NC SUSTAINABLE
ENERGY ASSOCIATION

June 9, 2023

Ms. A. Shonta Dunston
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

Re: Docket No. E-2, Sub 1300
Application of Duke Energy Progress, LLC For Adjustment of Rates and Charges Applicable to Electric Service in North Carolina and Performance-Based Regulation
Partial Proposed Order of the North Carolina Sustainable Energy Association

Dear Ms. Dunston,

In connection with the above-referenced docket, please find enclosed for filing the partial Proposed Order of the North Carolina Sustainable Energy Association.

Respectfully yours,

/s/ Ethan Blumenthal
On Behalf of the North Carolina Sustainable Energy Association

CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing documents by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission with the party's consent.

This the 9th day of June, 2023.

/s/ Ethan Blumenthal
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STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 1300

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Energy Progress, LLC, for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina	)))))	PARTIAL PROPOSED ORDER OF THE NORTH CAROLINA SUSTAINABLE ENERGY ASSOCIATION

BY THE COMMISSION:

On June 8, 2022, the Company filed its Request to Initiate Technical Conference Regarding Transmission and Distribution Projects to be included in the Duke Energy Progress's (DEP) Performance-based Regulation Application.

On July 5, 2022, the North Carolina Sustainable Energy Association filed a Petition to Intervene and Notice of Intent to Participate, which was granted by the Commission on July 7, 2022.

On September 6, 2022, DEP filed its Performance-based Regulation Application Pre-filing Notice.

On October 6, 2022, DEP filed its Application for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina (DEP's Application) before the Commission, pursuant to N.C.G.S. § 62-133.16. The Commission established a general rate case and suspended rates on October 31, 2022.

On December 16, 2022, the Commission issued its Order Scheduling Investigation and Hearings, Establishing Intervention and Testimony Due Dates and Discovery Guidelines, and Requiring Public Notice.

On March 27, 2023, various intervenors and the Public Staff filed direct testimony and exhibits.

On April 5, 2023, the Commission issued its Order Providing Additional Hearing Procedures.

On April 14, 2023, DEP filed rebuttal testimony.

On May 4, 2023, the evidentiary hearing for this case commenced for the purpose of receiving expert witness testimony. Over the course of several days DEP's witnesses, the Public Staff's witnesses, and intervenors' witnesses were questioned extensively by other parties and the Commission. The evidentiary hearing concluded on May 16, 2023.

The reports, testimony, and exhibits of the witnesses run to several thousand pages. The Commission has read and given due consideration to the entire record in this proceeding. In this Order, however, the Commission will not attempt to provide summaries or recitations of each of the points made by the parties in their filings, established during the expert witness hearing, or made at the public hearings or in consumer statements of position.

Based on the entire record in this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. DEP's Application included proposed changes to nonresidential net energy metering ("NEM") tariffs. These changes are included in tariffs Rider NM, Rider NSC, and detailed within the written and oral testimony of Mr. Byrd.

2. Under DEP's proposed rate tariffs, customers that install new behind-the-meter renewable energy generation must take service under Rider NSC. Nonresidential customers currently taking service under Rider NM may continue to do so until Sept. 30, 2033.

3. The nonresidential customer segment in DEP includes many types of entities, including Fortune 500 companies, large industrial and manufacturing companies, retail companies ranging from small businesses to grocery stores to big box stores, local government buildings from police stations to water treatment facilities, and nonprofit organizations including hospitals, houses of faith, and providers of affordable housing. The facilities operated by these entities vary widely in how they use the energy provided to them by DEP.

4. DEP has submitted insufficient evidence of its investigation of the costs and benefits of customer-sited nonresidential generation, as required by N.C.G.S. § 62-126.4(b), to support its proposed changes to nonresidential NEM and ensure such rates are nondiscriminatory.

5. In developing new nonresidential NEM tariffs, DEP failed to conduct adequate stakeholder engagement considering the breadth and complexity of the nonresidential customer segment across its service territory.

