIGFUR's concerns and have engaged subject matter experts from their respective organizations to be included in the distribution list which includes a copy of the agenda and the presentation. The Companies will continue to leverage this more inclusive Collaborative as a forum to be responsive to stakeholder requests for information pertaining to the Companies' DSM/EE programs, including but not limited, to estimated environmental emission reduction, low-income participation, and the Companies' customer uptake of efficiency and beneficial electrification programs.

11. <u>Opt-Out/Commercial and Industrial</u>

In their initial comments, the Companies did not propose any change to the threshold for a "large commercial customer" under Rule 8-69 that can opt-out. However, the Companies expressed their hope that approval of the proposed enablers would allow the Companies to offer higher incentives for DSM/EE programs and measures, thereby making their DSM/EE programs more attractive to industrial and commercial customers.

[23] Initial Comments of Walmart, Inc., at p. 8, ¶ 21.

In its initial comments, Walmart stated that, "regardless of any changes to the DSM/EE Mechanism," it "anticipates that it will continue to opt-out of new EE measures in the Companies' service territories."[24] However, Walmart expressed that it "sees substantial opportunity for well-designed DSM programs to attract C&I participation,"[25] *i.e.*, "programs . . . [that have] the potential to earn back more than the costs of participating . . . and . . . [that] recognize Walmart's operational limitations."[26]

The Public Staff expressed its general support for "the exploration of [Walmart's, CUCA's, and CIGFUR's ideas from the Technical Conference] for program offerings provided that the participants must opt into the Companies' DSM/EE riders and to the extent the offerings are cost effective."[27]

All parties either support or do not oppose the existing language in the DEC Mechanism and DEP Mechanism regarding the opt-out provisions. Therefore, the Companies made no further edits to the Mechanisms—however, the Companies remain hopeful that approval of the proposed enablers will allow them to offer higher incentives for DSM/EE programs and measures and make their DSM/EE programs more attractive to industrial and commercial customers.

12. Non-Participant Spillover

In their initial comments, the Companies took the position that inclusion of opt-out customers in the Non-Participant Spillover ("NPSO") calculation is consistent with industry practices and appropriately reflects the true net system savings realized by the program. As stated in the Companies' initial comments, these savings would not occur

[24] *Id.* at p. 5, ¶ 13.
[25] *Id.* at p. 5, ¶ 14.
[26] *Id.* at pp. 5-6, ¶ 14.
[27] Public Staff's Comments, at p. 47.

"but for" the Companies' DSM/EE activities—just like savings realized by participating customers. The costs incurred by the Companies pursuant to those DSM/EE programs will be there regardless of whether NPSO is recognized, and the savings created by these opted-out customers are indirect results of those expenditures by the Companies. Therefore, they should be recognized similarly to other system benefits created as a result of the Companies' DSM/EE efforts.

Conversely, the Public Staff stated its belief that "any DSM or EE measures installed by customers leveraging the opt-out provision should not have any impact on the DSM/EE riders, regardless of whether the Companies' programs influenced those savings" and the Public Staff has proposed revisions reflecting this concept.[28]

As a result of further discussions and in the spirit of compromise, the Companies have agreed to vet with the Public Staff any Evaluation, Measurement and Verification ("EM&V") associated with DSM/EE Programs targeting non-residential customers that would incorporate a NPSO analysis. Additionally, in advance of initiating EM&V, the Companies will work with Public Staff to vet the methodology and the appropriateness of the NPSO in an EM&V. To the extent that the application of the NPSO benefits is not mutually agreed to by both parties, both parties maintain the right to challenge the inclusion or exclusion of those benefits in the Company's PPI and calculation.

As a result of these agreements, the Companies' proposed revisions on this topic are either supported or unopposed by all parties. These revisions are set forth in Paragraph 39 of the DEC Mechanism and Paragraph 36 of the DEP Mechanism, respectively.

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[28] *Id.* at p. 49.

13. One-time Reconciliation

In their initial comments, the Companies included revisions providing for a one-time, non-precedent setting reconciliation or "true-up" of Vintage 2025 to reflect all Commission-approved changes to the Mechanisms resulting from the present review.

