BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1247

In the Matter of Application of Duke Energy Carolinas, LLC for Approval of CPRE Compliance Report and CPRE Cost Recovery Rider	)))))	TESTIMONY OF JEFF THOMAS PUBLIC STAFF – NORTH CAROLINA UTILITIES COMMISSION

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TESTIMONY OF JEFF THOMAS
ON BEHALF OF THE PUBLIC STAFF
NORTH CAROLINA UTILITIES COMMISSION

MAY 13, 2021

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND PRESENT POSITION.

A. My name is Jeff Thomas. My business address is 430 North Salisbury Street, Dobbs Building, Raleigh, North Carolina. I am an engineer with the Energy Division of the Public Staff – North Carolina Utilities Commission.

Q. BRIEFLY STATE YOUR QUALIFICATIONS AND DUTIES.

A. My qualifications and duties are included in Appendix A.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to make recommendations to the Commission regarding the Public Staff's investigation of the application for recovery of costs associated with the implementation of the Competitive Procurement of Renewable Energy (CPRE) Program filed by Duke Energy Carolinas, LLC (DEC or the Company) on February 23, 2021. My review also includes the supplemental testimony and exhibits filed by DEC on May 3, 2021.

The Public Staff Energy Division's specific responsibilities in this CPRE rider proceeding are to: (1) review the Company's application and proposed rates for compliance with N.C. Gen. Stat. 62-110.8 and Commission Rule R8-71; (2) review the CPRE Compliance Report and address any deficiencies pursuant to Commission Rule R8-71(h) and Commission Orders; and (3) make recommendations regarding changes to the Company's calculations of the proposed rates.

Q. HOW IS YOUR TESTIMONY ORGANIZED?

A. My testimony summarizes the CPRE Program Rider request and the CPRE Compliance Report and presents the results of the Public Staff's investigation.

Q. ARE YOU RECOMMENDING ANY ADJUSTMENTS IN YOUR TESTIMONY?

A. No. However, I do make recommendations to the Commission regarding DEC's request for market-based recovery of its winning CPRE proposals.

A. <u>Overview of DEC's CPRE Rider Request</u>

Q. WHAT COSTS DOES DEC SEEK TO RECOVER ASSOCIATED WITH THE CPRE PROGRAM IMPLEMENTATION?

A. As described in the direct and supplemental testimony of DEC witness Jones, DEC seeks to recover $488,499 in implementation costs (system) incurred during the test period from January 1, 2020, through December 31, 2020, (Experience Modification Factor or EMF Period). These costs include internal company labor and associated costs, outside consulting and legal services, and $179,552 in Independent Administrator (IA) fees and T&D Sub-Team[1] costs not recovered from Tranche 2 Market Participant (MP) fees. DEC has also included a $2.25 million credit to ratepayers associated with contract fees collected from MPs in 2020. DEC forecasts ongoing system implementation costs of $310,830 from September 1, 2021 through August 31, 2022 (Billing Period), associated with internal labor and external consulting.

Q. PLEASE EXPLAIN WHAT COSTS ARE INCLUDED IN THE IA FEES NOT RECOVERED FROM MPS.

A. The $179,552 of IA fees not recovered from MPs that DEC seeks to recover from ratepayers is 50% of the total IA fees not recovered. The $359,105 of total IA fees not recovered consists of (1) **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** associated with initial program implementation that was distributed over all three CPRE Tranches; (2) **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** associated with ongoing Tranche 1 disputes; (3) **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** of CPRE

[1] As defined in Commission Rule R8-71(b)(16).

T&D Sub-Team evaluation costs from Tranche 2; and (4) **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** of Tranche 2 IA fees, net of MP proposal fees and winner fees received.

Q. HOW DOES DEC ALLOCATE THESE IMPLEMENTATION COSTS?

A. In its application, DEC allocates implementation costs to NC retail customer classes using a weighted average of the energy and capacity allocation factors ("Composite Factor"), calculated separately for the EMF Period and the Billing Period, as described by witness Jones on page 10 of her direct testimony.