6. A failure to substantively engage key stakeholders prior to significant rate design changes presents a substantial risk to Duke's ability to convey accurate

information to all customers when new rate designs are implemented.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1 - 4

The evidence for this finding is found in the Commission's Order Approving Revised Net Metering Tariffs in Docket No. E-100 Sub 180, DEP's Application, the testimony and exhibits for DEP's witnesses, and the entire record in this proceeding.

Summary of Evidence

DEP's Application, filed October 6, 2022, includes proposed changes to nonresidential NEM tariffs, including Rider NM, Rider NSC, and associated time-of-use ("TOU") based tariffs. Application Exhibit B, E-2 Sub 1300, (Oct. 6, 2022). NEM tariff reform has been included in recent statutes enacted by the North Carolina General Assembly, including HB589 and HB951.

House Bill 589 ("HB589") was passed into law in 2017 with explicit requirements related to NEM. The Commission has interpreted HB589 as requiring

> "that '[e]ach electric public utility shall file for Commission approval revised net metering rates' and that such rates should be 'established only after an investigation of the costs and benefits of customer-sited generation.' N.C.G.S. § 62-126.4(a)-(b). [HB] 589 further requires the Commission to 'establish net metering rates under all tariff designs that ensure that the net metering retail customer pays its full fixed cost of service.' N.C.G.S. § 62-126.4(b). Although HB 589 mandates that Duke file revised NEM rates, it permits existing NEM customers to take service under existing programs until January 1, 2027. N.C.G.S. § 62-126.4(c)."

Order Approving Revised Net Metering Tariffs, E-100 Sub180, 4-5 (Mar. 23, 2023). House Bill 951 ("HB951") was signed into law in Oct. 2021 and required, among other things, that the Commission evaluate and modify as necessary NEM rates. *Id*. at 5.

DEP is proposing a new tariff for all new nonresidential renewable energy installations using NEM in its service territory, Rider NSC. In its Application, DEP "proposes to freeze Rider NM to new customers as of October 1, 2023 and allow existing NEM customers to continue service under Rider NM until they request service under Rider NSC or until September 30, 2033, at which point all nonresidential NEM customers receiving service under Rider NM will be moved to Rider NSC or another appropriate tariff, as available at that time." Official Tr., Vol. 11, pg. 248.

Rider NSC provides that "Customers applying for service under this Rider must be served under an existing approved general service rate schedule that includes [TOU] periods." DEP's Application, Exhibit B, pg. 199. Related to the requirement to take concurrent service under a TOU-based rate schedule, Rider NSC also includes a new three-part demand charge structure. The standby charge would be eliminated for systems with generation capacity of 100kW or less, and for systems larger than 100kW with a planning capacity factor 60% or lower (as contained in DEP's proposed changes to Rider SS). Though the size limit for leased facilities remains the same as before, "[f]or Customer-owned generation installations, the Company is proposing to increase the size limit to the lesser of 100% of the Customer's contract demand or 5,000 [kW]." Official Tr., Vol. 11, pg. 248-49.

Rider NSC also would net customers' exported energy against their usage within each TOU period on a monthly basis. "Net electricity will be calculated for each TOU period, in descending order by price. Any net excess energy from one TOU period will be applied to the next TOU period, as applicable. After net electricity has been calculated for all TOU periods, the Customer-Generator shall be credited for any remaining net excess energy at the Monthly Credit rate," which is set at $0.0340 per kWh. DEP's Application, Exhibit B, pg. 200; Official Tr., Vol. 11, at 247. Witness Byrd testifies that these changes were included in DEP's Comprehensive Rate Design Study ("CRDS") and the following Roadmap for consideration within a later rate case. Official Tr., Vol. 11, pg. 249.

DEP is also proposing to change the application of TOU rates, as discussed in Witness Byrd's testimony and shown within Byrd Exhibit 1. Witness Byrd acknowledges that though DEP believes these changes are necessary in this current rate case, "[f]requent changes to TOU periods are inadvisable and potentially burdensome as customers use price periods to evaluate energy investments and program load management devices (e.g., thermostats, EV chargers). Accordingly, [DEP] has relied upon net peak forecasts stretching close to a decade beyond the current period for the development of the new TOU periods." *Id.* at 241.

