

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-7, SUB 831

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Application of Duke Energy Carolinas, LLC for Approval of Save-a-Watt Approach, Energy Efficiency Rider and Portfolio of Energy Efficiency Programs)	ORDER DENYING MOTION FOR CLARIFICATION AND RECONSIDERATION
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BEFORE: Chairman Edward S. Finley, Jr., Presiding; and Commissioners Lorinzo L. Joyner and William T. Culpepper, III

BY THE COMMISSION: On June 12, 2009, Duke Energy Carolinas, LLC, (Duke or Company); the Environmental Defense Fund (ED), the Natural Resources Defense Council (NRDC), the Southern Alliance for Clean Energy (SACE), and the Southern Environmental Law Center (SELC) (collectively referenced as the Environmental Intervenors); and the Public Staff – North Carolina Utilities Commission (the Public Staff) filed an Agreement and Joint Stipulation of Settlement (Settlement Agreement) in this docket.

On February 9, 2010, the Commission issued its *Order Approving Agreement and Joint Stipulation of Settlement Subject to Certain Commission-Required Modifications and Decisions on Contested Issues* (February 9, 2010 Order), regarding Duke's modified save-a-watt approach, a four-year limited term pilot.

In the February 9, 2010 Order, at Pages 21-22, regarding Paragraph G.1., the Net Lost Revenues section of the Settlement Agreement, the Commission stated as follows (including Footnote No. 11, which is provided below at the end of the quoted excerpt):

Further, the Commission is of the opinion that the specific language of this provision of the Agreement should be, and hereby is, modified to read as follows:¹¹ ([the Commission's] Modifications are shown in a track changes format.)

G. Net Lost Revenues

1. Net lost revenues mean revenue losses, net of marginal costs, avoided at the time of the lost kilowatt-hour sale(s), incurred by the Company's public utility operation as the result of a new ~~demand-side management or energy~~

efficiency measure. Net lost revenues shall also be net of any increases in revenues resulting from any activity by the Company's public utility operations that cause a customer to increase demand or energy consumption, whether or not that activity has been approved pursuant to R8-68. Programs or measures with the primary purpose of promoting general awareness and education of energy efficiency as well as research and development activities are ineligible for the recovery of net lost revenues. Pilot programs or measures are also ineligible for the recovery of net lost revenues, unless the Commission approves the Company's specific request that a pilot program or measure be eligible for the recovery of net lost revenues when the Company seeks approval of that pilot program or measure. Utility activities shall be closely monitored by the Company to determine if they are causing a customer to increase demand or consumption, and the Company shall identify and keep track of all of its activities that cause customers to increase demand or consumption, whether or not those activities are associated with demand-side management or energy efficiency programs, as provided in the Settlement Agreement, so that they may be evaluated by the parties and the Commission for possible confirmation as 'found revenues.' When authorized by Commission Rule R8-69, and unless the Commission determines otherwise in a G.S. 62-133.9 DSM/EE rider proceeding, net lost revenues shall be recovered for 36 months for each vintage year, except that the recovery of net lost revenues will end upon Commission approval of (1) an alternative recovery mechanism, or (2) the implementation of new rates in a general rate case or comparable proceeding to the extent that rates set in a rate case or comparable proceeding are set to explicitly or implicitly recover those net lost revenues.

The Commission concludes that the modifications set forth above are reasonable and should be adopted in this proceeding. They are largely, if not totally, consistent with and track certain provisions adopted by the Commission with respect to the DSM/EE cost recovery plan approved for Progress Energy. In addition, Duke and the Public Staff are hereby requested to work cooperatively to develop practices and procedures which will ensure, to the maximum extent possible, that the Company is able to identify and keep track of all its activities that cause customers to increase demand or consumption, whether or not those activities are associated with demand-side management or energy efficiency programs, so that they may be evaluated by the parties and the Commission for possible confirmation as "found revenues."

¹¹ To the extent that modifications set forth below have not been previously discussed, they have been excerpted from either the Public Staff's August 18, 2009 comments in response to the Commission's Second Pre-Hearing Order Requiring Verified Information, in the present docket, or from the Commission's Order Approving Agreement and Stipulation of Partial Settlement, Subject to Certain Commission-Required Modifications, in 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.

On March 10, 2010, Duke filed a motion for clarification and reconsideration of certain provisions of the Commission's February 9, 2010 Order regarding the Commission's modifications to Paragraph G.1., Net Lost Revenues.

On April 6, 2010, the Commission issued an *Order Allowing Comments* permitting parties to this docket to file responses to Duke's motion no later than April 23, 2010, and allowing Duke to file reply comments no later than May 7, 2010. Comments were filed by the City of Durham (City); the Environmental Intervenors; N.C. Waste Awareness & Reduction Network (NC WARN); Progress Energy Carolinas, Inc. (PEC); and the Public Staff. Thereafter, reply comments were filed by Duke.

MOTION FOR CLARIFICATION AND RECONSIDERATION

In its motion for clarification and reconsideration, Duke specifically requested that:

1. The Commission clarify the meaning of 'Programs or measures with the primary purpose of promoting general awareness and education or energy efficiency as well as research and development activities [that] are ineligible for the recovery of net lost revenues';
2. The Commission exclude education and awareness programs that produce quantified capacity and/or energy savings from its definition of 'Programs or measures with the primary purpose of promoting general awareness and education of energy efficiency as well as research and development activities [that] are ineligible for the recovery of net lost revenues';
3. The Commission clarify which 'utility activities shall be closely monitored by the Company to determine if they are causing a customer to increase demand or consumption';
4. The Commission exclude from its definition of 'utility activities [that] shall be closely monitored by the Company to determine if they are causing a customer to increase demand or consumption' those activities that are independent of the Company's energy efficiency and demand-side management programs; [and]

5. The Commission eliminate the condition that Duke Energy Carolinas be required to identify and keep track of its activities that cause customers to increase demand or consumption that are not associated with demand-side management or energy efficiency programs.

In support of its request, as set forth in Item Nos. 1 and 2 above, concerning the recovery of net lost revenues for general awareness and education programs, Duke offered the following:

1. The Commission modified Section G of the Settlement Agreement to add the following provision: 'Programs or measures with the primary purpose of promoting general awareness and education of energy efficiency as well as research and development activities are ineligible for the recovery of net lost revenues.' (Order, pp. 21-22). The Company is unable to find guidance within the Order itself, or the sources cited by the Commission in footnote 11 of the Order, as to the meaning of '[p]rograms or measures with the primary purpose of promoting general awareness and education,' and what, if any, of the Company's programs or measures would qualify as such. While it is clear that the Commission has excerpted this modification from its *Order Approving Agreement and Stipulation of Partial Settlement, Subject to Certain Commission-Required Modifications*, in Docket No. E-2, Sub 931 ('PEC Order'), the Company cannot find a definition of or clarification of what would qualify as 'general awareness and education' programs in the PEC Order either. Accordingly, the Company respectfully requests clarification of this provision from the Commission. In particular, the Company seeks guidance as to whether such 'general awareness and education' programs ineligible for recovery of net lost revenues include those for which the Company can demonstrate verified kW and/or kWh reductions resulting from such programs.