Q. WHAT REVENUE REQUIREMENTS DOES DEC SEEK TO RECOVER ASSOCIATED WITH PURCHASES OF ENERGY AND CAPACITY FROM WINNING PROJECTS?

A. Within the EMF Period, DEC seeks recovery of $55,105 in system purchased power revenue requirements associated with operational Tranche 1 projects. Only two projects began commercial operation: the DEC-owned Gaston Solar generation facility[2] and the DEC-owned Maiden Creek Solar generation facility.[3]

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[2] Docket No. E-7, Sub 1216.

[3] Docket No. E-7, Sub 1215.

On May 3, 2021, DEC made a supplemental filing indicating that the commercial operation dates (COD) of the remaining Tranche 1 projects have been delayed, reducing the revenue requirements DEC seeks to include in the Billing Period.

Facility	Original COD	Revised COD
DEC Gaston Solar	2/23/2021	In-service
DEC Maiden Creek	3/31/2021	In-service
Sugar Solar, LLC	9/26/2021	11/29/2021
Broad River Solar	9/26/2021	12/31/2021
Pinson Solar	9/29/2021	1/29/2022
Speedway Solar	1/20/2022	3/1/2022
Stony Knoll Solar	12/29/2021	3/1/2022
Partin Solar, LLC	8/29/2021	7/16/2022
Oakboro PV1	11/12/2021	8/1/2022
Westminster	11/12/2021	9/28/2022

Based upon the revised CODs of Tranche 1 facilities, DEC estimates that during the Billing Period it will incur a total of approximately $22.7 million (system) in purchased and generated power,[4] consisting of $3.5 million in capacity and $19.2 million in energy. The North Carolina retail portion of these total revenue requirements is

[4] Purchased power refers to third-party and unregulated Duke affiliates that have entered into PPAs with DEC. Generated power refers to DEC-owned facilities that are seeking market-based recovery through this rider at the as-bid price.

approximately $15 million.[5] DEC assumes that only one Tranche 2 facility will become operational during the Billing Period. The delay in Tranche 1 facility CODs caused a 38% reduction in North Carolina retail Billing Period purchased power revenue requirements.

Q. PLEASE PROVIDE AN OVERVIEW OF DEC'S CPRE COMPLIANCE REPORT.

A. DEC filed its 2020 CPRE Compliance Report pursuant to Commission Rule R8-71(h) and included information required for calendar year 2020. Tranche 2 opened on October 15, 2019, and closed on March 9, 2020. Thus, DEC's 2020 actions included evaluation, selection, and contract execution for Tranche 2 projects. The report states that 614 MW of capacity was originally selected in Tranche 2, with the final amount of procured capacity reduced to 589 MW after one project withdrew. The Compliance Report also provides average pricing for each of the selected proposals, avoided cost thresholds, costs and authorized revenue, network upgrade costs on a per-project basis, and a certification from the IA stating that "[a]ll proposals were evaluated using the same criteria and

[5] These numbers reflect the revised exhibits filed on May 3, 2020. The original application estimated $36.5 million in system revenue requirements during the Billing Period, $24.2 million of which was assigned to North Carolina retail customers.

evaluation modeling, consistent with the CPRE Program Methodology."

Q. DOES THE COMPLIANCE REPORT PROVIDE ANY INFORMATION ON THE STATUS OF THE 30% UTILITY-OWNED LIMIT IN N.C. GEN. STAT. § 62-110.8(b)(4)?

A. No. The Public Staff found that in Tranches 1 and 2, approximately 16% of capacity procured is owned by DEC, Duke Energy Progress, LLC (DEP, and collectively with DEC, Duke), or Duke Energy affiliates. Neither DEC nor DEP submitted or sponsored any winning projects in Tranche 2. In Tranche 2, DEC did not submit any self-build projects or sponsor any asset acquisition projects.