Witness Byrd's testimony describes how some of these changes are meant to address the issue of cost causation. "The new TOU periods properly align price signals to the cost differences that exist across seasons and hours, encouraging peak load reduction and efficient system usage." *Id*. at 241. With respect to the proposed demand charge changes within TOU rates, "[t]he analysis showed that shifting a portion of fixed cost recovery from energy charges to demand charges improved alignment to cost causation across a wide spectrum of customer energy usage profiles." *Id.* at 245. While on the stand, Witness Byrd further provided that the new TOU periods and new demand charge structures are designed to ensure "recovery of production, transmission, distribution cost within those on peak, mid peak, and base demand charges." *Id.* at 350. Rather than analyzing potential cross-subsidies, "what we did was look at…the appropriateness of the price signals that we're giving customers on a cost causation basis within these pricing structures." *Id.* at 352.

DEP is also proposing to modify the seasonal designation of TOU periods, such that May through September will be treated as summer months. "Rider NM presently resets accumulated Excess Energy to zero at the beginning of each summer season, currently May 31. The Company proposes to change the reset date to April 30 to correspond with the beginning of the summer season…." *Id.* at 248.

DEP's proposed changes to TOU periods would impact the following rate schedules: "R-TOU, the redesigned R-TOUD, SGS-TOUE, SGS-TOU (which the Company proposes to rename "MGS-TOU" …), LGS-TOU, LGS-RTP, and the Large Load Curtailable Rider LLC. Schedules R-TOU-CPP and SGS-TOU-CPP already use the proposed periods and will not be impacted." *Id.* at 241. DEP's proposed changes to demand charge structures would impact both SGS-TOU (renamed MGS-TOU) and LGS-TOU rate schedules. *Id.* at 245. Neither proposed change is specific to nonresidential customers with renewable energy generation seeking to use NEM.

When it comes to estimating the impact of these changes, "modeling nonresidential solar is very challenging because of the lack of homogeneous load shapes within those classes." *Id.* at 351. DEP did conduct some modeling on existing facilities within the SGS category, for facilities both taking service under TOU rate schedules and some not using TOU rates, and found for most systems there was not much impact. *Id.* at 353.

In its Order Approving Revised Net Metering Tariffs in Docket No. E-100 Sub 180, this Commission recently interpreted the requirements of HB589 and reached several conclusions relevant to the present docket. While discussing the requirements found in HB589, the Commission found that "[t]he most natural reading of the language of subsection 126.4(b) is that the Commission is to ensure that under whatever tariff designs net metering is being offered the rates set must be sufficient to recover all fixed costs of service…the fundamental operative requirement expressly advanced by the General Assembly is to ensure that NEM customers pay their 'full fixed cost of service.'" Order Approving Revised Net Metering Tariffs, 34.

The Commission also interpreted HB589 to not require the simultaneous filing of different proposals to modify NEM across customer classes. In reaching this conclusion, the Commission noted the position of both DEP and the Public Staff that there is a lower risk of cross subsidization for the nonresidential customer class. The Commission also noted that DEP, via a signed Memorandum of Understanding with several stakeholders, "has agreed to work collaboratively with stakeholders on this issue." As such, the Commission determined that it was appropriate to wait and "address the merits of the proposed nonresidential NEM tariffs in Docket Nos. E-2, Sub 1300 and E-7, Sub 1276, and decline[d] to order a separate study" at that time. *Id.* at 34-35.

In its Order, the Commission also discussed HB589's requirement for, and the sufficiency of, DEP's "investigation of the costs and benefits of customer-sited generation." First, the Commission found that "[w]hile the statute provides the Commission with the ability to direct an investigation, nothing in the plain language of the statute requires the Commission, itself, to conduct the investigation… Nor does the statute require that the 'investigation' be in any particular format or using any particular procedure" *Id.* at 35.