In its initial comments, the Public Staff asserted that the Commission "should not grant [the Companies'] request for th[e] one-time reconciliation" because "the Companies have not provided any quantitative analysis or substantiated support to show a particular need for this reconciliation or the impact of such a one-time reconciliation."[29]

Although "not per se opposed to a future reconciliation," the AGO agree[d] with the Public Staff that this request for a one-time reconciliation is "premature and that there is not enough information to make an informed decision as to the appropriateness of this request" and assert that "it is [not] in the public interest to agree in advance to impacts that are, at this time, unknown."[30]

The Companies continue to believe that the one-time reconciliation for Vintage 2025 is appropriate and necessary to allow for the mechanism review's intended consequence to be realized in 2025 rather than waiting until Vintage 2026. As a result of continued discussions, the parties either support or do not oppose the revisions to Paragraph 83 of the DEC Mechanism and Paragraph 89 of the DEP Mechanism provided in the Companies' initial comments with removal of the phrase "unless [Company] and the Public Staff agree otherwise." However, the Companies and the Public Staff have agreed that no later than 90 days after the Commission issues its order on the Mechanism Review, the Companies shall file a consolidated application seeking modifications of each of its

[29] *Id.* at p. 54.
[30] Initial Comments of the Attorney General's Office, at pp. 16-17.

approved programs to reflect changes in program costs (customer incentives) or an explanation as to why a change in program costs (customer incentives) for a specific program is not appropriate or applicable. In this way, the one-time reconciliation will drive participation in DSM/EE programs by increasing incentives and improving program designs to align with the updated system benefit inputs.

No later than on the date of filing these modifications, the Companies shall provide the Public Staff (and other parties by request) with the following to ensure the necessary information is present to immediately begin a thorough review of the Companies' filing: (1) the current cost effectiveness scores for the respective program; (2) the cost effectiveness of the program after updating system benefits and including program costs; (3) detailed exhibit(s) containing the system benefits for energy, capacity, and T&D used in the filing; (4) proposed changes to program costs (customer incentives) compared to original program costs (customer incentives); (5) proposed effective date for all program cost and customer incentive changes; and (6) any necessary tariff changes, including redline versions.

As part of this agreement, the Companies and Public Staff would support the Commission reconsidering the appropriateness of the one-time reconciliation should the Companies fail to make such a filing within 90 days of the Commission's order or should the filing be inadequate based on the criteria set forth above solely due to the Companies' action or inaction. The Companies shall file an update with the Commission 30 days prior to the expiration of the 90-day period advising the Commission on the development of the filings.

Expeditious approval of the revised Mechanisms is critical to the Companies' ability to implement the agreed-upon one-time reconciliation (which includes submitting program modifications for Commission review and approval) in a timely manner so that customers may begin enjoying the benefits resulting from the revised Mechanisms in Vintage Year 2025.

14. <u>Combined Mechanisms</u>

In its initial comments, the Public Staff requested that the Commission order that, "in the Companies' compliance filings, the Companies work with the Public Staff to consolidate the DEC and DEP Mechanisms into one combined document, and that the combined document incorporate the Decision Tree and the EM&V Agreement in appendices rather than as separately referenced documents."[31]

The Companies are open to working with the Public Staff to develop a consolidated mechanism but believe that the consolidation could take more time than would be available prior to the compliance filings. Therefore, the Companies will work in good faith with the Public Staff to develop the Consolidated Mechanism with the included referenced documents within one year of the Mechanisms being approved by the Commission.

15. <u>Financial Reporting Requirements</u>

In its initial comments, the Public Staff noted that, in viewing the two Companies' ES-1 reports, it observed that "DEP includes NLRs in its earnings reporting in compliance with the 2020 Mechanism Order, while DEC subtracts NLRs from its operating income, giving the impression that DEP's DSM/EE programs are considerably more profitable than DEC's."[32] Public Staff committed to working with DEC to "make the necessary updates

[31] Public Staff's Comments, at p. 56-57.
[32] *Id.* at pp. 45-46.

to its reporting practices in compliance with the Commission's 2020 Mechanism Order, thereby ensuring synchrony in the two companies' earnings reporting."[33]

The Companies are currently working with the internal group that prepares the ES-1 to update the reporting template in a manner that appropriately reflects NLR in a manner consistent with the 2020 Order. The Companies plan to implement this change no later than the second quarter of 2024 with the reporting of first quarter of 2024 results and will share the proposed updated reporting form for the ES-1 with the Public Staff prior to populating it with data.