Q. PLEASE ADDRESS DEC'S PLANS FOR TRANCHE 3 OF THE CPRE.

A. Due to the increasing amount of Transition MWs connected to Duke's system, the Company estimates that the final CPRE procurement will be in the range of 860 MW to 1,385 MW.[6] In DEC's 2020 CPRE Program Plan, DEC indicated that under the most

[6] CPRE Compliance Report, at 6. Transition MWs is the term used to refer to projects that qualify under N.C. Gen. Stat. § 62-110.8(b)(1) as having executed PPAs and interconnection agreements within the DEC and DEP Balancing Authorities that are not subject to economic dispatch or curtailment and were not procured under the Green Source Advantage program. Pursuant to the statute, should the level of Transition MWs exceed 3,500 MW, the aggregate CPRE target of 2,660 MW will be reduced by such excess capacity.

conservative projection, only approximately 209 MW remains to be procured through CPRE.[7] DEC intends to seek stakeholder feedback for how to approach Tranche 3, and after receiving such feedback, will petition the Commission for approval of a proposed plan.

Q. DOES THE PUBLIC STAFF BELIEVE DEC'S CPRE COMPLIANCE REPORT SATISFIES THE REQUIREMENTS OF COMMISSION RULE R8-71(H)?

A. Yes. Based upon the Public Staff's review, DEC's CPRE Compliance Report provides adequate information that satisfies both the requirements of Commission Rule R8-71(h) and the Commission's February 21, 2018 *Order Modifying and Approving Joint CPRE Program* in Docket Nos. E-7, Sub 1156, and E-2, Sub 1159 (CPRE Order).

B. <u>CPRE Rider Investigation</u>

Q. REGARDING THE COSTS INCURRED DURING THE EMF PERIOD, DID THE PUBLIC STAFF'S INVESTIGATION IDENTIFY ANY ISSUES?

A. Yes. The Public Staff identified and investigated the following issues in this proceeding: (1) DEC's request for recovery of the excess IA

[7] CPRE Program Plan, Attachment II to DEC's Integrated Resource Plan, filed in Docket No. E-100, Sub 165, at 8.

costs and T&D Sub-Team labor to implement and evaluate the CPRE solicitations from ratepayers; (2) DEC's request for recovery of the IA costs from ratepayers for ongoing disputes arising from the implementation of Tranche 1; and (3) whether DEC's request for market-based recovery of revenue requirements associated with its CPRE facilities pursuant to Commission Rule R8-71(j)(2) is in the public interest.

Q. PLEASE EXPLAIN THE IA FEES FOR WHICH DEC IS SEEKING RECOVERY IN THIS PROCEEDING.

A. As previously stated, DEC is seeking recovery of approximately $179,552 in IA fees and T&D Sub-Team costs, because the proposal and winners' fees collected were insufficient to cover all IA costs. This amount represents 50% of the total IA fees not recovered, while DEP will seek to recover the remaining 50% in its annual CPRE cost recovery proceeding to be filed later this year. Commission Rule R8-71(d)(10) authorizes DEC to charge reasonable proposal fees from the CPRE participants to fund the IA and T&D Sub-Team costs. To the extent the fees collected were insufficient to pay the total IA cost, the winning participants should pay the balance through a winners' fee. While N.C.G.S. § 62-110.8(d)[8] and Rule R8-71(d)(10)[9] require the costs of the IA to be recovered from market participants, DEC takes the position that it is permitted to recover these costs as program implementation costs.

Q. HOW MUCH DID DUKE COLLECT IN FEES FROM MARKET PARTICIPANTS?

A. DEC and DEP collected approximately $519,765 in net proposal fees and $1,000,000 in winners' fees, for a total of $1,519,765. These fees were used to fund Tranche 2 system impact cluster studies as well as the IA fees.

Q. HAS DEC PROVIDED A REASONABLE EXPLANATION WHY IA FEES EXCEEDED THE FEES RECOVERED FROM MARKET PARTICIPANTS?

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[8] N.C.G.S. § 62-110.8(d) requires that the competitive procurement is independently administered by a third party and "[a]ll reasonable and prudent administrative and related expenses incurred to implement this subsection [requiring a third party entity to administer the solicitation] shall be recovered from market participants through administrative fees levied upon those that participate in the competitive bidding process, as approved by the Commission."