The Commission found "that the 2018 test year for the cost-of-service ("COS") study and the embedded and marginal cost analyses were sufficient to determine the need for the proposed NEM tariffs"— basing this conclusion on the recency of the COS study and a finding that "[t]he analyses in the embedded and marginal cost studies that Duke conducted as part of its Rate Design Study capture the majority, if not all, of the known and verifiable benefits of solar generation." *Id.* at 35-36. "The embedded cost analysis estimated a potential monthly subsidy in favor of each NEM customer between…$35 and $40 for DEP. The marginal cost framework estimated a potential monthly subsidy in favor of each NEM customer between…$58 and $63 for DEP." *Id.* at 5-6. Finally, the Commission concluded that, based on all the materials in the record in docket E-100 Sub 180, "[DEP], through its [CRDS] and stakeholder process, properly conducted an investigation of the costs and benefits of customer-sited generation as required by HB 589." *Id.* at 37.

The nonresidential customer class is widely varied and includes Fortune 500 companies, large industrial and manufacturing companies, retail companies ranging from small businesses to grocery stores to big box stores, local government buildings from police stations to water treatment facilities, and nonprofit organizations including hospitals, houses of faith, and providers of affordable housing. When it comes to these different facilities' use of electricity, "[t]here's a lack of homogeneity across the customer class." Official Transcript, Vol 11, 354. Reflecting the complexity of this customer class, well over half (18 out of 28) of DEP's proposed rate schedules fall into this category. Application Exhibit B, 1. Local governments and the Southeast Sustainability Directors Network ("SSDN") exemplify the complexity of this customer class, as well as the need for robust stakeholder engagement. Comments of North Carolina Local Governments on DEP's Application, E-2 Sub 1300CS (June 9, 2023).

Discussion and Conclusions

NEM has been a hotly contested issue before this Commission for quite some time, with many interested stakeholders intervening to participate in E-100 Sub 180. First HB589 and later HB951 required this Commission to consider how NEM rates have historically been applied in North Carolina and to reevaluate such rates to ensure that any cross-subsidy is reduced to the maximum extent practicable and that each retail customer pays its full fixed cost of service. These changes must be implemented by Jan. 1, 2027.

In Docket E-100 Sub 180, the comment and reply comment process led to a complete and fulsome record from which the Commission could then render its Order. The record included specific evidence as to the amount of embedded and marginal cross subsidy in DEP's territory that existed in favor of residential NEM customers. These analyses included the known and verifiable benefits of solar generation. The record included evidence explaining how the results of the 2018 COS study specifically implicated residential NEM customers. Though the Commission found the CRDS and corresponding stakeholder process to be sufficient for the purposes of N.C.G.S. § 62-126.4, it relied upon the specific evidence within the record as to the results of that process in order to find the proposed changes necessary. No such evidence exists in the record in this present case.

In this docket, DEP mentions that the proposed changes were discussed within the CRDS process. There is very little evidence in this docket as to which issues were discussed and what level of consensus was achieved with stakeholders included in those discussions. As to the elimination of potential cross-subsidies in favor of NEM customers, Witness Byrd points to DEP's proposed changes to TOU periods and demand charge structures. However, these changes do not apply specifically to customers using NEM, they are applied generally across the nonresidential customer class. There is no evidence distinguishing how these changes are tailored to eliminate cross subsidies for nonresidential NEM customers specifically. Similarly, there is no evidence as to how the potential benefits of behind-the-meter renewable energy generation were taken into account. Finally, these changes only apply to customers currently taking service under TOU rates or ones that will in the future. Under DEP's proposed changes, existing customers may continue to be served under Rider NM, and thus use non-TOU rate schedules, into 2033. There is no evidence as to why this length of time is appropriate or as to the level of cross-subsidy these customers may continue to receive until that time.

While DEP may propose changes to rates generally within a rate case, as to NEM rates, HB589's requirement that "rates shall be nondiscriminatory and established only after an investigation of the costs and benefits of customer-sited generation" must still be satisfied. Though the Commission has previously held that the CRDS and corresponding stakeholder process satisfies the requirement that an "investigation" be conducted, evidence as to the results of that investigation is required for the Commission to ensure such rates are in fact nondiscriminatory. The current record in this case has incomplete evidence to such effect and thus provides an insufficient basis for the Commission to make such a finding; therefore, DEP's proposed changes to nonresidential NEM tariffs must be denied. However, as they apply generally across the nonresidential customer class, this conclusion does not reach DEP's proposed changes to TOU periods or demand charge structures.

