

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, Sub 1071
DOCKET NO. E-7, Sub 1074
DOCKET NO. E-22, Sub 525
DOCKET NO. E-100, Sub 113
DOCKET NO. E-100, Sub 121
DOCKET NO. E-100, Sub 145

DOCKET NO. E-2, SUB 1071)
In the Matter of)
Application of Duke Energy Progress, LLC,)
for Approval of Renewable Energy and)
Energy Efficiency Portfolio Standard Cost)
Recovery Rider Pursuant to G.S. 62-133.8)
and Commission Rule R8-67)

DOCKET NO. E-7, SUB 1074)
In the Matter of)
Application of Duke Energy Carolinas,)
LLC, for Approval of Renewable Energy)
and Energy Efficiency Portfolio Standard)
Cost Recovery Rider Pursuant to G.S.)
62-133.8 and Commission Rule R8-67)

**COMMENTS OF NORTH CAROLINA
EASTERN MUNICIPAL POWER
AGENCY AND NORTH CAROLINA
MUNICIPAL POWER AGENCY
NUMBER 1**

DOCKET NO. E-22, SUB 525)
In the Matter of)
Application of Virginia Electric and Power,)
d/b/a Dominion North Carolina Power, for)
Approval of Renewable Energy and Energy)
Efficiency Portfolio Standard Cost Recovery)
Rider Pursuant to G.S. 62-133.8 and)
Commission Rule R8-67)

DOCKET No. E-100, Sub 113)
In the Matter of)
Rulemaking Proceeding to Implement)
Session Law 2007-397)

DOCKET NO. E-100, SUB 121)
In the Matter of)
Implementing a Tracking System for)
Renewable Energy Certificates Pursuant)
to Session Law 2007-397)

DOCKET NO. E-100, SUB 145)
In the Matter of)
2015 REPS Compliance Plans and 2014)
REPS Compliance Reports)

NOW COME ElectriCities of North Carolina, Inc., North Carolina Municipal Power Agency Number 1 and North Carolina Eastern Municipal Power Agency, who provide these Comments pursuant to the Order Requesting Comments On Options For Addressing Poultry REC Shortfall issued September 21, 2015, in these dockets. That Order concerns compliance with the poultry waste set-aside requirement set forth in the North Carolina Renewable Energy Portfolio Standard (“REPS”) at N.C. Gen. Stat. § 62-133.8(f).

ElectriCities of North Carolina, Inc. (“ElectriCities”) is a joint municipal assistance agency organized pursuant to N.C. Gen. Stat. § 159B-43 by North Carolina Eastern Municipal Power Agency and North Carolina Municipal Power Agency Number 1. ElectriCities is a membership organization that provides aid and assistance to its members in connection with the operations of their electric systems. ElectriCities also provides management services to those Agencies.

North Carolina Eastern Municipal Power Agency (“NCEMPA”) is a joint agency organized pursuant to Chapter 159B by its members, which consist of 32 cities located in that portion of eastern North Carolina served by Duke Energy Progress, Inc. f/k/a Progress Energy Carolinas, Inc. (“DEP”), and Dominion North Carolina. NCEMPA is not an electric power supplier under N.C. Gen. Stat. § 62-133.8 but is acting in its capacity as REPS compliance aggregator for its 32 member municipalities, which are electric power suppliers.

North Carolina Municipal Power Agency Number 1 (“NCMPA1”) is a joint agency organized pursuant to Chapter 159B by its members, which consist of 19 cities located in that portion of western North Carolina served by Duke Energy Carolinas, LLC. NCMPA1 is not an electric power supplier under N.C. Gen. Stat. § 62-133.8 but is acting in its capacity as REPS compliance aggregator for its 19 member municipalities, which are electric power suppliers. ElectriCities, NCEMPA and NCMPA1 are referred to collectively herein as “the Power Agencies.”

As reflected in the Order Requesting Comments, on September 16, 2015, APX, Administrator of the North Carolina Renewable Energy Tracking System (“NC-RETS”), filed a letter with the Commission. APX’s letter explained that the 2013 retail electric sales data for some electric power suppliers was updated after the June 1, 2014 reporting deadline. Those updates caused NC-RETS’s software to re-allocate the 170,000-MWh poultry waste set-aside obligation for 2014 among the electric power suppliers as recently as August of 2015.