[9] Commission Rule R8-71(d)(10) provides:

> The Independent Administrator's fees shall be funded through reasonable proposal fees collected by the electric public utility. The electric public utility shall be authorized to collect proposal fees up to $10,000 per proposal to defray its costs of evaluating the proposals. In addition, the electric public utility may charge each participant an amount equal to the estimated total cost of retaining the Independent Administrator divided by the reasonably anticipated number of proposals. To the extent that insufficient funds are collected through these methods to pay of the total cost of retaining the Independent Administrator, the electric public utility shall pay the balance and subsequently charge the winning participants in the CPRE RFP Solicitation.

A. Yes. In the prior DEC CPRE Rider proceeding, Docket No. E-7, Sub 1231, DEC similarly sought recovery of unrecovered IA fees. In that docket, DEC committed to doubling the applicable winners' fee from $500,000 to $1 million to ensure recovery of costs from market participants. The winners' fee cap was included in the Tranche 2 Request for Proposals (RFP) to provide MPs with certainty regarding those fees, and the doubling of the cap to $1 million was believed to be sufficient to prevent a similar under-recovery in the future. However, DEC did not anticipate the large reduction in the number of proposals submitted, from 78 proposals in Tranche 1 to 40 proposals in Tranche 2, which caused a proportional reduction in proposal fees collected. This reduction in proposals, coupled with ongoing costs related to Tranche 1 disputes, contributed to the under-recovered amount.[10]

Q. PLEASE ELABORATE ON THE TRANCHE 1 DISPUTE COSTS INCLUDED FOR RECOVERY IN THIS PROCEEDING.

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[10] In Tranche 1, DEC and DEP collected $901,382 in net proposal fees. The $519,765 in net proposal fees collected in Tranche 2 represents a 44% reduction. Total fees collected by DEC and DEP in Tranche 1 were $1.77 million, compared to $1.52 million collected in Tranche 2.

A. There are two ongoing disputes related to Tranche 1. The first is with Stanly Solar, LLC (Stanly),[11] and the second is with Orion Renewable Resources, LLC (Orion).[12]

Q. PLEASE DESCRIBE THE STANLY DISPUTE.

A. Stanly filed a Motion for Return of CPRE Proposal Security on January 1, 2020, based upon the forfeiture of its proposal security due to its withdrawal from Tranche 1 after project evaluation.[13] Currently, this dispute appears to be resolved,[14] and the IA's cost of preparing its responses filed in 2020 is included for recovery in this proceeding. The Public Staff notes that the IA incurred billable hours in 2021 in filing its reply to Stanly's petition for reconsideration, and those costs will likely be included in next year's filing.

Q. PLEASE DESCRIBE THE ORION DISPUTE.

A. Orion filed a petition for relief on March 9, 2020, alleging that the IA improperly eliminated its project proposal from Tranche 1. The Commission held a remote hearing on November 2, 2020. Orion filed

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[11] Docket No. SP-9590, Sub 0. Replies from the IA were filed in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156.

[12] Docket No. SP-13695, Sub 1.

[13] Stanly's proposal security is not included in the $2.5 million contract fee credit included in the EMF Period.

[14] The Commission denied Stanly's motion on October 20, 2020, and Stanly filed a petition for reconsideration on November 20, 2020. The IA filed a response on January 5, 2021, as did DEC and DEP. The Commission denied the petition for reconsideration on April 13, 2021.

a motion to strike portions of DEC's post-hearing brief or in the alternative to reopen the hearing, and the Commission allowed the motion to reopen the hearing. A remote hearing is scheduled for June 3, 2021. The IA and DEC filed direct testimony on April 28, 2021. The IA's Orion dispute costs billed in 2020 are included for recovery in this filing, and costs to be billed in 2021 will likely be included for recovery in next year's filing.

Q. DOES THE PUBLIC STAFF AGREE WITH DEC THAT THE COSTS OF RESOLVING THESE DISPUTES ARE REASONABLE AND PRUDENT CPRE IMPLEMENTATION COSTS?

A. The Public Staff is not recommending disallowance of the **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** of Tranche 1 dispute costs included for recovery in this proceeding. DEC has stated that these costs are reasonable and prudent and required to implement CPRE. Both Stanly and Orion were selected as winning projects in Tranche 2.