The Commission further finds it appropriate to open a new docket and direct DEP to file proposed changes to nonresidential NEM with further evidence as is consistent with the reasoning of this Order within 90 days. This docket shall be open to interested parties to intervene and submit comments; however, it will not include a separate evidentiary hearing.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5 - 6

The evidence for this finding is found in the Commission's Order Approving Revised Net Metering Tariffs in Docket No. E-100 Sub 180, DEP's Application, the testimony and exhibits for DEP's witnesses, and the entire record in this proceeding.

Summary of Evidence

Witness Byrd testified that during the course of DEP's CRDS several working sessions were held on nonresidential rate design, during which NEM rates for nonresidential customers were addressed. During the course of the CRDS process, stakeholders were able to present their ideas and DEP collected that feedback, as well as feedback received in follow-up conversations around the time the CRDS roadmap was filed. Official Tr., Vol. 11, 341-343. Witness Byrd testified that representatives of stakeholders from various customer groups and classes were involved in discussions on developing Rider NSC. *Id.* at 344. However, Witness Byrd could not recall specific conversations discussing Rider NSC with municipal customers or nonprofit customers, such as YMCAs, hospitals, or houses of faith. *Id.* at 343-344. Though nonresidential NEM changes were discussed in the CRDS process, Witness Byrd was not able to speak to the level of consensus achieved among stakeholders that were present. *Id*. at 341.

In response to a question from Commissioner Clodfelter as to whether the design of Rider NSC was developed during the course of the CRDS, witness Byrd testified that the development of Rider NSC was different than that of Rider RSC, which was developed "as a separate item, and it was a collaborative[,] working with a lot of groups to come up with."[1] Official Tr., Vol. 12, 77. In particular, Witness Byrd did not recall discussing the details of Rider NSC, such as the excess netting waterfall, within the CRDS nonresidential working groups; whereas the broader concept of monthly netting was discussed with the CRDS

[1] DEP signed a Memorandum of Understanding before filing its proposed changes to residential NEM with the North Carolina Sustainable Energy Association, the Southern Environmental Law Center on behalf of Vote Solar and the Southern Alliance for Clean Energy, Sunrun, Inc., and the Solar Energy Industries Association. On May 19, 2022, DEP and DEC reached further consensus in a Stipulation filed with solar installation companies Sundance Power Systems, Inc., Southern Energy Management, Inc., and Yes Solar Solutions. Order Approving Revised Net Metering Tariffs, 1-2.

nonresidential working groups. *Id.* at 78. Nor was stakeholder feedback on the excess netting waterfall received subsequent to the CRDS nonresidential working group process. *Id.* at 78 -79.

Witness Byrd also testified that the various elements of Rider RSC are an outcome of the collaborative work done by the parties to the Commission's residential NEM proceeding. Witness Byrd explained that Rider RSC was developed under the parameters of a memorandum of understanding (*Id.* at 77-78) executed among utility, environmental, and solar interests. By contrast, Rider NSC was developed through the nonresidential working group of the CRDS, through stakeholder proposals and discussions which DEP "took back" and included in its CRDS roadmap filing. *Id.* at 78.

In response to questioning from Commissioner McKissick, Witness Reed discussed the "massive change" represented by DEP's rate design proposals and the amount of change management needed internally to be prepared to communicate those changes to ratepayers. *Id.* at 53. Witness Reed testified as to the need for DEP's staff to relearn "all of our rate designs and . . . to be able to explain to customers what the best rate is". *Id*. at 52. Witness Reed further testified to DEP's intent "to train all of our representatives to be able to speak to our rates," as opposed to training a subset of specialists on the specific changes proposed in this case. *Id.* at 53. Within the nonresidential customer class, "LGS class customers also have Large Account Managers that provide individualized support to help them select the best rate." Official Tr., Vol 11, pg. 267.