16. Vintage/Amortization

In its initial comments, the Public Staff suggested that "true-ups of no more than five years from the current Vintage Year be permitted" and that "when corrections are identified, . . . any corrections should be made in the year the issue is identified."[34] Public Staff also commented that "it is in the best interest of ratepayers to reduce the amortization period from three years to one year sooner rather than later."[35]

The Companies agree with Public Staff's recommendation regarding true ups of no more than five years, as it brings finality to rates for the Companies and their customers, while providing an appropriate window of time for the Companies to complete necessary EM&V. As a result, the Companies have added Paragraph 53 to the DEC Mechanism and Paragraph 63 to the DEP Mechanism in the attached Exhibits A and B respectively to specify that, "[b]eginning with Vintage Year 2025, true-ups to Program Costs, PPI, NLR, and any other associated coats will be limited to a maximum of five years from the current

[33] *Id.* at p. 46.
[34] *Id.* at p. 50.
[35] *Id.* at p. 51.

Vintage Year" and that "identified true-up corrections are to be completed in the identified Vintage Year and . . . should not be split across multiple Vintage Years."

As part of this agreement, the Companies have also agreed "not to seek general amortization for future DSM/EE riders" and that "[s]hould any special circumstances arise, the Company agrees to discuss with the Public Staff and other interested parties whether it is appropriate to recover over an amortized period." This agreement is set forth in the revisions in Paragraph 53 to the DEP Mechanism in the attached Exhibit B. The Companies understand that all parties either support or do not oppose the revisions cited above related to true ups of vintage years and amortization.

17. <u>Caps on Annual Increases</u>

In its initial comments, the Public Staff suggested the possibility of "an appropriate cap on annual increases in the DSM/EE riders until the next Mechanism review that would prevent or mitigate rate shock, while encouraging [the Companies] to pursue all cost-effective DSM/EE and increase customer offerings and participation."[36]

The Companies do not agree that there should be caps on annual increases in the DSM/EE riders. H.B. 951 provides that the law remains the same regarding DSM/EE, and the existing law does not provide such a cap on annual increases under the DSM/EE rider despite the General Assembly capping costs on REPS from providers. It would be inappropriate to consider caps on annual increases for the DSM/EE rider when the General Assembly, who knows how to impose caps, chose not to do so in this instance.

As a result of the parties' further discussions, the resulting proposed revisions to the Mechanisms acknowledge that such a cap creates unnecessary complexity and raises a

[36] *Id.* at p. 57.

barrier to the promotion of achieving as much cost-effective energy efficiency as possible. The Companies understand that Public Staff is withdrawing this recommendation and no party opposes such withdrawal.

B. Comments on Efficiency Advocates' Active Load Management Proposal

In their initial comments, Efficiency Advocates proposed adding a new Active Load Management component that would recognize the potential customer benefits that can be unlocked from enrolling customers in a program that will allow for broader utility control of devices at the grid's edge.

The Companies agree with this proposal from the Efficiency Advocates, which represents a positive next step in the evolution of the Companies' DSM/EE portfolio, and have added the following definition of Active Load Management to the Mechanisms:

> Active Load Management is the process by which Duke Energy utilizes any combination of voluntary demand side management programs or measures that allow for the aggregated control or management of distributed energy resources or controllable electrical devices at the grid edge, whether directly by the utility or by a third party under contract with the utility, to enhance or maintain resource adequacy, reduce grid congestion, efficiently manage variable renewable energy output, and shape utility loads at a locational or aggregate level to benefit the utility system. Active Load Management shall be eligible for recovery of prudently incurred program costs and Utility incentive earned.