While the Public Staff is not taking a position in this docket on the merits of these disputes, it is concerned about the potential for the IA to incur significant costs associated with the Orion complaint to resolve a dispute over whether the IA mistakenly eliminated a project from Tranche 1.[15] In the first Orion hearing, which lasted three hours, the IA presented a panel of five experts.[16] The hourly rates for IA employees are included in confidential Exhibit B to witness Cathcart's testimony.

Q. DOES DEC SEEK MARKET-BASED RECOVERY OF ITS WINNING TRANCHE 1 PROJECTS IN THIS PROCEEDING?

A. Yes. DEC seeks to recover the revenue requirements determined for its Maiden Creek and Gaston solar facilities through the CPRE rider on a market basis, pursuant to Commission Rule R8-71(j)(2). To the extent possible, DEC will recover its costs based upon actual energy produced multiplied by the approved market price for each pricing period.[17] The Public Staff interprets this market-based recovery rule to require all revenue requirements associated with these facilities to be recovered through the CPRE rider, including capital costs and annual amounts related to capital investment, operations and management expenses, property tax, labor and labor-related

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[15] The Public Staff filed comments on May 29, 2020 in Docket Sp-13695, Sub 1, presenting evidence and stating that "in the event that the full target procurement has not been reached, and projects that submitted bids below avoided costs remain eligible for consideration, the Public Staff does not believe that the Net Benefit calculation from the IA Evaluation Tool should be used to eliminate those projects." Public Staff Comments, at 7.

[16] The panel consisted of director Harold Judd and senior consultants Phillip Layfield, Ralph Monsalvatge, David Ball, and Garey Rozier.

[17] During the initial term, the market price is equal to DEC's as-bid price. After the initial term, the market price will be determined by a mechanism established by the Commission.

benefits, and other expenses. Proper market-based recovery will ensure that all costs related to these facilities are not included in future general rate cases.[18]

Q. DOES THE PUBLIC STAFF AGREE WITH DEC THAT MARKET-BASED RECOVERY IS IN THE PUBLIC INTEREST?

A. Yes. Commission Rule R8-71(j)(2) requires that if DEC seeks market-based recovery of its utility-owned facility, it must "support its application with testimony specifically addressing the calculation of those costs and revenues sufficient to demonstrate that recovery on a market basis is in the public interest."

DEC states that it is seeking to recover the costs of its two solar facilities on a market basis because this recovery will allow the Company to avoid Federal Investment Tax Credit normalization rules to the benefit of current customers. In addition, DEC states that it seeks market-based recovery "in light of the bid evaluation process."[19] All CPRE bids were evaluated pursuant to the process set forth in Commission Rule R8-71(f)(3), and DEC appears to acknowledge that cost-of-service (COS) based recovery would result in DEC facilities being evaluated under a different standard.

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[18] The Public Staff verified that no costs associated with DEC's utility-owned CPRE facilities were included for recovery in its most recent general rate case, Docket No. E-7, Sub 1214.

[19] Supplemental Testimony of Jones, at 5.

The Public Staff agrees with DEC that the "as bid" price for the twenty year term is less than the estimated levelized COS-based revenue requirement per megawatt-hour (MWh) for both facilities. The 25-year present value of the revenue requirements (PVRR) under COS recovery and the 20-year net present value (NPV) of the market-based revenue that DEC will collect through the CPRE rider for both facilities is shown in the table below.

[BEGIN CONFIDENTIAL]

[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]

[redacted]. **[END CONFIDENTIAL]**.

Commission Rule R8-71(*l*)(4) states that:

> If market-based authorized revenue for a generating facility owned by the electric public utility and procured pursuant to this Rule was initially determined by the Commission to be in the public interest, then the electric public utility shall similarly be permitted to continue to receive authorized revenue based on an updated market based mechanism, as determined by the Commission pursuant to G.S. 62-110.8(a). Any market based rate for either utility owned or non-utility owned facilities shall not exceed the electric public utility's avoided cost rate established pursuant to G.S. 62-156. If the electric public utility's initial proposal includes assumptions about pricing after the initial term, such information shall be made available to the Independent Administrator and all participants.