2. To the extent that the Commission determines that even those education and awareness programs that the Company can show produce verified kW and/or kWh reductions are ineligible for recovery of net lost revenues, the Company seeks reconsideration. Duke Energy Carolinas should be allowed to recover measured and verified net lost revenues resulting from energy efficiency programs, as provided by Commission Rule R8-68. If the Company is not permitted to do so for certain programs for the arbitrary reason that these programs have the primary purpose of promoting general awareness and education of energy efficiency, it will lose revenue, which could discourage the Company from implementing such programs. For example, the Company plans to file a new energy efficiency program, Home Energy Comparison Report [HECR], which will assist residential customers in assessing their energy usage by supplying them with comparative usage data for similar

residences in the same geographic area. The program will also provide recommendations for more efficient energy use and will identify those customers who could benefit most by investing in new energy efficiency measures and participating in other Duke Energy Carolinas programs. Absent recovery of net lost revenues, reduction in energy use resulting from Home Energy Comparison Report would impair the Company's ability to recover sufficient revenues to cover its fixed costs, creating a financial disincentive to the implementation of this beneficial program. General education and awareness programs help to transform the market by making customers increasingly receptive to specific program offerings, as well as by providing information to customers about how they can save money on their utility bills through either specific utility programs or other energy saving activities. So long as these programs are specifically designed to result in quantified capacity and/or energy savings, there is no logical reason for their wholesale exclusion from net lost revenue recovery.

3. Moreover, the modified save-a-watt compensation mechanism is based exclusively upon actual capacity and energy savings achieved, as measured and verified by an independent third party. As such, Duke Energy Carolinas assumes the risk of recovering its energy efficiency and demand-side management program costs or any management incentive – including net lost revenues for energy efficiency programs – based upon its performance. Net lost revenues will be included in the final true-up process at the end of the four-year save-a-watt pilot. The outstanding balance of net lost revenues will be adjusted based on the actual measured and verified lost revenues determined in the final true-up process, and any overcollection will be returned to customers with interest. Due to the fact that Duke Energy Carolinas is compensated only if it can demonstrate results, the Company has every incentive to perform robust measurement and verification of its programs, which will support the existence of net lost revenues for the Company's energy efficiency programs, including those that promote general awareness and education.

In support of its request for clarification and reconsideration, as indicated in Item Nos. 3, 4, and 5 hereinbefore, which concern the definition of net lost revenues and tracking found revenues, Duke offered the following:

4. The Commission also modified Section G of the Settlement Agreement to read:

Utility activities shall be closely monitored by the Company to determine if they are causing a customer to increase demand or consumption, and the Company shall identify and keep track of all of its activities that cause customers to

increase demand or consumption, whether or not those activities are associated with demand-side management or energy efficiency programs, as provided in the Settlement Agreement, so that they may be evaluated by the parties and the Commission for possible confirmation as 'found revenues.'

(Order, p. 22). However, the Commission does not provide sufficient guidance as to what constitutes a utility activity that increases consumer demand or consumption that should offset net lost revenues. The Commission does reference the Public Staff's Responses to the Second Pre-Hearing Order Requiring Verified Information in footnote 11, but unfortunately these responses do little to clarify which utility activities would qualify. Accordingly, the Company respectfully requests clarification regarding the meaning of a utility activity that causes a customer to increase demand or consumption.

5. To the extent that the Commission defines 'utility activities [that] shall be closely monitored by the Company to determine if they are causing a customer to increase demand or consumption' to include those activities that are independent of the Company's energy efficiency and demand-side management programs, the Company requests reconsideration of this monitoring requirement. The Company also seeks reconsideration of the Commission's requirement that it identify and track changes in revenues that occur as a result of actions of customers that increase or decrease their energy use that are independent of the Company's energy efficiency and demand-side management programs.

6. It is important to acknowledge that there are several types of changes in revenues that could be construed – some erroneously – as being caused by utility activities. For example, one occurs as a result of changes in the economy or actions of customers that cause them to change their energy use up or down that are independent of the Company's energy efficiency and demand-side management programs. Another can originate from actions of customers that change their energy use up or down that are directly related to the Company's energy efficiency and demand-side management programs. With regard to the first type, these are changes that do not result from any activity by the Company's public utility operations; they are actually customer driven. If the Company is to count revenue changes under this first type as 'found' revenues, even those that may occur from economic development actions, then it must also count customer driven decreases, such as those that occur when a plant or business closes or when a customer reduces its energy use in response to an increase in electricity price. To consider increases and decreases on a case-by-case basis on such a broad basis is incorrect and creates a tremendous administrative burden, including

lengthy and contested proceedings over what constitutes ‘found revenues.’ Indeed, if all possible changes are to be considered included, the Commission might as well investigate whether it is more appropriate to institute a decoupling mechanism because every increase or decrease in revenues must be considered. Instead, a more workable application of net lost revenues would be limited to the results of those actions taken by customers in response to the Company’s energy efficiency or demand-side programs. While the Company does not have energy efficiency or demand-side management programs that are designed or intended to increase energy consumption, the Company expects the measurement and verification process to identify areas where there may have been increases in energy usage, and these impacts, if any, would be used to reduce the level of lost sales and lost revenues.

7. In addition, under the Settlement Agreement, Duke Energy Carolinas is limited to recovering net lost revenues for a period of 36 months despite the fact that, absent a general rate case through which rates are set to recover those net lost revenues, the Company will continue to lose revenues beyond 36 months to the extent that successful energy efficiency programs continue to result in kilowatt-hour savings. This more limited recovery period inherently takes into account the possibility of any increase in revenues resulting from any activity of the Company that causes customers to increase demand or energy consumption. As such, issues of lost and ‘found’ revenues should be restricted to the activities associated with the Company’s energy efficiency and demand-side programs. Similarly, in the Company’s Comments filed in Docket No. E-100, Sub 113 on March 1, 2010, Duke Energy Carolinas recommended that the definition of net lost revenues in Commission Rule R8-68 be amended to provide simply for a limited recovery of net lost revenues for thirty-six months and eliminate the complexities and burden associated with attempting to identify and track found revenues.

COMMENTS

► *Recovery of Net lost Revenues for General Awareness and Education Programs*

The City of Durham recommended that “the Commission leave the substance of its prior Orders and the Stipulated Settlement in this docket unchanged.”

The City remarked that in the February 9, 2010 Order the Commission acceded to Duke’s strong desire to have an energy efficiency payment scheme based upon a combination of avoided costs and net lost revenues, rather than a compensation methodology in keeping with a traditional formulation of cost plus reasonable rate of return, but the Commission imposed appropriate constraints on this unconventional methodology. In particular, the City observed that one of those constraints is that

“general awareness and education of energy efficiency as well as research and development activities are ineligible for the recovery of net lost revenues” (the City referenced this as General Education).

The City observed that in seeking to recover net lost revenues for General Education, Duke argued that “General education and awareness programs help to transform the market by making customers increasingly receptive to specific program offerings, as well as by providing information to customers about how they can save money on their utility bills through either specific utility programs or other energy saving activities.” The City is of the opinion that what Duke is describing is essentially promotion, marketing, and advertising activity, which by its nature is intended to make customers increasingly receptive to the company’s offerings. The City does not support providing avoided costs and net lost revenues for such General Education activity.