The Companies also agree with the Efficiency Advocates' proposal to include an Active Load Management Incentive, which provides as follows:

> Beginning in 2025, Duke Energy will begin to identify and implement up to 20 MW of capacity under Active Load Management. If the Company applies for Commission approval of a new program or a modification to an existing program that the Company intends to be included in the initial 20 MW of capacity under this paragraph, the Company shall (i) explicitly notify the Commission of that intention at the time of application for approval of such new program or modification and (ii) communicate that intention to the Collaborative. The cost effectiveness and PPI of the initial 20 MW of Active Load Management will be evaluated consistent with the

> system benefits valuation of DSM/EE programs. The Company will utilize the EM&V results associated with the initial 20 MW of Active Load Management to determine the actual system benefits associated with reducing emissions, reducing the need for system balancing resources, and integrating variable renewable resources while reliably and cost-effectively managing the grid. After the Commission determines the actual benefits and the appropriate valuation for Active Load Management, the Company will earn a utility incentive of 30% of the net system benefits as determined under the new valuation for all future Active Load Management, with 70% of the net system benefits retained by customers. Any energy and demand savings attributed to a measure incentivized under an energy efficiency or demand side-management program will not also be counted in the system benefits attributed to the same measure leveraged in Active Load Management to avoid the potential for double counting.

This incentive proposal is identical to that proposed by Efficiency Advocates with two exceptions. First, the word "carbon" has been removed from "reducing carbon emissions." The language should not be limited to only emissions from carbon because Active Load Management may reduce other emissions as well. Second, the Companies have clarified that programs or modifications to be included in Active Load Management will undergo the same stakeholder vetting in the Collaborative and approval process by the Commission as other programs. Specifically, the revisions provide that, prior to a program or modification being included in the initial 20 MW of Active Load Management capability, the Companies will inform the Commission that such program is to be included in the 20 MW of Active Load Management capability at the time of application for approval of such new program or modification and will inform the Collaborative of the same. This requirement ensures that the Commission and interested parties are fully informed of the Companies' intention to include any such programs under the Active Load Management provisions in the Mechanisms.

As proposed in the revised Mechanisms, upon Commission vetting and approval of the Companies' proposal for a new program, the Companies could offer these "Active Load

Management" programs to enhance or maintain resource adequacy, reduce grid congestion, efficiently manage variable renewable energy output, and shape utility loads at a locational or aggregate level to benefit the utility system. The corresponding utility incentive is tied to the realization and determination of new incremental system benefits, which would encourage the Companies to offer these more complex programs and create actual system benefits associated with reducing emissions, reducing the need for system balancing resources, and integrating variable renewable resources while reliably and cost-effectively managing the grid.

The additions of the Active Load Management definition and the Active Load Management Incentive are incorporated in Paragraphs 1 and 91 of the DEC Mechanism and Paragraphs 1 and 96B of the DEP Mechanism attached in Exhibits A and B respectively. As stated above, the Public Staff and AGO are the only parties that object to these revisions.

C. Comments Regarding Proposed Portfolio Performance Incentive Tiering Structure (Net Benefits)

In their initial comments, the Companies did not propose any revisions to the existing incentive structure. However, the Companies indicated the possibility that a performance tiering incentive structure could be developed with stakeholders after the filing of the initial comments. The Public Staff recommended a tiered structure under which the Companies would receive no PPI for incremental savings of less than 1%, its weighted average cost of capital ("WACC") for incremental savings from 1% to 1.5%, and its WACC + 25 basis points for incremental savings greater than 1.5%.

In its initial comments, the AGO supported the tiered structure recommended by the Public Staff in its initial comments. According to the AGO, the approach put forward by the Public Staff in its initial comments included two key elements that should be incorporated into any PPI approved by the Commission—(1) the move to a tiered approach and (2) no PPI if the Companies achieve fewer savings than the savings used for Carbon Plan modeling purposes. With respect to the second element, the AGO asserted that because the Commission determined that 1% of prior year retail sales represents the "least cost path" to achieving N.C.G.S. § 62-110.9, the Companies should not be entitled to receive a PPI if they fall short of that target.