In approving the CPRE Program in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156, the Commission agreed that Duke should modify its Tranche 1 guidelines to present "Duke's current assumption that any proposal submitted by Duke as either a self-developed proposal or asset acquisition proposal would continue to receive market based revenues based on a pricing mechanism to be established by the Commission at the conclusion of the initial CPRE Program term."[20] The Tranche 1 and Tranche 2 RFPs included the following statement regarding post-term assumptions:

> Utility Self-Developed Proposals and conversions of Asset Acquisition Proposals will be priced based on the assumption that these facilities will continue to receive market-based revenues based on a pricing mechanism to be established

[20] CPRE Order, at 19.

by the Commission at the conclusion of the initial 20-year term of the PPA.

Q. HAS DEC INDICATED WHAT ACTION IT WILL TAKE, IF THE AS-BID PRICE DURING THE INITITAL TERM AND THE POST-TERM MARKET-BASED RECOVERY RATE IS INSUFFICENT TO RECOVER THE FULL COSTS OF THE FACILITY?

A. No.[21] However, the Public Staff believes market-based recovery in lieu of COS-based recovery for DEC assets selected in the CPRE is vital to maintain the integrity of the CPRE Program. If DEC is permitted to recover any costs associated with its CPRE projects on a COS basis through rate base in excess of the market bid price, now or in the post-term, we believe that would result in DEC having an advantage over other MPs who do not have that option. All other MPs selected in the CPRE must recover their costs through their as-bid price and assume the risk of receiving market-based rates or seek to sell their output as a qualified facility after the initial term, and that may be insufficient to fully recover project capital costs and expenses plus an acceptable rate of return. The CPRE RFPs issued to date explicitly stated that utility-owned and utility-acquired proposals would assume market-based revenues after the initial term. To ensure a level playing field, and consistent with the assumptions

[21] The Public Staff asked this question in discovery, and DEC objected based upon relevance.

made in the utility's bids, the Public Staff recommends that the Commission require that DEC continue to seek market-based recovery of its CPRE facilities after the initial term.[22]

Q. HAVE MARKET PARTICIPANTS OR THE PUBLIC STAFF RAISED THE ISSUE OF POST-TERM COST RECOVERY IN ANY OTHER CONTEXT?

A. Yes. This issue received considerable attention in the CPRE Rulemaking proceeding, Docket No. E-100, Sub 150. In that proceeding, the North Carolina Clean Energy Business Association (NCCEBA) and the North Carolina Sustainable Energy Association (NCSEA) both raised concerns that utility cost recovery of utility-owned assets could create an unlevel playing field.[23] Duke proposed the language that was eventually adopted into Commission Rule R8-71(*l*)(4), stating that it anticipates "that this provision will allow both third-party developed proposals and utility-owned project

[22] In the CPRE Order, the Commission approved Duke's request for certain waivers of its Regulatory Conditions and Code of Conduct Requirements, due to the specific circumstances of the CPRE Program. Should the continued market-based recovery after the initial term for DEC's CPRE facilities be considered as part of a program similar to the CPRE Program, it may be appropriate to continue the waivers for those facilities. However, the ultimate decision with regard to the continuation of the waiver should be made at the time of any proposed renewal of the program consistent with a new procurement period as required by Commission Rule R8-71(c)(2).

[23] See Docket E-100, Sub 150, Amended Initial Comments of NCCEBA (Aug. 17, 2017), at 18-19, and Initial Comments of NCSEA (Aug. 17, 2017), at 18-20.

development proposals to more effectively compete within the CPRE RFP solicitation process."[24]

In the Green Source Advantage (GSA) program, the Commission originally denied Duke's request to recover the cost of its self-developed GSA facilities on a market-basis after the initial term.[25] The Public Staff noted at the time that "this expectation of future cost [of service] recovery provided to Duke may provide more certainty to Duke-owned GSA Facilities than may otherwise be available to GSA Facilities, since non-utility owners may have to make assumptions regarding their ability to renew GSA Service Agreements, seek to sell their output as qualifying facilities (QFs), or other options that might be available."[26] In the same docket, NCCEBA stated that "cost-of-service based Post-Term Cost Recovery is completely inappropriate and unjust", and that if Duke were permitted to recover its unamortized facility costs after the term of the GSA Service Agreement on a COS basis, it "would provide Duke with a major, unfair advantage in competing with independent renewable

[24] Docket No. E-100, Sub 150, *Duke's Reply Comments and Amended Proposed Rule to Implement N.C. Gen. Stat. § 62-110.8* (Sep. 8, 2017), at 15.