Furthermore, the City argued that two problems are particularly troubling and they should stop the Commission from according avoided costs and/or net lost revenues for General Education. First, how can the ratepayers be assured that even demonstrated behavior changes will persist, and for how long? Secondly, paying a third-party verifier to develop and implement a methodology to attempt to really track the causation and duration of such behavior changes itself imposes a potentially unfair cost on ratepayers, diverting funds from more clear and durable energy efficiency measures.

According to the City, it would not regard as General Education customer-specific information provided about that customer’s usage and how it compares to the usage of similarly-situated customers. For example, a Home Energy Comparison Report (HECR) with such customer-specific information could qualify, in the City’s view, as a useful measure aimed at changing customer behavior. However, the City observed that, in line with Duke’s own explanation, such informational measures are best viewed as a marketing or promotional activity to gain customer participation in “hardware” energy efficiency programs, which provide clear and durable energy savings.

The City asserted that Duke’s motion is evidence of the slippery slope stepped onto by agreeing to any payment of net lost revenues, as seen by Duke’s argument that the Commission has no valid reason to differentiate between equipment and other hard costs leading to energy efficiency and General Education regarding energy efficiency.

It is the City’s view that differentiating between behavioral change caused by Duke’s information and that caused by the avalanche of information from other sources is difficult and of questionable reliability. The City also believes that it will add cost and complexity, and is therefore not fair to surcharge-paying customers, to hire a third-party company to attempt to accurately attribute behavioral change to Duke’s General Education. More specifically, the City asserted that

- (1) The complexity of the task will equate to greater cost of the third-party verifier, as well as making Duke’s costs and benefits of the save-a-watt program more complex and less transparent for the ratepayers.

(2) The 36-month longevity of lost revenues reimbursement under save-a-watt may outstrip the duration of the behavior leading to the energy efficiency.

(3) The Company receives a net present value payment under save-a-watt. Therefore, the time of the General Educational materials' deployment would presumably be the date at which the Company is owed payment for the lost revenues and avoided costs. Even if the behavioral change is somehow verified as being due to Duke's information, the behavior can stop and the Company would already accrue the net present value of its save-a-watt payment.

Lastly, the City maintained that Duke should prioritize implementing a low-income residential retrofit program similar to that implemented by PEC, rather than putting money into General Education programs. The City observed that PEC has had remarkable rates of participation, up to 86%, in its carefully-devised, low-income neighborhood energy efficiency retrofit program based upon community-organizing principles. The City asserted that Duke has no comparable program. The City recommended that the Commission arrange for a presentation by PEC on PEC's low-income energy retrofit program and request that Duke add a similar program to its save-a-watt portfolio in order to remediate save-a-watt's relative lack of benefit to low-income households.

The Environmental Intervenors commented that clarification would be helpful on the matter of what, if any, of Duke's programs or measures would qualify as programs or measures with the primary purpose of promoting general awareness and education. The Environmental Intervenors supported Duke's request for guidance on the matter of whether such general awareness and education programs ineligible for recovery of net lost revenues include those as a result for which Duke can demonstrate verified kilowatt (kW) and/or kilowatt-hour (kWh) reductions and, if so, that matter should be reconsidered. Further, the Environmental Intervenors observed that since Duke may only recover net lost revenues for verified kW and kWh reductions, it should not matter whether those reductions are produced by a general awareness and education program or some other type of program.

NC WARN did not file comments on this issue.

PEC stated that its position on this matter is quite simply that to the extent a utility can demonstrate that a demand-side management and/or energy efficiency (DSM/EE) program or measure reduces its customers' demand or energy usage the utility should be allowed to recover its reasonable and prudent costs associated with the program or measure, net lost revenues, and an appropriate incentive. PEC explained that the label applied to a program or measure as to whether it is a general awareness and education program or a measure or program that is intended to cause a specific change in customer behavior should not be used to disallow appropriate cost recovery. PEC maintained that the real and only issue is whether the action by the utility actually

results in reductions in kW or kWh; to do otherwise would create a disincentive for a utility to offer these types of programs and measures and would result in lost DSM/EE opportunities. PEC asked the Commission to declare that if a program or measure approved by the Commission is specifically designed to result in verifiable kW and kWh reductions then the utility offering such program or measure should be allowed to recover all reasonable and prudent costs, net lost revenues, and incentives.

The Public Staff disagreed with Duke's request that the Commission should clarify the meaning of general education and awareness programs or that the Commission should reconsider its decision that Duke should not recover net lost revenues for implementing such programs.

The Public Staff pointed out that the PEC Order issued June 15, 2009, in Docket No. E-2, Sub 931, as cited by the Commission in support of the Commission's modifications to Paragraph G.1. of Duke's Settlement Agreement, included a discussion regarding general education and awareness programs that should resolve any uncertainty. In the PEC Order, the Commission approved, with modifications, certain provisions in the Agreement and Stipulation of Partial Settlement (PEC Stipulation) entered into by PEC; Wal-Mart Stores East, LP and Sam's East, Inc. (Wal-Mart); and the Public Staff. In particular, the Commission directed the Public Staff to monitor and review PEC's administrative and general (A&G) costs on an ongoing basis, "with particular emphasis on the effectiveness of the Company's general EE education programs", and report its findings to the Commission during PEC's future DSM/EE cost recovery proceedings.

With respect to the recovery of program costs, the Commission found that it was appropriate for PEC to amortize incremental A&G costs supporting its DSM/EE programs. That finding was based on PEC's response to the Commission's March 3, 2009 *Post-Hearing Order Requiring Further Information and Granting Extension of Time* (PEC Post-Hearing Order) in Docket No. E-2, Sub 931. The Public Staff observed that, in the June 15, 2009 PEC Order, in Docket No. E-2, Sub 931, at Pages 27-28, in discussing PEC's general awareness and education programs, the Commission specifically emphasized PEC's response as follows:

The Company has launched this campaign [Save the Watts] in an aggressive manner for the purpose of raising awareness and educating customers about energy savings opportunities while it awaits the approval and launch of its DSM and EE programs. . . . However, PEC plans to continue developing and implementing generic energy efficiency education, and awareness programs, including but not limited to K-12 education, residential custom[er] energy reports, online customer audit tools, etc. . . . PEC cannot quantify any measurable direct energy reduction benefits from the Save the Watts campaign.

Further, the Public Staff commented that because PEC was seeking to defer these costs under G.S. 62-133.9(d)(1), the Commission had to determine whether the

costs were intended to produce “future benefits.” Consequently, the Public Staff opined that the Commission defined general awareness and education programs to be similar to PEC’s Save-the-Watts campaign, residential customer energy reports, and online audit tools, noting the lack of measurement and verification (M&V) of any future direct energy reduction benefits resulting from such programs.

In addition, the Public Staff noted that the Commission further approved portions of the PEC Stipulation that provided that PEC could not recover net lost revenues or program performance incentives for general awareness and education programs.¹ According to the Commission’s rationale in the PEC Order, general awareness and education programs should not be eligible for the recovery of net lost revenues, because they are designed to inform customers about benefits of DSM/EE generally and are unassociated with any specific DSM/EE program designed to directly result in quantifiable energy or capacity savings. The Public Staff believes that no further clarification is needed.

Also, the Public Staff observed that whether a program is a general awareness and education program, however, is a question of fact for the Commission to resolve. The Public Staff remarked that Duke describes its prospective HECR measure as a program with the primary purpose of promoting general awareness and education about energy efficiency. Nevertheless, Duke appears to contend that this program produces verified kW and kWh savings. The Public Staff pointed out that this program is not before the Commission, and, in fact, has not yet been filed for approval. The Public Staff believes that, instead of issuing a statement of general application in this proceeding, the Commission may appropriately determine whether a proposed program is a general awareness and education program on a case-by-case basis when the program is submitted for approval. At that time, the Commission may consider comments or testimony regarding the nature of the program, focusing specifically on the extent, if any, that actual measured and verified kW and kWh savings result directly from the proposed program.

Furthermore, the Public Staff noted that the Commission considered a similar issue in Docket No. E-100, Sub 113. In that docket, the Commission was requested to include studies on energy usage in the definition of “participation incentives.” The Public Staff opposed the request, explaining that such activities should not be recoverable through the annual DSM/EE riders, because they did not constitute a DSM/EE program. The Public Staff acknowledged, however, that such studies could result in participation in specific new DSM/EE programs. If an energy study or audit resulted in participation in specific new DSM/EE programs, the Public Staff predicted that it would likely not oppose the recovery of the costs of the study or audit. The

¹ The Public Staff explained that in this respect Duke differs from PEC. Duke recovers an amount based on its avoided costs from implementing DSM/EE programs. This amount is intended to recover both the program costs and provide a utility incentive. Duke recovers net lost revenues for EE programs separately. Duke is expressly prohibited only from recovering the net lost revenues from general awareness and education programs; PEC may recover neither net lost revenues nor a utility incentive for general awareness and education programs.

Commission concluded that it would determine whether an energy study or audit qualified as a participation incentive on a case-by-case basis. *Order Adopting Final Rules* (Rulemaking Order), Docket No. E-100, Sub 113, issued February 29, 2008, at Pages 96-97. In the present Docket No. E-7, Sub 831, the Public Staff is recommending that the Commission likewise determine at the time of program approval whether that program's primary purpose is to promote general awareness and education. If the Commission adopts this recommendation, the Public Staff believes that no amendment or clarification of the February 9, 2010 Order is required.

► ***Definition of Net Lost Revenues and Tracking Found Revenues***

The City of Durham did not file specific comments on this issue. The City recommended that "the Commission leave the substance of its prior Orders and the Stipulated Settlement in this docket unchanged."

The Environmental Intervenors are not opposed to Duke's request for clarification regarding the meaning of a utility activity that causes a customer to increase demand or consumption, but they suggested that Duke, rather than the Commission, is in the best position to identify which of Duke's activities causes customers to increase demand or consumption.

The Environmental Intervenors argued that the monitoring, identification, and tracking requirements added by the Commission follow logically from one of the provisions in Section G.1. of the original Settlement Agreement that was adopted by the Commission. However, they noted that in Duke's motion, in its quoted excerpt of the Commission-modified version of Paragraph G.1. included in the February 9, 2010 Order, Duke omitted the following provision: "Net lost revenues shall also be net of any increases in revenues resulting from any activity by the Company's public utility operations that cause a customer to increase demand or energy consumption, whether or not that activity has been approved pursuant to R8-68." The Environmental Intervenors maintained that the language added by the Commission merely sets forth a mechanism to implement this provision in the Agreement. They explained that if net lost revenues are to be net of revenue increases from the Company's non-DSM/EE activities that cause customers to increase demand or consumption, it necessarily follows that Duke would need to keep track of whether any of its non-DSM/EE activities are causing increased demand or consumption, so that the net lost revenues may be offset by any found revenues from those activities.

Regarding Duke's argument that it would create a tremendous administrative burden to count revenue changes from customer-driven increases, the Environmental Intervenors agreed that only revenue increases that result from Duke's public utility operations should be monitored and evaluated as possible found revenues. However, the Environmental Intervenors disagreed with Duke's position that only revenue changes that result from actions taken by customers in response to Duke's DSM/EE programs should be counted as found revenues. The Environmental Intervenors asserted that this position is in direct conflict with the provision that "Net lost revenues

shall also be net of any increases in revenues resulting from any activity by the Company's public utility operations that cause a customer to increase demand or energy consumption, *whether or not that activity has been approved pursuant to R8-68'*, language that was agreed to by Duke and memorialized in the Agreement. (Emphasis added.)

Further, the Environmental Intervenors are sensitive to Duke's concern about the administrative burden associated with the requirement that it identify and track its non-DSM/EE activities that cause customers to increase demand or consumption, and they suggested that a process could be established to lessen that burden. The Environmental Intervenors proposed, for example, that as part of the annual rider proceeding, the Commission could require Duke to identify the activities that it intends to track, and interested parties could be given an opportunity to comment on that list, with the Commission rendering a final decision on the list of activities. The Environmental Intervenors explained that this would limit the scope of activities that Duke is required to monitor, lessening the administrative burden on Duke while still facilitating compliance with the Agreement as modified by the Commission.

NC WARN recommended that the Commission deny Duke's motion to reconsider the Commission requirement that Duke monitor and report the demand increasing programs that encourage consumers to consume more electricity. Given the focus of several of the recent dockets before the Commission concerning DSM/EE, as well as the mandates of Session Law 2007-397 to achieve a Renewable Energy and Energy Efficiency Portfolio Standard (REPS), it is NC WARN's opinion that the acknowledged State policy is that we encourage the reduction of demand without causing the ratepayers any increase in their bills. NC WARN opined that decreasing demand reduces the need for expensive new power plants, consequently, restricting utility programs that have as their sole purpose increasing demand should be seen as beneficial to everyone. NC WARN observed that the provision in the February 9, 2010 Order requesting monitoring and reporting of demand increasing programs directly supports this policy. NC WARN commented that demand increasing programs are contrary to the Commission's clear mandate to promote energy conservation. G.S. 62-2(a)(3a) requires that conservation and efficiency be considered whenever the Commission reviews any of the utilities' programs.

Next, NC WARN pointed out that the February 9, 2010 Order and the equivalent order in PEC's DSM/EE Rider, Docket No. E-2, Sub 931, each contain a similar condition regarding demand increasing programs. If the utility goes forward with a program or continues with policies that encourage energy consumption, then those should be monitored and reported to the Commission. Further, NC WARN stated that any program that increases electricity sales should be closely scrutinized by the Commission to determine if there are any positive factors that outweigh the negative ones stemming from increased demand and energy consumption.

NC WARN suggested that monitoring and reporting the demand increasing programs can be done at the same time as Duke comes in with its revenue

requirements under the save-a-watt rider. This would allow the Commission and interested parties the opportunity to determine whether energy savings on one hand were simply used to encourage growth on the other.

In addition, if Duke needs guidance on what specific programs the Commission decides are demand increasing programs, it is NC WARN's view that the parties should have an opportunity to suggest programs and policies that should be monitored.

PEC did not file comments on this issue.

The Public Staff disagreed with Duke's position that the Commission did not provide sufficient guidance regarding its modification to Paragraph G.1. of Duke's Settlement Agreement regarding what constitutes a utility activity that increases consumer demand or consumption, thus offsetting net lost revenues.

The Public Staff noted that Duke, the Environmental Intervenors, and the Public Staff had agreed to the following language in the Settlement Agreement:

G. Net Lost Revenues

1. Net lost revenues mean revenue losses, net of marginal costs avoided at the time of the lost kilowatt-hour sale(s), incurred by the Company's public utility operation as a result of a new demand side management or energy efficiency measure. *Net lost revenues shall also be net of any increases in revenues resulting from any activity by the Company's public utility operations that cause a customer to increase demand or energy consumption, whether or not that activity has been approved pursuant to R8-68.* When authorized by Commission Rule R8-69, net lost revenues shall be recovered for 36 months for each vintage year, except that the recovery of net lost revenues will end upon Commission approval of (1) an alternative recovery mechanism, or (2) the implementation of new rates in a general rate case or comparable proceeding to the extent that rates set in a rate case or comparable proceeding are set to explicitly or implicitly recover those net lost revenues. (Emphasis added.)

The Public Staff explained that such agreed-upon language was not limited to increases in revenues resulting from DSM/EE programs only; in fact, it explicitly recognized that some of those increases might result from utility activities not approved under Commission Rule R8-68. Thus, the Public Staff argued that Duke's proposed clarification of the Settlement Agreement provisions regarding recovery of net lost revenues appears to result in the partial revocation of one of the limitations the

Stipulating Parties unanimously agreed would apply to Duke's recovery of net lost revenues.²

This provision of the Settlement Agreement mirrors in large measure Commission Rule R8-68(b)(5), which also provides, in pertinent part, that "[n]et lost revenues shall also be net of any increases in revenues resulting from any activity by the electric public utility that causes a customer to increase demand or energy consumption, whether or not that activity has been approved pursuant to Rule R8-68." The Public Staff observed that the Commission has never found that Rule R8-68 limits "found" revenues to only those that result from DSM/EE activities.

Moreover, the Commission carefully reviewed this provision of the Settlement Agreement prior to issuing its February 9, 2010 Order. In particular, on August 14, 2009, the Commission issued its *Second Pre-Hearing Order Requiring Verified Information* (Second Pre-Hearing Order) in this docket. Therein, the Commission requested that the parties, among other things, provide examples of activities that could cause revenue increases and result in reductions to net lost revenues.

In its August 18, 2009 response to the Second Pre-Hearing Order, in Docket No. E-7, Sub 831, the Public Staff verified that "The terms of the Settlement Agreement reflect the Public Staff's position on the recovery of net lost revenues, *and the Stipulating Parties have agreed that those terms govern Duke's recovery of net lost revenues throughout the Settlement Agreement's duration.*" (Emphasis added.) In those comments, the Public Staff identified a utility program promoting plug-in hybrid electric vehicles or a balanced bill program as examples of activities that may cause a customer to increase demand or consumption, and it recommended that utility activities be closely monitored to determine if they are causing an increase in demand or consumption. The Public Staff pointed out that neither Duke nor the Environmental Intervenors expressed any disagreement with the Public Staff's explanation of net lost revenue recovery contained in Paragraph G.1. at the evidentiary hearing or their jointly prepared Proposed Order filed on October 7, 2009, which addressed the Settlement Agreement.

The Public Staff asserted that Duke has offered no compelling new reason for the Commission to reconsider the scope of its definition of net lost revenues contained in Paragraph G.1. The Public Staff observed that Duke is essentially making the same argument it previously made in response to the Commission's July 30, 2009 *Pre-Hearing Order Requesting Verified Information* in this docket. Specifically, in Duke's August 10, 2009 response, Duke acknowledged that its position with respect to "found" revenues differed from the other Stipulating Parties. Duke's position then, as it is now, was that definitions of lost and found revenues should be limited to actions

² The Public Staff discussed the interplay of the definition of net lost revenues with the 36-month limitation on the recovery of net lost revenues contained in its settlement agreements with Duke and PEC in its April 1, 2010 Reply Comments in Docket No. E-100, Sub 113, at Pages 17-21. The Public Staff respectfully incorporated those comments herein by reference.

taken in response to Duke's DSM/EE programs. However, as pointed out by the Public Staff, the Settlement Agreement did not reflect Duke's August 10, 2009 position on the recovery of net lost revenues. Instead, Paragraph G.1. of the Settlement Agreement was, with the agreement of the Stipulating Parties, intended to reflect the negotiated resolution that "found" revenues shall include "any increases in revenues resulting from any activity by the Company's public utility operations that cause a customer to increase demand or energy consumption, whether or not that activity has been approved pursuant to R8-68," which is essentially the Public Staff's position on recovery of net lost revenues.

The Public Staff maintained that it has not changed its position on the recovery of net lost revenues. As the Public Staff has previously stated in its August 18, 2009 responses to the Second Pre-Hearing Order, Duke's described restriction on the types of programs that would be covered by Paragraph G.1. of the Settlement Agreement is too narrow. The Public Staff explained that Duke should be allowed to recover measured and verified net lost revenues from its energy efficiency programs, essentially as provided in Rule R8-68. The Public Staff recognizes that an electric utility will lose revenue (net of related fuel and variable operations and maintenance expenses) when implementing certain energy efficiency programs, which could discourage it from implementing such programs. However, the Public Staff does not believe that revenues "lost" due to an energy efficiency program continue in perpetuity, nor do they exist in a vacuum. Instead, they are offset by gains in revenues that occur for various reasons, so that the negative impact of the measure on the utility's reasonable return on rate case is limited.

As it did in its response to the Commission's July 30, 2009 *Pre-Hearing Order Requesting Verified Information* in this docket, Duke discussed in its Motion here two types of changes in revenues – those that occur as a result of changes in the economy or actions of consumers, which should not be counted as "found" revenues, and those that occur as a result of Duke's DSM/EE programs and measures, which should be counted. With respect to the first type of change, the Public Staff agreed with Duke's position that these types of "natural" changes are not to be considered as activities "by the Company's public utility operations that cause a customer to increase demand or energy consumption," and instead are generally accounted for by the 36-month limitation on the recovery of net lost revenues. With respect to the second type of change, Duke indicated that increases in revenues due to certain DSM/EE programs would be classified as "found revenues" under Paragraph G.1. Clearly, these programs would fall into the category of the applicable utility activities. However, the Public Staff maintained that other activities, in addition to those associated with Duke's DSM/EE programs, could also cause revenue to increase and result in reductions to net lost revenues. It is the Public Staff's opinion that revenues from these activities should also be counted as "found."

As Public Staff witness Maness testified during the August 19, 2009 evidentiary hearing in this docket, the recovery of net lost revenues is intended to replace revenues that Duke has lost from enacting an energy efficiency program. Further, witness

Maness agreed that the recovery of net lost revenues is intended to make the company “whole”, not to provide a bonus in addition to a utility incentive for implementing DSM/EE programs. Furthermore, the Public Staff asserted that if the utility engages in activities that increase its net revenues to levels that would not otherwise naturally occur, it is entirely appropriate that the allowed amount of net lost revenues recovery be reduced to avoid overcompensating the utility being made more than whole, just as if the net revenue increase had resulted from some aspect of an EE program. The Public Staff explained that the net revenue increase from such an activity should be treated in the same manner as an increase resulting from a DSM/EE program. For the foregoing reasons, the Public Staff recommended that the Commission deny Duke’s request to clarify or reconsider its modifications and conclusions regarding Paragraph G.1. of the Settlement Agreement.

Lastly, the Public Staff noted that the Commission directed it to work cooperatively to develop practices and procedures which will ensure, to the maximum extent possible, that Duke is able to identify and trace those activities, whether or not they are associated with DSM/EE programs. The Public Staff acknowledged that it has not yet met with Duke on this matter. Therefore, the Public Staff respectfully suggested that it meet with Duke (and the Environmental Intervenors to the extent they wish to be involved) as expeditiously as possible to discuss identifying and tracking the activities and report the results of that meeting to the Commission within 120 days of the Commission’s order in response to Duke’s pending motion.

REPLY COMMENTS

► *Recovery of Net lost Revenues for General Awareness and Education Programs*

Duke pointed out that the Environmental Intervenors and PEC share Duke’s position that any energy efficiency program that produces verified energy or capacity savings should be eligible for recovery of net lost revenues.

Duke observed that while the Public Staff has recommended that the Commission should determine if a program is a general awareness or education program on a case-by-case basis, it did highlight that in the Commission *Order Approving Agreement and Stipulation of Partial Settlement, Subject to Certain Commission-Required Modifications*, in Docket No. E-2, Sub 931 (PEC Order), the Commission’s rationale for limiting the recovery of net lost revenues for such programs was based upon the fact that PEC stated that it could not quantify any measurable direct energy reduction benefits for its Save the Watts campaign. Thus, Duke argued that it is implied that the Commission has already indicated that net lost revenues are inappropriate for programs “designed to inform customers about the benefits of EE and DSM generally” rather than those associated with programs “designed to directly result in quantifiable energy or capacity savings.”

Duke stated that the City was the only commenter who directly opposed the recovery of net lost revenues for awareness and education programs that produce verified kW or kWh reductions. Duke argued that the City's generalization of awareness and education programs and behavioral programs as promotion, marketing, and advertising is misguided. Although such programs can serve to make customers more receptive to the Company's programs, it is Duke's opinion that such programs are not mere marketing tools to leverage the Company's other energy offerings, but rather provide benefits all their own. Further, Duke explained that behavioral programs like HECR will be evaluated by comparing the pilot group to a control group in order to differentiate between reductions resulting from the program versus those resulting from other factors. According to Duke, there is no reason to believe that Duke's Commission-approved measurement and verification plan³ is any less able to make this differentiation when the program is an informational measure as opposed to a hardware energy efficiency measure.

Regarding the City's question "how can the ratepayers be assured that even demonstrated behavior changes will persist, and for how long", Duke answered that the persistence of results is also evaluated during the measurement and verification process. Duke also observed that if it implements general awareness and education programs that stop producing results, it will no longer get paid once the results cease to materialize.

With respect to the City's concern that the 36-month longevity of lost revenues reimbursement under the save-a-watt approach may outstrip the duration of the behavior leading to the energy efficiency, Duke argued that concern is unfounded. Duke explained that, for example, if the forecasted life of a measure is three years, but the measure fails to generate kWh savings beyond year one, the Company will only receive net lost revenues for that one year, despite the general availability of recovery of net lost revenues for 36 months pursuant to the Settlement Agreement.

Furthermore, Duke maintained that the City has mistakenly implied that Duke will receive the net present value of its net lost revenues for energy efficiency programs, including those that may be classified as general awareness and education programs. Duke explained that the Settlement Agreement provides that the Company will retain up to 50% for the net present value of its avoided capacity and energy costs; however, it does not provide for recovery of net lost revenues on a net present value basis, rather net lost revenues are recovered annually.

Concerning the City's position that Duke has no program that benefits low-income customers and that Duke should offer a program similar to PEC's low-income residential retrofit program, Duke responded that the City ignored that the Commission has already approved Duke's Low-Income Weatherization Program. Further, Duke maintained that it is also actively looking at additional low-income

³ Duke observed that under the save-a-watt approach Duke's customers do not directly pay for measurement and verification of program results, rather the Company's avoided cost based revenues must cover measurement and verification costs.

programs, including those similar to PEC's model. In addition, Duke explained that behavioral programs, like its HECR program, are offered at no cost to the customer and are exactly the type of programs in which low-income customers would be able to participate and derive value. Duke also noted that low-income customers can take advantage of the Company's residential CFL program, which is provided at no cost to the customer.

Lastly, Duke opined that, if it is to reach its target under save-a-watt, it must pursue nontraditional programs, such as those aimed at changing behavior, in addition to traditional hardware EE programs that involve installation of equipment. In support, Duke observed that feedback from the Company's Collaborative suggests that developing behaviorally-based programs is a direction in which Duke should head. Duke acknowledged that it has the burden to demonstrate results. However, Duke asserted that to deny recovery of demonstrated net lost revenues for awareness and education programs would discourage the Company from implementing inventive and successful programs.

► ***Definition of Net Lost Revenues and Tracking Found Revenues***

Duke noted that the Public Staff, the Environmental Intervenors, and NC WARN have all taken the position that the Company would have to track found revenues for utility activities that increase demand or consumption, regardless of whether or not these activities are approved as energy efficiency programs.

Duke argued that the Public Staff has relied upon the definition of net lost revenues in Rule R8-68 for its position that "found" revenues are not limited to those resulting from energy efficiency activities. Duke filed comments in Docket No. E-100, Sub 113, on March 1, 2010, recommending that the definition of net lost revenues in R8-68 be amended to provide simply for a limited recovery of net lost revenues for 36-months and eliminate the complexities and burden associated with attempting to identify and track "found" revenues. Duke requested that this recommendation be taken into consideration in this present docket as well. However, even if Rule R8-68 is not amended, it is Duke's view that, other than programs that provide incentives (which are approved under Rule R8-68), it is inappropriate to assume utility activities that are designed to meet new electric uses necessarily promote increased electric use.

Regarding the Public Staff's comments identifying a utility program promoting plug-in hybrid electric vehicles as an example of an activity that may cause a customer to increase demand or consumption, and thus should offset recovery of net lost revenues for the successful implementation of energy efficiency, Duke maintained that, provided the utility is not offering incentives for its customers to purchase plug-in vehicles, it is simply prudent utility practice to ensure that its rate offerings and infrastructure are designed to appropriately address a new use for electricity. Duke commented that it strains logic to classify programs or rates designed to address the economic reality of plug-in vehicles as utility activities that cause a customer to increase demand or consumption.

Further, Duke observed, as noted in the Settlement Agreement, the purpose of allowing for recovery of net lost revenues is to remove a disincentive for the utility to institute energy efficiency programs. Duke asserted that to adopt the Public Staff's position is to offset net lost revenues whenever the Company implements programs and rates that accommodate electric use that is attractive to customers, independent of a Company-offered incentive. Duke argued that it is overly simplistic to say that the Company is promoting electric use when it is actually responding to or preparing for larger events in the economy.

Finally, regarding the Public Staff's and NC WARN's comments identifying fixed payment plans/balanced bill programs as utility activities that increase demand or consumption, Duke noted that its residential fixed payment plan approved in Docket No. E-7, Sub 710 has been suspended as of March 2010.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

► *Recovery of Net lost Revenues for General Awareness and Education Programs*

Duke requested guidance as to whether general awareness and education programs, which are ineligible for recovery of net lost revenues, include those programs for which the Company can demonstrate verified kW and/or kWh reductions resulting from such programs. And, if so, Duke is requesting reconsideration such that the Commission should exclude education and awareness programs that produce quantified capacity and/or energy savings from its definition of general awareness and education programs. Duke argued that general awareness and education programs help to transform the market by making customers increasingly receptive to specific program offerings, as well as by providing information to customers about how they can save money on their utility bills through either specific utility programs or other energy saving activities. It is Duke's position that as long as general awareness and education programs are specifically designed to result in quantified capacity and/or energy savings, there is no logical reason for their wholesale exclusion from net lost revenue recovery. Duke maintained that as long as changes in energy consumption from a program, such as its HECR program⁴, can be measured, whether the savings originate from behavioral changes or the installation of new equipment, the impacts should be counted and net lost revenues should be allowed to be recovered.

The Commission is of the opinion that the matter of whether a particular program is a general awareness and education program is a question that the Commission should resolve on a case-by-case basis when the specific program or measure is

⁴ On June 7, 2010, in Docket No. E-7, Sub 954, Duke filed its proposed HECR program for approval as a one-year pilot program and also requested that the program be eligible for the recovery of net lost revenues, among other requests.

formally submitted and presented to the Commission for consideration and approval. At that time, the Commission will be in a position to fairly review and carefully consider the pertinent parties' submittals, comments, testimony, etc. regarding the nature of the specific program, including the extent, if any, that measurable and verifiable kW and kWh savings will directly result from the proposed program. Clearly, at that point, the Commission will be better informed to determine if the purpose of a program or measure is primarily for the promotion of general awareness and education. Accordingly, the Commission agrees with the City of Durham and the Public Staff that no amendment or clarification of the Commission ruling, in the February 9, 2010 Order, is required regarding the Commission's modification, in Paragraph G.1., Net Lost Revenues, which reflects the Commission's finding that "Programs or measures with the primary purpose of promoting general awareness and education or energy efficiency as well as research and development activities are ineligible for the recovery of net lost revenues."⁵

There is one remaining matter, with respect to future programs, that was raised by the City in its comments. Specifically, the City argued that Duke should prioritize implementing a low-income residential retrofit program similar to that implemented by PEC. The City asserted that Duke has no comparable program. Consequently, the City recommended that the Commission arrange for a presentation by PEC on PEC's low-income energy retrofit program and request that Duke add a similar program to its save-a-watt portfolio. Duke responded that the City ignored that the Commission has already approved Duke's Low-Income Weatherization Program. Duke also noted that it is actively looking at additional low-income programs, including those similar to PEC's model.

The Commission declines to request that Duke implement a program similar to PEC's low-income energy retrofit program. However, the Commission encourages Duke to continue to actively investigate possible additional programs, including the PEC program, which could be beneficial for low-income customers. Furthermore, the Commission reminds the participating parties of the approved provision in Paragraph J.4. of the Settlement Agreement terms which provides that "The Company will continue to pursue partnerships with third party agencies to help implement programs, including partnerships offering assistance to low income households. Upon approval of its programs, the Company will convene the Advisory Group (discussed in Section K, below) to guide efforts to expand cost-effective programs for low-income customers."

► ***Definition of Net Lost Revenues and Tracking Found Revenues***

Duke requested reconsideration of the monitoring requirement to the extent that the Commission defines "utility activities [that] shall be closely monitored by the

⁵ General awareness and education programs are designed to inform customers about the benefits of DSM/EE generally and are not associated with any specific DSM/EE program designed to directly result in quantifiable energy or capacity savings. Therefore, general awareness and education programs were determined by the Commission to be ineligible for the recovery of net lost revenues.

Company to determine if they are causing a customer to increase demand or consumption” to include those activities that are independent of the Company’s DSM/EE programs. The Company is also seeking reconsideration of “the Commission’s requirement that it identify and track changes in revenues that occur as a result of actions of customers that increase or decrease their energy use that are independent of the Company’s energy efficiency and demand-side management programs.” Duke asserted that there are several types of changes in revenues that could be construed, some erroneously, as being caused by utility activities. Duke explained, for example, that one type (customer driven) occurs as a result of changes in the economy or actions of customers that cause them to change their energy use up or down that are independent of the Company’s DSM/EE programs. Duke also observed that another type of change in revenues can originate from actions of customers that change their energy use up or down that are directly related to the Company’s DSM/EE programs.

Duke argued that if the Company is to count revenue changes under the customer-driven type as “found” revenues, even those that may occur from economic development actions, then it must also count customer-driven decreases, such as those that occur when a plant or business closes or when a customer reduces its energy use in response to an increase in electricity price. Duke maintained that to consider increases and decreases on a case-by-case basis on such a broad basis is incorrect and creates a tremendous administrative burden, including lengthy and contested proceedings over what constitutes “found” revenues. Instead, Duke contended that a more workable application of net lost revenues should be limited to the results of those actions taken by customers in response to the Company’s DSM/EE programs. Duke also argued that the limited net lost revenues recovery period of 36 months inherently takes into account the possibility of any increase in revenues resulting from any activity of the Company that causes customers to increase demand or energy consumption. In summary, Duke proposed that issues of lost and “found” revenues should be restricted to only the activities associated with the Company’s DSM/EE programs.

Moreover, Duke filed comments in Docket No. E-100, Sub 113, on March 1, 2010, recommending that the definition of net lost revenues in Commission Rule R8-68 be amended to provide simply for a limited recovery of net lost revenues for 36 months and eliminate the complexities and burden associated with attempting to identify and track “found” revenues. Duke has requested that this recommendation be taken into consideration in this present docket as well. However, even if Rule R8-68 is not amended, it is Duke’s view that, other than programs that provide incentives which are approved under Rule R8-68, it is inappropriate to assume utility activities that are designed to meet new electric uses necessarily promote increased electric use.

The Commission disagrees with Duke’s request that issues of lost and “found” revenues should be restricted to the activities associated only with the Company’s DSM/EE programs. First, Duke’s proposal is not in compliance with the definition of “net lost revenues” provided in Commission Rule R8-68(b)(5) which, in pertinent part, states that:

Net lost revenues shall also be net of any increases in revenues resulting from any activity by the electric public utility that causes a customer to increase demand or energy consumption, whether or not that activity has been approved pursuant to this Rule R8-68. (Emphasis added.)

Second, and more significantly, Duke's proposal is in direct opposition to a specific provision that was ultimately negotiated and adopted by all the Stipulating Parties (Duke, the Environmental Intervenors, and the Public Staff) in the Settlement Agreement. Specifically, in Paragraph G.1. of the Settlement Agreement terms (Exhibit B), the Stipulating Parties agreed to include the following:

Net lost revenues shall also be net of any increases in revenues resulting from any activity by the Company's public utility operations that cause a customer to increase demand or energy consumption, whether or not that activity has been approved pursuant to R8-68. (Emphasis added.)

This agreed-upon language, which closely tracks the above-cited text from Commission Rule R8-68(b)(5), not only acknowledges that the increases which may occur and be applied to reduce the amount of net lost revenues recoverable is not limited to increases in revenues resulting from only DSM/EE programs, but it also explicitly establishes that some of those increases may result from other utility activities that are not approved under Commission Rule R8-68.

Furthermore, the Commission carefully reviewed this provision of the Settlement Agreement prior to issuing its February 9, 2010 Order. In particular, in its July 30, 2009 Pre-Hearing Order issued in this docket, the Commission requested that Duke, on behalf of the Stipulating Parties, among other things, "provide examples of activities that could cause revenue increases and result in reductions to net lost revenues."⁶ In its August 10, 2009 response, Duke acknowledged that its position with respect to "found" revenues for the purpose of determining net lost revenues differed from the other Stipulating Parties. Duke's position then, as it is now, was that the application of lost and "found" revenues should be limited to the results of actions taken by customers in response to Duke's DSM/EE programs.

On August 14, 2009, the Commission issued its Second Pre-Hearing Order in this docket, requesting the Environmental Intervenors and the Public Staff to file statements indicating their respective positions as to their agreement and/or disagreement with Duke's August 10, 2009 response and to include a responsive filing explaining any matter of disagreement. In its August 18, 2009 response to the Second Pre-Hearing Order, the Public Staff verified that "The terms of the Settlement Agreement reflect the Public Staff's position on the recovery of net lost revenues, and the Stipulating Parties have agreed that those terms govern Duke's recovery of net lost revenues throughout the Settlement Agreement's duration." Additionally, the Public Staff recommended that the utility's activities be closely monitored to determine if

⁶ This is one part of what the Commission inquired about in its Question No. 20.

they are causing an increase in demand or consumption. The Public Staff also stated that “With regard to procedures utilized to identify and record ‘found revenues,’ the Public Staff believes that the company should be expected to identify and keep track of all of its activities that cause customers to increase demand or consumption, whether or not those activities are associated with DSM or EE programs, as provided in the Settlement Agreement, so that they may be evaluated by the parties and the Commission for possible confirmation as ‘found revenues.’”

Accordingly, the Commission does not find any compelling new reason in Duke’s request which causes the Commission to reconsider the scope of its definition of net lost revenues contained in Paragraph G.1. Nor does the Commission believe it is appropriate to limit “found” revenues to only those that result from the Company’s approved DSM/EE programs.

As previously indicated, the Environmental Intervenors, NC WARN, and the Public Staff all disagreed with Duke’s position that only revenue changes that result from actions taken by customers in response to Duke’s DSM/EE programs should be counted as found revenues. In addition, NC WARN observed that G.S. 62-2(a)(3a) requires that conservation and efficiency be considered whenever the Commission reviews any of the utilities’ programs.

The Commission agrees with the Environmental Intervenors, NC WARN, and the Public Staff that Duke should be required to identify and track all of the Company’s activities that cause customers to increase demand or consumption, regardless of whether or not those activities are associated with DSM/EE programs, such that they may be evaluated by the parties and the Commission for possible confirmation as “found” revenues. The Commission finds and concludes that it appropriately modified Paragraph G.1. to include the following:

Utility activities shall be closely monitored by the Company to determine if they are causing a customer to increase demand or consumption, and the Company shall identify and keep track of all of its activities that cause customers to increase demand or consumption, whether or not those activities are associated with demand-side management or energy efficiency programs, as provided in the Settlement Agreement, so that they may be evaluated by the parties and the Commission for possible confirmation as ‘found revenues.’ (Emphasis added.)

These monitoring, identification, and tracking requirements added by the Commission follow logically from the provision in Paragraph G.1. of the original Settlement Agreement terms that was adopted by the Commission, as follows: “Net lost revenues shall also be net of any increases in revenues resulting from any activity by the Company’s public utility operations that cause a customer to increase demand or energy consumption, whether or not that activity has been approved pursuant to R8-68.” The Commission believes that the implementation of this particular Stipulating Parties’ provision will be greatly facilitated by such monitoring, identification, and tracking

requirements. Clearly, Duke will need to monitor, identify, and track its activities to determine whether any of its other utility activities, in addition to those associated with Duke's DSM/EE programs, are causing increased demand or consumption, such that the net lost revenues may be offset by any "found" revenues from those activities, to avoid overcompensating the utility.

With respect to Duke's argument that it creates a tremendous administrative burden to count revenue changes from customer-driven increases, the Environmental Intervenor and the Public Staff agreed that only revenue increases that result from Duke's public utility operations should be monitored and evaluated as possible found revenues. The Commission agrees that customer-driven types of change which occur independent of the utility's activities are, clearly, not to be considered as activities "by the Company's public utility operations that cause a customer to increase demand or energy consumption." (Emphasis added.) Consequently, the Commission finds and concludes that no further clarification is required.

Furthermore, regarding Duke's request for clarification on the meaning of a utility activity that causes a customer to increase demand or consumption, the Commission notes that in the February 9, 2010 Order, Ordering Paragraph No. 4 stated as follows:

4. That Duke and the Public Staff shall be, and hereby are, requested to work cooperatively to develop practices and procedures which will ensure, to the maximum extent possible, that the Company is able to identify and keep track of all its activities that cause customers to increase demand or consumption, whether or not those activities are associated with demand-side management or energy efficiency programs, so that they may be evaluated by the parties and the Commission for possible confirmation as 'found revenues;'

In this regard, the Public Staff acknowledged that it has not yet met with Duke. The Public Staff suggested that it should meet with Duke (and the Environmental Intervenor to the extent they wish to be involved) as expeditiously as possible to discuss identifying and tracking the activities and report the results of that meeting to the Commission within 120 days of the Commission's order in response to Duke's pending motion. Consequently, the Commission finds and concludes that the Public Staff should meet with Duke, as expeditiously as possible, to discuss identifying and tracking the Company's activities and report the results of such meeting(s) to the Commission within 120 days of the issuance date of this order.

In sum, for the reasons cited above, the Commission denies Duke's request for clarification and reconsideration of the Commission's modifications and conclusions, as set forth in the February 9, 2010 Order, regarding Paragraph G.1. of the Settlement Agreement terms.

IT IS, THEREFORE, ORDERED as follows:

1. That Duke's motion for clarification and reconsideration shall be, and the same hereby is, denied.

2. That the Public Staff shall meet with Duke, as expeditiously as possible, to discuss identifying and tracking the Company's activities and report the results of such meeting(s) to the Commission no later than Thursday, November 4, 2010.

3. That the *Order Approving Agreement and Joint Stipulation of Settlement Subject to Certain Commission-Required Modifications and Decisions on Contested Issues*, issued on February 9, 2010, shall be, and hereby is, affirmed in all respects.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of July, 2010.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script that reads "Patricia Swenson".

Patricia Swenson, Deputy Clerk

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