Like the Public Staff, the Efficiency Advocates also advocated for a tiered incentive structure and recommended "replacing [the current PPI structure] with a scaled utility incentive that rewards higher performance with a higher earnings potential for Duke Energy . . . and weighting that incentive to encourage achievement of longer-lived efficiency savings"[37] and replacing the existing bonus incentive with a new bonus incentive that rewards increased savings from income qualified programs. Unlike the Public Staff's proposal, the Efficiency Advocates' incentive structure proposal did not include a tier for which the Companies would receive no incentive.

In its initial comments, Walmart asserted that, within the incentive structure, "it is necessary to ensure adequate compensation levels for the Companies to incentivize their investment in DSM in lieu of other capital expenditures."[38]

Since the filing of initial comments, the Companies have engaged in constructive conversations with the parties and have revised their PPI proposal in response to those

[37] Joint Comments of Southern Alliance for Clean Energy, Natural Resources Defense Council, South Carolina Coastal Conservation League, Sierra Club, North Carolina Justice Center, North Carolina Housing Coalition, and North Carolina Sustainable Energy Association on Duke Energy's Proposed Changes to the Demand-Side Management/Energy Efficiency Mechanism, at p. 5.

[38] Initial Comments of Walmart, Inc., at p. 7, ¶ 19.

conversations. The Companies propose the following PPI structure, which the Public Staff and all other parties—except for the AGO—either support or do not oppose:

PPI Performance Scale		
Savings Percentage of Eligible Retail Sales	Utility PPI (Duke's Share of UCT Net Benefit)	Customers Share of UCT Net Benefits
< 0.50%	3.50%	96.50%
≥ 0.50% & < 0.75%	5.50%	94.50%
≥ 0.75% & < 1.00%	7.50%	92.50%
≥ 1.00% & < 1.25%	9.50%	90.50%
≥ 1.25% & < 1.50%	10.50%	89.50%
≥ 1.50% & < 1.75%	11.50%	88.50%
≥ 1.75%	12.50%	87.50%

The amount of the pre-income-tax PPI initially to be recovered for the entire DSM/EE portfolio for a vintage year, excluding programs ineligible for a PPI, will be based on the PPI Performance Scale determined by the energy savings achieved during the vintage year as a percent of eligible retail sales (sales to retail customers not opted-out of participating in the Company's EE programs) for the vintage year.

Importantly, the proposed PPI Performance Scale includes an incentive for each tier, which furthers the purpose for which incentives are provided—namely, to reduce the foregone opportunity costs associated with pursuing DSM/EE instead of the traditional supply-side resources. By way of example, the Companies may invest in DSM/EE in lieu of supply-side resources; these DSM/EE investments reduce not only the need for traditional utility capacity investment but also the earnings opportunities associated with those traditional investments. For traditional resource investments, the Companies earn approximately double what they do for DSM/EE investments under the current structure.

The fact that the Companies have characterized 1% of prior year eligible retail sales as an aggressive but achievable goal, and the Commission found it be a reasonable planning target, and that the Companies have included savings from energy reductions of DSM/EE activities at 1.0% of prior year's retail sales in their Carbon Plan Integrated Resource Plan, is irrelevant to the analysis of whether an incentive is appropriate under North Carolina's legal and regulatory construct.

House Bill 951 of 2021 ("H.B. 951") did not fundamentally change the state's policy approach to DSM/EE and reiterated the need for the three critical components of the constructive regulatory mechanism for DSM/EE in North Carolina—program cost recovery, recovery of NLRs, and receipt of a utility incentive. Indeed, H.B. 951 specifically preserves Senate Bill 3 of 2007 ("S.B. 3") and its policy goals,[39] providing that "[e]xisting law shall apply with respect to energy efficiency measures and demand-side management."[40] H.B. 951 also specifically contemplates that DSM/EE incentives will remain, providing that "[a]ny incentives related to demand-side management and energy efficiency measures pursuant to G.S. 62-133.9(f) shall be excluded from the limits [of the PIM] and shall continue to be recovered through the demand-side management and energy efficiency (DSM/EE) rider."[41] As such, the Commission retains its authority to approve an annual rider, outside of a general rate case, for recovery of reasonable and prudent costs incurred in the adoption and implementation of new DSM and EE measures, as well as appropriate rewards for adopting and implementing those measures.[42]

The General Assembly in enacting H.B. 951 did not provide for or require a tier in which an incentive should not be awarded, as supported by the AGO in its initial comments.

[39] S.B. 3 declared as State policy the promotion of the development of EE and required each electric supplier to implement DSM and EE measures to establish the least cost mix of demand reduction that meets the customers' electricity needs.

[40] H.B. 951 Section 1(2)a.

[41] H.B. 951 Section 4.a (codified at Section 62-133.16(c)(4)).

[42] N.C. Gen. Stat. § 62-133.9.

Tiered structures that include tiers with no incentives would undermine the successful existing regulatory construct (which includes an incentive structure); conflict with the stated policy goals of S.B. 3 to encourage the adoption of DSM/EE; conflict with prior Commission decisions awarding incentives to motivate the Companies to deploy DSM/EE programs effectively and aggressively;[43] and run counter to the express requirement in H.B. 951 that the existing law shall continue to apply to DSM and EE measures. For these reasons, the PPI proposal agreed to between the Companies and the Public Staff—which is objected to only by the AGO—reflects the appropriate balance on this fundamental component of North Carolina's DSM/EE construct.

As part of this jointly supported proposal, and to ensure continued transparency in the calculation of the PPI, the Companies have also agreed to incorporate the following language into the Mechanisms:

> Public Staff and the Company agree that no later than 60 days prior to the commencement of the next formal DSM/EE Mechanism review, the Companies will provide a comparative PPI analysis between the projected system benefit associated with energy and capacity savings used in the prospective Vintage year in the most recently approved DSM/EE rider proceeding as a baseline for comparison of any potential future changes in the methodology for determining system benefit from energy and capacity savings considered as part of the next Mechanism review to evaluate the potential impacts to PPI. This analysis will include, but will not be limited to, changes in system benefits, program costs, and participation forecasts and other system benefits. The Company and the Public Staff agree to work together, for discussion purposes in determining any potential changes that may be necessary to the PPI structure, to establish prior to the beginning of the proceeding a "baseline PPI" which would reflect a levelized PPI for comparison to the 2023/2024 Mechanism Review PPI structure after accounting for the impact of the changes in the net system benefits (NPV of

[43] In Docket No. E-2, Sub 931, even though pursuit of DSM/EE was mandated by state law and even though a positive UCT may have suggested that the utility should undertake the programs even in the absence of such a mandate, the Commission determined that incentives to encourage the utility to pursue DSM/EE were appropriate. Order dated June 15, 2009, in Docket No. E-2, Sub 931, at 24 ("The incentives . . . must be sufficient to motivate [DEP] to deploy DSM/EE programs effectively and aggressively. The Commission notes that state law mandates that utilities pursue DSM and EE.").

system benefits less NPV of program costs) that underlies the determination of projected cost effectiveness and PPI earned by the Company.

This new language requires proactive discussions between the Public Staff and the Companies to further streamline PPI evaluations in future Mechanism reviews—importantly, the language largely builds upon the experience in this Mechanism review and will ensure continued transparency and collaboration going forward. The PPI Performance Scale and associated revisions are included in Paragraph 74 of the DEC Mechanism and Paragraph 80 of the DEP Mechanism attached in Exhibits A and B respectively. The PPI comparative analysis language is included in Paragraph 93 of the DEC Mechanism and Paragraph 98 of the DEP Mechanism attached in Exhibits A and B respectively.