[25] Docket Nos. E-2, Sub 1170 and E-7, Sub 1169, *Order Modifying And Approving Green Source Advantage Program, Requiring Compliance Filing, And Allowing Comments* (Feb. 1, 2019), at 63.

[26] Docket Nos. E-2, Sub 1170 and E-7, Sub 1169, *Public Staff's Comments on DEC & DEP's Compliance Filing* (April 8, 2019), at 15.

suppliers" for GSA customers.[27] NCSEA and the Southern Alliance for Clean Energy (SACE) agreed.[28]

In Duke's reply, it stated that confirmation of its right to receive post-term cost recovery was appropriate. Duke stated that it had no comparable legal construct to guarantee post-term recovery as do QF participants, which are able to avail themselves of the PURPA right to sell their output to Duke.[29] The Public Staff notes that, unlike the GSA program, utility CPRE facilities are expressly permitted to seek recovery for utility-owned facilities after the initial term via a market-based mechanism.

The Commission did not rule on the appropriateness of post-term market-based or COS-based recovery for utility-owned GSA facilities; instead, the Commission rendered that question moot as it concluded Duke was not permitted to offer self-developed facilities into the GSA program based upon its statutory interpretation of the term "renewable energy supplier" to not include an "electric public

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[27] Docket Nos. E-2, Sub 1170 and E-7, Sub 1169, NCCEBA's Motion for Reconsideration (May 1, 2019), at 2.

[28] Docket Nos. E-2, Sub 1170 and E-7, Sub 1169, NCSEA's Comments on NCCEBA's Motion (May 20, 2019), at 1; Comments of SACE on NCCEBA's Motion for Reconsideration (May 20, 2019), at 1-2.

[29] Docket Nos. E-2, Sub 1170 and E-7, Sub 1169, DEC's and DEP's Reply to Motion for Reconsideration (May 20, 2019), at 3.

utility" as those terms are used in the GSA statute, N.C.G.S. § 62-159.2.[30]

Q. DOES THE PUBLIC STAFF AGREE THAT MARKET-BASED RECOVERY IS IN THE PUBLIC INTEREST?

A. Yes. Based on our review of DEC's supplemental filing, ratepayers will benefit from market-based cost recovery. In addition, the Public Staff believes that maintaining the integrity of the CPRE evaluation process is in the public interest, and to do so requires DEC to receive market-based recovery for its winning CPRE proposals throughout the life of the facilities, as assumed in the utility's bid prices pursuant to the guidelines established in the RFPs. The Public Staff recommends that DEC's request for market-based recovery be approved.

Q. DO THE TOTAL REVENUE REQUIREMENTS DEC SEEKS TO RECOVER IN THIS PROCEEDING EXCEED THE COST CAP ESTABLISHED BY N.C. GEN. STAT. § 62-110.8(g)?

A. No. The total revenue requirements sought for recovery in this proceeding are less than 1% of DEC's total North Carolina retail jurisdictional gross revenues for 2020.

[30] Docket Nos. E-2, Sub 1170 and E-7, Sub 1169, *Order on Reconsideration* (Aug. 5, 2019), at 10.

Q. DURING THE IMPLEMENTATION OF THE CPRE PROGRAM, THE PUBLIC STAFF RAISED CONCERNS REGARDING "PHANTOM UPGRADES" THAT MAY ARISE DUE TO THE WAY THE GROUPING STUDY BASELINE WAS DEFINED. HAS THE PUBLIC STAFF INVESTIGATED THIS MATTER?