As also noted in the Order Requesting Comments, some electric power suppliers had already submitted their 2014 REPS Compliance Reports for Commission review when this re-allocation of the poultry waste compliance obligation occurred. According to APX’s letter, current records in NC-RETS indicate that because the poultry waste set-aside obligation was re-allocated later in the 2014 REPS compliance process, the North Carolina electric power suppliers will, in the aggregate, be 599 MWh short of complying with the aggregate 2014 poultry waste set-aside obligation

In its Order, the Commission requested comment on the following specific matters.

1. **What actions, if any, the Commission should take to address the apparent 599 MWh shortfall in the electric power suppliers' aggregate 2014 poultry waste resource requirement, including the option of rolling the shortfall into the 2015 compliance year?**

The aggregate REPS 2014 poultry waste set-aside requirement was 170,000 MWh. Thus, renewable energy certificates ("RECs") for that quantity of power supplied from poultry waste were required to be retired into the electric suppliers' respective compliance subaccounts for 2014. The Power Agencies do not believe that there is any "shortfall" in poultry RECs, in the sense that there is a shortage or an insufficient supply of poultry RECs available to be retired to comply with the 2014 set-aside requirement. The Power Agencies believe that there were and are an adequate number of poultry RECs available to comply with the 170,000 MWh requirement for 2014, *i.e.*, that a sufficient quantity of RECs to comply with that requirement do exist and can be retired. The number of poultry RECs retired by the electric suppliers identified in the APX letter simply needs to be reallocated among the affected suppliers.

Based on the data set forth in APX's letter to the Commission, it appears that Duke Energy Carolinas ("DEC"), Duke Energy Progress ("DEP") and the Tennessee Valley Authority ("TVA") moved slightly less poultry RECs into their respective 2014 compliance sub-accounts than they needed to, based on the revised data as to the total retail electric sales all electric suppliers, with the total differential being 599 poultry RECs.

If this is, indeed, a "shortfall," then the Power Agencies see no need to roll this "shortfall" into the 2015 compliance year. As the Commission will know from their Tri-Annual Reports, the Power Agencies had accumulated sufficient poultry RECs to comply with their *pro rata* portion of the aggregate 2014 poultry waste set-aside requirement. If

DEC, DEP and TVA have a total of 599 additional poultry RECs to retire for 2014, then they can move the required number of additional RECs into their respective 2014 compliance sub-accounts, in the individual quantities indicated in APX's letter. In the event that DEC, DEP and TVA do not have a total of 599 additional poultry RECs to retire for 2014, then the Power Agencies are willing to, in effect, "advance" 599 poultry RECs on their behalf to maintain compliance with this REPS requirement. In that event, then for purposes of compliance with the poultry waste set-aside requirement in future years the Power Agencies would be "credited" with the excess poultry RECs which they retired for 2014.

In either event, the Power Agencies see no need to roll this shortfall forward to 2015. They believe that this situation can be readily resolved by adjustment of the numbers of poultry RECs placed in the respective 2014 compliance sub-accounts of the Power Agencies, GreenCo, DEC, DEP and TVA.

2. The Commission seeks comments on what changes to the Commission's rules or the NC-RETS software are necessary to prevent a similar occurrence in the future.

The Power Agencies believe that a minor revision of the Rule R8-67(h)(11), which is the Commission rule establishing the due date for electric suppliers to report to NC-RETS their total retail power sales for the prior year, can prevent a recurrence of the scenario now being addressed.

The advantages of such a rule revision are illustrated by the combination of complicating factors that caused the Power Agencies to have to update their members' 2013 sales data in 2015. First, as described in the Power Agencies' prior filings with the Commission, it has always been a challenge for the Power Agencies to meet the June 1 due date for prior year retail sales data. Second, the Power Agencies have historically

relied on retail electric sales data provided to the Energy Information Administration, United States Department of Energy (“EIA”), by their member municipalities in order to derive and report their members’ total annual retail sales to NC-RETS. In 2013 and 2014 EIA made changes in its reporting requirements, which made it more difficult for the Power Agencies to secure data from all of their members by June 1.

Third, as a result of those changes, the EIA changed its reporting window in 2014. The EIA did not open the submittal window for 2013 electric sales data until June 3, 2014, which was two days after the June 1 due date for NC-RETS in Rule R8-67(h)(11), and that window did not close until August 5. The time span of this window complicated the Power Agencies’ efforts to collect retail sales data.

As currently written, Rule R8-67(h)(11) provides in pertinent part:

All Commission-approved costs of developing and operating NC-RETS shall be allocated among all electric power suppliers based upon their respective share of the total megawatt-hours of retail electricity sales in North Carolina in the previous calendar year. Each electric power supplier, or its utility compliance aggregator, shall, within 60 days of NC-RETS beginning operations, and by June 1 of each subsequent year, enter its previous year’s retail electricity sales into NC-RETS, which sales will be used by NC-RETS to calculate each electric power supplier’s REPS obligations and NC-RETS charges.

In an effort to comply with the June 1, 2014 date for reporting 2013 retail sales data, on that date the Power Agencies reported to NC-RETS the only complete metered data they possessed at that time for each of their municipal members, which was the wholesale metered load data for each of them. As explained in some detail below, and as illustrated in the APX letter, the wholesale load data tended to slightly overstate the volume of the Power Agencies’ members’ total retail sales.

As to the first complicating factor, the June 1 due date, ElectriCities' Reply Comments in Response to the Commission's Order Requesting Proposed Amendments to Rules R8-64 Through R8-69, filed in this docket on April 1, 2010, noted the problem with any due date for provision of retail sales data prior to July 1.

In its Comments filed March 1, 2010, the North Carolina Sustainable Energy Association ("NCSEA"), among other things, proposed moving the annual due date for filing REPS Compliance Plans and REPS Compliance Reports to March 1. ElectriCities submits that neither of North Carolina Eastern Municipal Power Agency or North Carolina Municipal Power Agency Number 1 (the "Power Agencies"), each of which is filing consolidated REPS Compliance Plans and REPS Compliance Reports on behalf of its members, will receive information concerning its members' retail sales for the prior year before May of each reporting year. (For example, the Power Agencies will not receive 2009 retail sales data from their municipal members prior to May 2010). **As a result, the Power Agencies would be unable to file their REPS Compliance Plans and REPS Compliance Reports before July of each reporting year, and therefore, ElectriCities proposes that any change in the due date for the Power Agencies' filing their REPS Compliance Plans and REPS Compliance Reports be no earlier than July 1.**

(Emphasis added) Comments at pp. 1-2.

The Commission recognized the Power Agencies' concern, and did not adjust the reporting date to March 1 as recommended by the NCSEA. (*Order Requesting Comments On Modifications To Rules R8-64 Through R8-69 And Interim Operating Procedures For NC-RETS*, August 3, 2010, Docket No. E-100, Subs 113 and 121, pp. 23-26). The Power Agencies later concluded that a June 1 date for reporting to NC-RETS could be workable, but experience over the last few years has proven that it is difficult for the Power Agencies to aggregate prior year retail sales data for all of their members by June 1. As a result, and as explained in detail below, the Power Agencies recommend

that the due date for both filing prior year retail sales data with NC-RETS and for filing REPS Compliance Reports with the Commission be September 1.

With regard to the second complicating factor, the process of accumulating the retail sales data from NCEMPA's 32 members and NCMPA1's 19 members has been exacerbated since the filing of those ElectricCities' Comments by recent changes to EIA's reporting requirements.

EIA collects data via annual reports filed by electric power suppliers – including municipal power suppliers, such as the Power Agencies' members. The Commission has previously approved the Power Agencies use of their members' EIA data for REPS compliance purposes. (*Order On 2008 REPS Compliance Report*, May 3, 2011, Docket No. E-43, Sub 6, pp. 4-5).

In 2013 and 2014 the EIA changed its reporting processes in ways that are significant to the REPS retail sales reporting process. In 2013 EIA reduced the reporting requirements applicable to cities with annual sales less than 100,000MWh, and made corresponding changes to their reporting forms. In 2014 the EIA made additional revisions to its reporting requirements and also again changed the forms to be used in submitting the information called for by these revised requirements.

With regard to the third complicating factor, due to these changes the EIA did not open the 2014 submittal window for reporting retail sales data until June 3, 2014, which was two days after the June 1 due date for reporting prior year data to NC-RETS. The EIA's data submittal window did not close until August 5. And, even after the EIA reporting window closed on August 5, that is not necessarily the end of the EIA reporting process. Even after data is submitted, EIA does follow-up inquiries and retail sales data

is subject to further revision up to the time the EIA's final report is published at the end of each calendar year. The time required even for EIA to acquire this data is demonstrated by the fact that, at the present time EIA has published its final report for 2013 but has only published a preliminary report for 2014.

These various EIA actions have made it more difficult for the Power Agencies to collect retail sales data from all of their members. Together with the June 3 – August 5 time period covered by the EIA's revised 2014 reporting window for municipal power suppliers to report to the EIA - made it impossible for the Power Agencies to secure retail sales data from all of their members by the June 1 date for reporting to NC-RETS.

Because the Power Agencies did not have complete retail sales data as of June 1, 2014, they submitted the only metered load data they possessed at that time, which was the wholesale metered load data for each of their municipal members. That is, they reported the metered data as to the amount of power delivered to the interconnection point between the wholesale power provider's transmission system and each individual municipality's distribution system. While the figures reported were accurate, they overstated retail sales for the municipalities, because of the distribution loss experienced by each municipality, *i.e.*, the approximately 5% of power lost on a distribution system between the interconnection point and the retail customers' meters.

When the Power Agencies determined that their 2013 sales data recorded in NC-RETS did not accurately reflect their 2013 retail sales, the Power Agencies updated their 2013 retail sales data in NC-RETS on August 27, 2015. After this update was made, APX (the NC-RETS administrator) requested updated 2013 retail sales data from all of the other electric suppliers on September 1, 2015.

After the EIA reporting window closed in August, the Power Agencies had data as to the 2013 retail sales from all of their members, and that data was provided in the 2013 REPS Compliance Reports filed with the Commission on September 1, 2014. When the Power Agencies then moved poultry RECs into their respective retirement sub-accounts in 2015, they did so based on their members' updated 2013 retail sales data. As a result, the number of poultry RECs retired by them in August correctly corresponded to their total retail sales.

In its Order Requesting Comments, the Commission requested suggestions as to what changes to the Commission's rules or the NC-RETS software are necessary to prevent a similar occurrence in the future. The Power Agencies see no need to any changes to NC-RETS software. They do believe, however, that similar reoccurrences of this scenario can be avoided in the future by revising Commission rules to move the date for reporting retail sales data to NC-RETS to later in the year, preferably on the same date that the REPS Compliance Report is due. Synchronizing the due date for the two reports (one to NC-RETS and the other to the Commission) will reduce, if not eliminate, the possibility of any discrepancy in the reported data. Delaying the date for submission of sales data to NC-RETS to September 1, as recommended by the Power Agencies, would have no adverse impact on the ability of electric suppliers to determine their REPS compliance requirements, as that determination is not made until the following year, *e.g.*, 2013 retail sales data was due to be reported on June 1, 2014, and then was used in 2015 to determine the number of RECs to be retired in August 2015.

At present the electric suppliers are subject to competing reporting regimes with different due dates – one to NC-RETS and one to the Commission. The annual REPS

compliance reports filed with the Commission are and should be considered the most accurate, as they are now filed later in the year and thus have the benefit of additional time to secure all necessary data. In addition, they are authenticated by affidavit.

The Power Agencies recommend that the Commission revise its rules to move the date for reporting retail sales data to NC-RETS to later in the year, so as to align with the September 1 due date for filing REPS Compliance Reports. Such a revision to Commission rules would ensure that consistent data is reported both to NC-RETS and the Commission.

3. Finally, the Commission seeks comments as to whether an independent audit of the NC-RETS system is advisable.

The Power Agencies see no need for such an audit. No aspect of the situation described in APX's letter suggests that there is any issue with the accuracy of the data provided or maintained by APX. NC-RETS accurately reported the data provided to it by ElectriCities, and the Power Agencies are confident that implementation of their recommendation as to a modified reporting schedule can prevent a recurrence of this scenario.

Respectfully submitted, this the 2nd day of October, 2015.

BURNS, DAY & PRESNELL, P.A.

By: 

Daniel C. Higgins

P.O. Box 10867

Raleigh, North Carolina 27605

Telephone: (919)782-1441

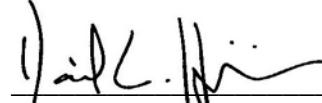
E-mail: dhiggins@bdppa.com

Attorneys for the Power Agencies

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document was duly served upon counsel of record for all parties to these dockets by either depositing same in a depository of the United States Postal Service, first-class postage prepaid, addressed as shown below, or by electronic delivery, this the 2nd day of October, 2015.

BURNS, DAY & PRESNELL, P.A.

A handwritten signature in black ink, appearing to read "Daniel C. Higgins", is written over a horizontal line.

Daniel C. Higgins

Post Office Box 10867

Raleigh, NC 27605

Tel: (919) 782-1441