D. Responses to Other General Comments Unrelated to Mechanism Revisions.

1. Southern California Edison's TOU-BIP and Programs to Reach Industrials

In its initial comments, CIGFUR reiterated its positions taken in prior dockets and/or expressed in other forums related to DSM/EE programs. Specifically, it advocated for the "adopt[ion] [of] a program mirrored after the Southern California Edison's Time-of-Use Base Interruptible Program (TOU-BIP), a voluntary program which would also include the option to participate in a related Emergency Load Reduction Program."[44] According to CIGFUR, "the Companies have proposed some, but not all or enough, of CIGFUR's suggestions and requested modifications to existing DSM/EE programs to potentially enable greater participation by non-residential customers."[45] CIGFUR stated that "[n]otwithstanding the fact that the opt-out is working as designed and should be preserved,

[44] CIGFUR's Initial Comments, at p. 4, ¶ 11.
[45] *Id.* at p. 8, ¶ 19.

CIGFUR also believes that demand response programs can be redesigned in a way that incentivizes opted-out non-residential customers to participate."[46]

Relatedly, CUCA asserted that "the consumer-focused initiatives of Duke Energy's existing EE offerings are not compelling to industrial customers because they do not offer meaningful operational benefits and the cost of participation exceeds any benefit received."[47] CUCA further indicated that it "fully supports the design and implementation of [] voluntary programs [tailored to the customers' operational imperatives which offer properly scaled benefits to justify and incent participation and] which can provide much needed 'peak shaving' benefits to the grid in a period of escalating load forecasts."[48]

The Companies desire to offer attractive programs to all customers, including industrial customers. In fact, the Companies recently filed a Power Share modification to try and reach its industrial customers. However, the amount of any incentive provided within these programs is tied to system benefits arising from that program in the Companies' jurisdictions. This necessarily reflects specific characteristics of the Companies, the Companies' customers, and the specific program. As a result, modelling a program after another state that has vastly different rates and market structures is not feasible. In short, there would not be sufficient system benefits arising from the Companies' implementation of Southern California Edison's TOU-BIP given that it was designed to create system benefits in an entirely different jurisdiction with characteristics vastly different than the Companies' However, the Companies have offered related

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[46] *Id.* at p. 10, ¶ 23.
[47] Comments of CUCA, at p. 2.
[48] *Id.* at p. 2-3.

programs that are more appropriate for the Companies' service territories in North Carolina that are more aligned with the Companies' system and customer base.

2. *EE Resource Standard*

The Efficiency Advocates suggest that the Commission "investigate . . . establishing an Energy Efficiency Resource Standard."[49]

The Companies assert that it would be inappropriate to consider establishing an EE Resource Standard in this proceeding, which is to consider revisions to the DSM/EE cost recovery mechanism. Importantly, the General Assembly could have enacted an Energy Efficiency Resource Standard if it thought that one was necessary or desired, but to date it has not done so. There is no reason here for the Commission to substitute its judgment for that of the legislature. Further, under the REPS, the Companies can meet up to 40% of the standard through EE and NLRs are used to determine REPS credits so the Companies already have a target at which to aim. Therefore, the Companies believe that incorporating such a concept in the Mechanisms is inappropriate at this time.

The Companies understand that, as a result of further discussions and in the spirit of reaching a consolidated compromise, the Efficiency Advocates are withdrawing their request to open a docket to consider the establishment of an EERs at this time.

IV. Conclusion

Based on the comments herein, the Companies respectfully request that the Commission approve the respective Mechanisms attached as Exhibit A and Exhibit B and

[49] Joint Comments on Behalf of Southern Alliance for Clean Energy, Natural Resources Defense Council, South Carolina Coastal Conservation League, Sierra Club, North Carolina Justice Center, North Carolina Housing Coalition, and North Carolina Sustainable Energy Association on Duke Energy's Proposed Changes to the Demand-Side Management/Energy Efficiency Mechanism, at p. 6.

grant any other relief as the Commission deems just and reasonable in the furtherance of the public interest.

WHEREFORE, the Companies respectfully request that the Commission:

(1) Approve the respective Mechanisms;[50] and

(2) Grant any other relief as the Commission deems just and reasonable in the furtherance of the public interest.

Respectfully submitted this 1st day of April 2024.

DUKE ENERGY CAROLINAS, LLC & DUKE ENERGY PROGRESS, LLC

s/ ______________________________

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[50] Given the Companies' continued dialogue with stakeholders, the Companies expressly reserve the right to modify Mechanisms.