A. Yes. Approximately 55 projects (representing 2,291 MW of capacity) that were included in the CPRE Tranche 2 grouping study baseline have since withdrawn their interconnection requests. The withdrawn projects consist of 1,806 MW of natural gas-fired facilities and 485 MW of solar facilities. However, DEC confirmed that no winning CPRE project was dependent on any upgrades that were assigned to the withdrawn projects.

C. <u>Public Staff Recommendations</u>

Q. WHAT ARE YOUR RECOMMENDATIONS TO THE COMMISSION REGARDING DEC'S APPLICATION?

A. The Public Staff recommends that the Commission accept the revised rates as filed in DEC's May 3, 2021 Supplemental Filing. The Public Staff also recommends that the Commission approve DEC's request for market-based recovery of its self-developed assets. In addition, the Public Staff recommends that if the Commission approves market-based recovery at this time, that it also require market-based recovery after the initial term.

Q. WHY DOES THE PUBLIC STAFF BELIEVE IT IS APPROPRIATE TO ADDRESS THIS MATTER NOW, RATHER THAN WAIT UNTIL THE EXPIRATION OF THE INITIAL CPRE TERM?

A. In the GSA docket, Duke stated that participating QFs have avenues for guaranteed cost recovery after the initial term not available to Duke, which created an un-level playing field to the advantage of the QFs. Duke stated that consideration of Duke's post-term cost recovery options was appropriate at the time of the GSA program approval, because it would create a level playing field between QFs and Duke.[31]

The Public Staff agrees with DEC's position regarding the timeliness of a Commission decision in the GSA docket. In order for future tranches of the CPRE or a similar competitive procurement program to be conducted with an evaluation process that treats QFs and utility-owned projects equally, the matter of post-term cost recovery of utility-owned projects should be addressed now, at the time DEC seeks market-based recovery of those project revenue requirements. Delaying a decision until such time as the utility seeks post-term recovery of its remaining unamortized balance would allow uncertainty to linger over all competitive procurement programs conducted in North Carolina, potentially affecting the

[31] Docket Nos. E-7, Sub 1169, and E-2, Sub 1170, DEC's and DEP's Reply to Motion for Reconsideration (May 20, 2019), at 3.

competitiveness of future proposals and ultimately, ratepayer benefits.

Q. WHAT RATES HAS DEC REQUESTED FOR ITS EMF AND CPRE RIDER?

A. In its Supplemental Testimony, DEC requested the following charges (excluding regulatory fee). The EMF Rate includes an interest component. The Public Staff recommends these rates be approved.

DEC's Rider Request – Supplemental Filing Filed on May 3, 2021 (cents per kWh)			
Customer Class	**EMF Rate**	**CPRE Rider Rate**	**Total CPRE Rate**
Residential	(0.0035)	0.0273	0.0238
General Service	(0.0033)	0.0257	0.0224
Industrial	(0.0033)	0.0252	0.0219

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

APPENDIX A

QUALIFICATIONS AND EXPERIENCE

JEFF T. THOMAS, P.E.

I graduated from the University of Illinois Champaign-Urbana in 2009, earning a Bachelor of Science in General Engineering. Afterwards, I worked in various operations management roles for General Electric, United Technologies Corporation, and Danaher Corporation. I left manufacturing in 2015 to attend North Carolina State University, earning a Master of Science degree in Environmental Engineering. At NC State, I performed cost-benefit analysis evaluating smart grid components, such as solid-state transformers and grid edge devices, at the Future Renewable Energy Electricity Delivery and Management Systems Engineering Research Center. My master's thesis focused on electric power system modeling, capacity expansion planning, linear programming, and the effect of various state and national energy policies on North Carolina's generation portfolio and electricity costs. After obtaining my degree, I joined the Public Staff in November 2017. In my current role, I have filed testimony in avoided cost proceedings, general rate cases, and CPCN applications, and have been involved in the implementation of HB 589 programs, utility cost recovery, renewable energy program management, customer complaints, and other aspects of utility regulation. I received my Professional Engineering license in April 2020 after passing the Principles and Practice of Engineering exam in Electrical and Computer Engineering: Power.