Discussion and Conclusions

In designing Rider NSC, Duke relied almost exclusively on the CRDS and the organizations willing and able to participate within that process. Though DEP used the CRDS process and related stakeholder engagements to inform their proposed changes to TOU periods, demand charge structures, and Rider NSC itself, there is no evidence that Rider NSC was developed within the CRDS process or that the changes proposed in Rider NSC were, in aggregate, discussed with stakeholders during the CRDS process. Instead, DEP took stakeholder proposals and discussions on nonresidential net metering rate design from the CRDS into consideration when later developing Rider NSC. Further, there is no evidence that DEP solicited feedback from stakeholders on Rider NSC once it had in fact been designed.

By contrast, DEP's Rider RSC was developed in a deliberatively collaborative manner, wherein many parties across multiple agreements found consensus positions between and among the utilities, environmental and policy advocates, and impacted industry. Stakeholder engagement yielded substantive changes designed to smooth implementation and provide customers with accurate information. Even in light of the extensive stakeholder involvement in developing DEP's Rider RSC, parties raised concerns that the complexity of the tariffs would make it difficult for customers to estimate solar benefits and would erode confidence in the industry, leading to a loss of credibility. Order Approving Revised NEM Rates, 23-24.

When instituting "massive change" to rate designs, it is important to have an understanding of how that change will impact all of the implicated customers. With respect to the nonresidential customer class and NEM, Witness Byrd testified to the difficulty of performing such modeling. DEP did conduct some modeling of the effects adopting Rider NSC would have on existing customers; however, this modeling was limited to customers taking service under SGS customer class rate schedules. There is no evidence in the record as to the potential effect the adoption of Rider NSC might have on customers under MGS or LGS rate schedules.

It is also important that DEP is able to accurately convey the impact of these changes to the ratepayers that will be impacted by them. While DEP is undertaking extensive efforts to train all their representatives on the changes proposed in this rate case, certain customers will necessarily be advantaged by this approach. Specifically, LGS class customers have access to individualized account managers while other nonresidential customers will have to rely on DEP's more general customer services. The disparate treatment of nonresidential customers could be mitigated by having a core team trained to be intimately familiar with Rider NSC and all of the changes it entails for NEM; however, this is not the approach DEP has elected to pursue at this time. Considering the complexity of the nonresidential customer class and the highly varied energy usage needs of such customers, accurate customer communications is very important to maintaining consumer confidence.

In contrast to the development process DEP used for Rider NSC, Rider RSC was developed with a group of stakeholders as "a collaborative working with a lot of groups to come up with." Even after DEP's initial introduction of new residential NEM tariffs, the Company continued to seek, and found, common ground with interested parties—including solar installation companies. Further, the calculator and bridge rate included in the Commission's Order in E-100 Sub 180 served to mitigate the risk of inaccurate information in the marketplace for residential NEM customers.

Substantive stakeholder engagement prior to the implementation of rate changes is an effective way to ensure accurate information exists in the marketplace, which is essential to providing adequate consumer protection. The lack of such stakeholder engagement and DEP's potential inability to provide accurate information to all customers create a material risk to customer protection in the nonresidential behind-the-meter solar market.

Due to the lack of sufficient stakeholder engagement and the material risk of incomplete or inaccurate information being provided to ratepayers, the Commission concludes that DEP's proposed changes as to nonresidential NEM should be denied. This does not apply to DEP's proposed changes to TOU periods or demand charge structures.

The Commission further finds it appropriate to open a new docket and directs DEP to file proposed changes to nonresidential NEM with further evidence as is consistent with the reasoning of this Order within 90 days. This docket shall be open to interested parties to intervene and submit comments; however, it will not include a separate evidentiary hearing.

IT IS, THEREFORE, ORDERED as follows:

1. That DEP's proposed changes to nonresidential NEM rates, as outlined in tariffs Rider NM and Rider NSC, are hereby denied.

2. That DEP is directed to file proposed changes to nonresidential NEM rates in a separate docket before this Commission no later than 90 days after this Order takes effect. DEP may submit further evidence in support of their proposed changes. Once that docket has been opened and DEP's filing received, it shall be open to intervention and comment by interested parties; however, it shall not include an evidentiary hearing.

ISSUED BY ORDER OF THE COMMISSION.

This the ___ day of __________, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk