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July 24, 2023

VIA ELECTRONIC FILING

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

Re: Duke Energy Carolinas, LLC's Proposed Order
Docket No. E-7, Sub 1281

Dear Ms. Dunston:

Enclosed for filing in the above-referenced proceeding on behalf of Duke Energy Carolinas, LLC is its *Proposed Order*.

Please feel free to contact me if you have any questions. Thank you for your assistance in this matter.

Sincerely,

Ladawn S. Toon

STATE OF NORTH CAROLINA
UTILITIES COMMISSION RALEIGH

DOCKET NO. E-7, SUB 1281

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Energy Carolinas, LLC, Pursuant to N.C.G.S. § 62-110.8 and Commission Rule R8-71 for Approval of CPRE Cost Recovery Rider and Compliance Report	)	**PROPOSED ORDER OF DUKE ENERGY CAROLINAS, LLC APPROVING CPRE RIDER AND CPRE PROGRAM COMPLIANCE REPORT**

BEFORE: Commissioner Kimberly W. Duffley, Presiding; Chair Charlotte A. Mitchell; and Commissioners ToNola D. Brown-Bland, Daniel G. Clodfelter, Jeffrey A. Hughes, Floyd B. McKissick, Jr., and Karen M. Kemerait

APPEARANCES:

For Duke Energy Carolinas, LLC:

Ladawn Toon, Associate General Counsel, Duke Energy Corporation,
411 Fayetteville Street, Raleigh, North Carolina 27602

E. Brett Breitschwerdt, McGuireWoods LLP, 501 Fayetteville St., Suite 500, Raleigh, North Carolina 27601

For Carolina Utility Customers Association, Inc:

Marcus Trathen, Brooks Pierce, McLendon, Humphrey & Leonard, LLP, Wells Fargo Capitol Center, 150 Fayetteville Street, Suite 1700, Raleigh, NC 27601

For the Carolina Industrial Group for Fair Utility Rates III:

Christina D. Cress and Douglas D.C. Conant, Bailey & Dixon, LLP, 434 Fayetteville Street, Suite 2500, Raleigh, North Carolina 27601

For the Using and Consuming Public:

Robert B. Josey, William E.H. Creech, and Thomas Felling, Public Staff – North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699-4300

BY THE COMMISSION: On February 28, 2023, Duke Energy Carolinas, LLC ("DEC," or the "Company") filed an application pursuant to N.C. Gen. Stat. § 62-110.8 and Commission Rule R8-71 for Approval of CPRE Compliance Report and CPRE Cost Recovery Rider, along with the direct testimony and exhibits of Christy J. Walker, Rates and Regulatory Strategy Manager, and Angela M. Tabor, Renewable Compliance Manager with the Business & Compliance Department ("Application"). The testimony of witness Tabor included the DEC Competitive Procurement of Renewable Energy ("CPRE") Compliance Report for calendar year 2022 as Exhibit No. 1 ("CPRE Compliance Report").

On March 10, 2023, the Commission issued an *Order Scheduling Hearing, Requiring Filing of Testimony, Establishing Discovery Guidelines, and Requiring Public Notice* in which the Commission set this matter for hearing; established deadlines for the submission of intervention petitions, intervenor testimony, and DEC rebuttal testimony; required the provision of appropriate public notice; and mandated compliance with certain discovery guidelines

Petitions to intervene were filed by Carolina Utility Customers Association, Inc. ("CUCA") on March 27, 2023 and by Carolina Industrial Group for Fair Utility Rates III ("CIGFUR III") on April 10 2023. The Commission granted CUCA's petition to intervene on March 28, 2023 and CIGFUR III's petition to intervene on April 12, 2023. The intervention of the Public Staff is recognized pursuant to N.C. Gen. Stat. § 62-15(d) and Commission Rule R1-19(e).

On May 3, 2023, DEC filed the supplemental testimony and exhibits of witnesses Walker and Tabor.

On May 9, 2023, the Public Staff filed the testimony and exhibit of Darrus K. Cofield, Public Utility Regulatory Analyst, Accounting Division, and the testimony and exhibit of Jeff Thomas, Engineer, Energy Division.

On May 18, 2023, DEC filed the rebuttal testimony of Angela M. Tabor and Matthew Holstein.

On May 23, 2023, the Public Staff filed a Motion for Substitution of Witness and Adoption of Testimony and the testimony of James S. McLawhorn.

On May 24, 2023, DEC and the Public Staff filed a Joint Motion to Excuse Witnesses from Appearance at Hearing.

On May 25, 2023, DEC filed Affidavits of Publication indicating that the public notice had been provided in accordance with the Commission's procedural order.

On May 26, 2023, the Commission issued an Order Excusing Witnesses,

excusing witnesses Walker and Cofield from attending the evidentiary hearing on this matter.

On May 30, 2023, the Public Staff filed the updated testimony and exhibit of James S. McLawhorn.

On June 5, 2023, the Commission issued an Order Directing the Court Reporter to Amend the Hearing Transcript.

On May 30, 2023, the matter came on for hearing.

On June 9, DEC and the Public Staff filed Joint Late-Filed Exhibit No. 1, and DEC filed Late-Filed Exhibit Nos. 2, 3, and 4.

On July 21, 2023, DEC and the Public Staff filed proposed orders and briefs.

Based upon the Company's verified Application, the testimony, workpapers and exhibits received into evidence and the record as a whole, the Commission makes the following findings of fact:

FINDINGS OF FACT

1. DEC is a duly organized limited liability company existing under the laws of the State of North Carolina, is engaged in the business of developing, generating, transmitting, distributing, and selling electric power to the public in North Carolina, and is subject to the Commission's jurisdiction as a public utility. DEC is lawfully before this Commission based upon its application filed pursuant to N.C.G.S. § 62-110.8 and Commission Rule R8-71.

2. The test period for purposes of this proceeding is the 12-month period beginning on January 1, 2022, and ending on December 31, 2022 ("test period" or "EMF period").[1] The billing period for this proceeding is the 12-month period beginning on September 1, 2023, and ending on August 31, 2024.

3. In DEC's Application, direct testimony, and supplemental testimony (including workpapers and exhibits), it identified system level costs and revenues attributable to the test period as follows: $19,904,314 in charges for purchased and generated power; $365,777 in CPRE Program implementation costs (including a credit of $75,767 for an adjustment related to Independent Administrator fees ("IA")); $17,001,109 in revenues; and $5,397,400 in onetime revenues associated with contract fees collected from CPRE Program market participants ("MPs") in 2022. Of these system level charges and revenues, DEC proposed to credit $3,458,200, the difference between CPRE Program costs allocated to the North Carolina retail customers and CPRE Program rider revenues collected from the North Carolina retail customer classes in the test period, back

[1] EMF is an abbreviation of Experience Modification Factor.

to North Carolina retail customers. Also, DEC proposed a credit of $3,606,126 for the DEC North Carolina retail customers' allocable share of the above-mentioned onetime system revenues associated with contract fees collected from MPs in 2022. The total credits DEC proposes to flow back to customers in the EMF rider rate amounts to $7,064,326.

4. DEC's purchased and generated power costs and implementation charges for the test period were reasonably and prudently incurred.

5. The North Carolina retail jurisdictional allocation factors related to the capacity and energy components of purchased and generated power costs incurred during the test period in this proceeding were 66.68% and 66.90%, respectively. The capacity component was based on the 2021 production plant allocator,[2] and the energy component was based on test period sales. Similarly, the North Carolina retail class allocation factors related to the capacity and energy components of purchased and generated power costs incurred during the test period in this proceeding were based on the 2021 production plant and test period sales for each class, respectively. The North Carolina retail and customer class allocation factors related to implementation charges and receipt of contract fees during the test period were based on a composite rate of 66.81% calculated as the weighted average of the capacity and energy components of purchased and generated power, as shown of Walker Revised Exhibit No. 4.

6. The North Carolina retail test period sales used in calculating the EMF rider component are 59,059,117 MWh. The North Carolina retail customer class MWh sales were as follows:

N.C. Retail Customer Class	MWh Sales
Residential	22,419,810
General Service/Lighting	24,337,422
Industrial	12,301,885
Total	59,059,117

7. In DEC's revised testimony, including exhibits, the Company requested$37,254,710 in system level billing period charges anticipated to be incurred for purchased and generated power, $388,648 in system level ongoing implementation costs and $13,710,000 in one-time system level revenues associated with contract fees collected during 2023 that would have otherwise been included in the Company's 2024 CPRE Rider filing.

8. The North Carolina retail jurisdictional allocation factors related to

[2] The capacity component of purchased power and generation cost was allocated to NC Retail and among customer classes based on the final 2021 cost of service production plant allocators since the 2022 cost of service study was not available at the time of filing.

the capacity and energy components of purchased and generated power costs anticipated to be incurred during the billing period in this proceeding are 66.68% and 66.83%, respectively. The capacity component is based on the 2021 production plant, and the energy component is based on projected billing period sales. Similarly, the North Carolina retail class allocation factors related to the capacity and energy components of purchased and generated power costs anticipated to be incurred during the billing period in this proceeding are based on the 2021 production plant[3] and projected billing period sales for each class, respectively. The North Carolina retail class allocation factors related to implementation charges and receipt of contract fees for the billing period are based on a composite allocation factor of 66.81% calculated as the weighted average of the capacity and energy components of purchased and generated power, as shown on Walker Revise Exhibit No. 3.

9. The projected billing period sales for use in this proceeding are 60,824,729 MWh on a North Carolina retail basis. The projected billing period North Carolina retail customer class MWh sales are as follows:

N.C. Retail Customer Class	MWh Sales
Residential	23,477,265
General Service/Lighting	24,077,007
Industrial	13,270,457
Total	60,824,729

10. The appropriate EMF CPRE Rider component to be credited to customers, excluding the regulatory fee, is (0.0119) cents per kWh for the Residential class, (0.0129) cents per kWh for the General Service/Lighting class, and (0.0087) cents per kWh for the Industrial class, excluding interest related to the overcollection.

11. The appropriate EMF CPRE Rider interest component to be credited to customers, excluding the regulatory fee, is (0.0009) cents per kWh for the Residential class, (0.0012) cents per kWh for the General Service/Lighting class, and (0.0006) cents per kWh for the Industrial class, including interest related to the overcollection.

12. The appropriate North Carolina retail prospective billing period expenses (including revenue credits for contract fees), as adjusted and set forth on Walker Revised Exhibit No. 3, total $15,990,005. The appropriate prospective billing period expenses for use in this proceeding are $6,362,991 for the Residential class, $6,274,240 for the General Service/Lighting class, and $3,352,774 for the Industrial class.

13. The appropriate prospective CPRE Rider component to be

[3] *Id.*

charged to customers is 0.0271 cents per kWh for the Residential class, 0.0261 cents per kWh for the General Service/Lighting class, and 0.0253 cents per kWh for the Industrial class, excluding the regulatory fee.

14. The appropriate net CPRE Rider to be collected during the billing period is 0.0143 cents per kWh for the Residential class, 0.0120 cents per kWh for the General Service/Lighting class, and 0.0160 cents per kWh for the Industrial class, excluding the regulatory fee.

15. The change in costs DEC proposes to recover with its proposed CPRE Program Rider and EMF Rider are within the limit established in N.C.G.S. § 62-110.8.

16. The 2022 CPRE Compliance Report provides adequate information that satisfies the requirements of Commission Rule R8-71(h), and for the reporting period, DEC implemented the CPRE Program in compliance with the requirements of N.C.G.S. § 62-110.8. In accordance with Commission Rule R8-71(g), DEC shall file its annual CPRE Program Plan, together with Duke Energy Progress, LLC ("DEP") with the Commission by September 1, 2023, providing an update on the Company's compliance with N.C.G.S. § 62-110.8.

17. In the case of the two DEC-owned facilities, the Commission approves DEC's request to recover costs for the DEC-owned CPRE facilities on a market basis in lieu of cost-of-service recovery. Specifically, DEC will recover the costs associated with these facilities at the $/MWh price at which those facilities bid into CPRE Tranche 1 RFP and were selected by the IA.

18. It is inappropriate to accept the Public Staff's recommendation to direct DEC to credit customers 50% of the Liquidated Damages (LDs) in the EMF period that it believes DEC should have obtained from Wilkes Solar, LLC (Wilkes Solar).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding of fact is essentially informational, procedural, and jurisdictional in nature and is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The evidence for this finding of fact is contained in the direct testimony and exhibits of DEC witness Walker.

Pursuant to N.C.G.S. § 62-110.8, an electric public utility shall be authorized to recover the costs of all purchases of energy, capacity, and environmental and renewable attributes from third-party renewable energy facilities and to recover the authorized revenue of any utility-owned assets that are procured through an annual rider approved by the Commission and reviewed annually. Commission Rule R8-71 prescribes that unless otherwise ordered by the Commission, the test period for each electric public utility shall be the same as its test period for purposes of Rule R8-55. The test period for purposes of Rule R8-55 is the 12 months ending December 31. Witness Walker testified that for purposes of this proceeding, DEC's proposed rider includes both an EMF rider component to adjust for the difference in DEC's costs incurred compared to revenues realized during the EMF test period, as well as a rider component to collect costs forecasted to be incurred during the prospective 12-month period over which the proposed CPRE Program rider will be in effect.

DEC's proposed test period is the 12 months beginning on January 1, 2022, and ending on December 31, 2022, and the proposed billing period for the CPRE Program rider is the 12 months beginning on September 1, 2023, and ending on August 31, 2024.

The test period and the billing period proposed by DEC were not challenged by any party. Based on the foregoing, the Commission concludes that DEC used the appropriate test period and billing period in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3-4

The evidence for these findings of fact is contained in the direct testimony and exhibits of DEC witnesses Walker and Tabor and Public Staff witnesses McLawhorn and Cofield.

In her direct testimony on Walker Exhibit No. 1, DEC witness Walker identifies $19,904,314 on a system basis of purchased power costs and authorized revenue for DEC-owned facilities during the EMF period. Witness Walker's Exhibit No. 2 sets forth the per books implementation charges, which illustrate that DEC incurred $365,777 on a system basis to implement the CPRE Program during the test period. Walker Exhibit No. 2 also includes a credit of $75,767 for Tranche 3 IA fees that were inadvertently included in the DEC's 2022 CPRE cost recovery filing in Docket No. E-7, Sub 1262.

In her direct testimony, DEC witness Tabor testified regarding DEC's actions to implement the CPRE Program and comply with the CPRE Program

requirements of N.C.G.S. § 62-110.8, as described in DEC's Compliance Report.

In her supplemental testimony, on Walker Revised No. Exhibit 4, witness Walker identified $13,542,909 in costs incurred during the EMF period that were allocated to the North Carolina retail jurisdiction and $17,001,109 in CPRE Program rider revenues collected during the EMF period, resulting in an overcollection of $3,458,200.

Also in her supplemental direct testimony, witness Walker testified that DEC received $5,397,400 in onetime revenues associated with contract fees collected from CPRE Program MPs in 2022. She further testified as to DEC's proposal that North Carolina retail customers be credited with $3,606,126, their allocable share, through the proposed EMF rider component.

Public Staff witness McLawhorn discussed the system-level expenses sought to be recovered by DEC, but did not recommend any disallowances to the system-level expenses incurred by DEC. Public Staff McLawhorn did, however, recommend an adjustment to credit ratepayers for certain LDs DEC had not collected, as discussed further below in this Order.

Public Staff witness Cofield testified as to the procedures taken by the Public Staff to evaluate whether DEC properly determined its per-books CPRE Program costs and revenues during the test period.

Public Staff witness McLawhorn testified that at the request of the Public Staff, DEC had credited to customers a portion of liquidated damages associated with several contested Power Purchase Agreements (PPA) in the EMF period, as discussed by witness Walker in her supplemental direct testimony.

No parties challenged the prudency of the $7,064,326 amount, before interest, that DEC proposes to credit back to customers.

The Commission concludes that the $7,064,326 North Carolina retail level overcollection and onetime revenue credits collected by DEC during the EMF period for the CPRE program were reasonably and prudently incurred and are appropriate to be credited back to customers by DEC.

Further, the Commission notes that DEC's CPRE implementation charges of $365,777 include a $75,767 credit reflecting IA fees associated with Tranche 3 that were inadvertently included in DEC's 2022 CPRE Rider. The Commission accepts this credit as reasonable and appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact is contained in the testimony and exhibits of DEC witness Walker and the affidavit of Public Staff witness Cofield.

In Walker Revised Exhibit No. 4, DEC witness Walker provided DEC's North Carolina retail jurisdictional allocation factors, including 66.68% for capacity-related costs and 66.90% for energy-related costs. The CPRE Program implementation charges allocation factor, which is a composite allocation factor based on the weighted average of capacity and energy purchases for purchased and generated power costs, is 66.81%.

No other party presented evidence on the appropriateness of the North Carolina retail jurisdictional allocation factors.

The Commission concludes that the 66.68% allocation factor for capacity-related costs, the 66.90 % allocation factor for energy-related costs and 66.81% for implementation costs are appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence supporting this finding of fact is contained in the direct and supplemental testimony and exhibits of DEC witness Walker.

Walker Workpaper No. 4 provides DEC's North Carolina test period retail sales of 22,419,810 MWh for the Residential class, 24,337,422 MWh for the General Service/Lighting class, and 12,301,885 MWh for the Industrial class. No other party presented evidence on the appropriateness of test period North Carolina retail sales.

The Commission concludes that the test period North Carolina retail MWh sales proposed by DEC for purposes of calculating the EMF billing factors are appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7-8

The evidence supporting these findings of fact is contained in the direct and supplemental testimony and exhibits of DEC witness Walker and Public Staff witness McLawhorn.

Walker Exhibit No. 2 and Walker Revised Exhibit No. 3 present DEC's projected North Carolina retail allocated CPRE costs of $15,990,005 in the billing period (including onetime revenue credits of $9,159,725 for contract fees), as well as the allocation of the system costs to the North Carolina retail jurisdiction and the North Carolina retail customer classes. As explained in witness Walker's and

witness Tabor's supplemental testimonies, the Company collected $13,710,000 from certain PPA counterparties outside of the EMF period and the billing period in LDs. After discussions with the Public Staff, DEC agreed to include the LDs amount it had collected in this CPRE Rider for immediate benefit to customers. DEC used the 2021 production plant jurisdictional allocation factor of 66.68% for capacity costs and the projected billing period sales jurisdictional allocation factor of 66.83% for energy costs for its allocation of CPRE purchased and generated power costs.

Public Staff witness McLawhorn discussed the CPRE costs estimated for the billing period and stated that the Public Staff finds them reasonable, notwithstanding the Public Staff's recommended adjustment discussed below.

No other party presented evidence on the appropriateness of DEC's proposed billing period charges anticipated to be incurred or the allocation of these costs.

The Commission concludes that DEC's North Carolina retail allocated charges of $15,990,005 anticipated to be incurred during the billing period for purchased and generated capacity and energy, ongoing implementation costs and onetime revenue credits for contract fees are appropriate for use in this proceeding. The Commission further concludes that the use of 66.68% for the capacity component and 66.83% for the energy component to allocate system-level CPRE purchased and generated power costs to the North Carolina retail jurisdiction is appropriate for use in this proceeding, and that the use of production plant and energy sales, respectively, to allocate North Carolina retail jurisdictional capacity and energy costs to the customer classes is appropriate for use in this proceeding. Further, the Commission concludes that the use of a composite rate for the allocation of North Carolina retail implementation costs and one-time revenue credits for certain contract fees to the North Carolina retail customer classes is appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence supporting this finding of fact is contained in the direct and supplemental testimony and exhibits of DEC witness Walker.

In Revised Exhibit No. 3, DEC witness Walker provided DEC's projected billing period sales of 23,477,265 MWh for the Residential class, 24,077,007 MWh for the General Service/Lighting class, and 13,270,457 MWh for the Industrial class. Witness Walker further testified that the rate per customer class for purchased and generated power is determined by dividing the sum of the billing period costs allocated to the class by the forecast billing period MWh sales for the customer class. Similarly, the rate per customer class for implementation costs is determined by dividing the sum of the billing period costs allocated to the class,

using a composite rate determined in the purchased and generated power calculation, above, by the forecast billing period MWh sales for the customer class.

The Public Staff witnesses did not propose any adjustments to the projected billing period sales amounts used in this proceeding. No other party presented evidence on the appropriateness of the projected billing period North Carolina retail sales.

The Commission concludes that DEC's projected billing period sales for North Carolina retail customer classes are as follows: 23,477,265 MWh for the Residential class, 24,077,007 MWh for the General Service/Lighting class, and 13,270,457 MWh for the Industrial class.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10-14

The evidence supporting these findings of fact appears in DEC's Application, in the direct and supplemental testimony and exhibits of DEC witness Walker, in the testimony and exhibits of Public Staff witness McLawhorn, and the testimony and exhibits of Public Staff witness Cofield.

Revised Walker Exhibit No. 4 calculates for North Carolina retail customers a total over-recovery of $3,458,200 in CPRE Program costs for the EMF period and onetime revenue credits of $3,606,126, resulting in a total credit of $7,064,326 before interest of $576,366. The North Carolina retail customer share of CPRE Program costs for the prospective billing period, as shown through witness Walker Revised Exhibit No. 3, amounts to a total of $15,990,005.

In her supplemental direct testimony, DEC witness Walker presented the components of the proposed Total CPRE Rate as follows, excluding the regulatory fee:

DEC's Rider Request Filed on May 3, 2023 (cents per kWh)			
Customer Class	**EMF Rate (including EMF Interest) Component**	**Prospective Rate Component**	**Total CPRE Rate**
Residential	(0.0128)	0.0271	0.0143
General Service/Lighting	(0.0141)	0. 0261	0.0120

Industrial	(0.0093)	0.0253	0.0160

The Public Staff witnesses did oppose the rates supported by the Company; however, the Public Staff did request an additional adjustment be made to the rates as discussed further below. No other party presented evidence on the appropriateness of the rates.

Based on the foregoing, the Commission finds good cause to find that DEC's proposed rates are just and reasonable for purposes of this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence supporting this finding of fact is contained in the testimony and exhibits of DEC witness Walker and the testimony of Public Staff witness McLawhorn.

DEC witness Walker testified that N.C.G.S. § 62-110.8(g) and Commission Rule R8-71 limits the annual increase in CPRE Program-related costs recoverable by an electric public utility to 1% of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year. Witness Walker testified that the increase in aggregate costs DEC seeks to recover in this proceeding is less than the statutory maximum.

Public Staff witness McLawhorn similarly concluded that the costs DEC seeks to recover are less than 1% of DEC's total North Carolina retail jurisdictional gross revenues for 2021.

For the reasons stated herein, the Commission concludes that the costs DEC seeks to recover in this proceeding are not in excess of the cost cap established by N.C.G.S. § 62-110.8(g).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence supporting this finding of fact is contained in the direct, supplemental, and rebuttal testimony and exhibits of DEC witness Tabor, including the CPRE Compliance Report, and the testimony of Public Staff witness McLawhorn.

The direct testimony of DEC witness Tabor and the 2022 CPRE Compliance Report, which accompanied her direct testimony, detail DEC's actions to implement the CPRE Program requirements of N.C.G.S. § 62-110.8 in collaboration with the IA and, in the 2022 Solar Procurement, in collaboration with the Independent Evaluator. The Compliance Report provides an overview of activity in Tranches 1, 2, and 3. 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 its evaluation process for Tranche 3 treated all participants equitably and was unaware of any bias towards or against any participant.

Public Staff witness McLawhorn testified that the 2022 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-2, Sub 1156 and E-7, Sub 1159.

No other party presented evidence on this issue.

In light of the testimony received, the Commission concludes that the 2022 CPRE Compliance Report provides adequate information that satisfies the requirements of Commission Rule R8 71(h), and for the reporting period, DEC implemented the CPRE Program in compliance with the requirements of N.C.G.S. § 62-110.8.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence supporting this finding of fact is contained in DEC's Application, the direct testimony of DEC witness Walker, and the direct testimony of Public Staff witness McLawhorn.

The CPRE Rider rates proposed by DEC in its Application included costs for certain DEC-owned facilities that were selected as winning bidders in CPRE Tranche 1. DEC proposed that cost recovery for the DEC-owned facilities be established on a market basis in lieu of cost-of-service for the full 20-year CPRE term. Specifically, the costs associated with DEC-owned CPRE facilities were included in the CPRE Rider rates at the price at which those facilities bid into the Tranche 1 RFP and were selected by the IA as winning projects. No party to this proceeding has contested this form of cost recovery, and Public Staff witness McLawhorn supported DEC's proposal to recover costs on a market basis in lieu of cost-of-service recovery.

Accordingly, the Commission approves DEC's request to recover costs for the DEC-owned CPRE facilities on a market basis in lieu of cost-of-service recovery. Specifically, DEC will recover the costs associated with these facilities at the $/MWh price at which those facilities bid into CPRE Tranche 1 RFP. The issue of post-term recovery is already addressed by Commission Rule R8-71(l)(4); therefore, it is not necessary to further address this issue in the context of this CPRE rider proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The evidence supporting this finding of fact is contained in DEC's Application, the direct testimony of Public Staff witness McLawhorn, the rebuttal testimony of DEC witnesses Tabor and Holstein, and the entire record in this proceeding.

In his direct testimony, witness McLawhorn recommended the Commission direct DEC to reduce the costs it recovers by crediting to customers 50% of the default LDs that the Public Staff asserts DEC should have obtained from a CPRE Tranche 2 counter-party, Wilkes Solar, as a result of Wilkes Solar's breach and the subsequent termination of Wilkes Solar's PPA with DEC (the Public Staff's recommendation will hereafter be referred to as the Recommended Adjustment). Although witness McLawhorn testified that the Public Staff was not making a judgment as to whom was at fault for the PPA termination, he did discuss the expiration of Wilkes Solar's parent guaranty, which the Public Staff stated was the result of an oversight by DEC that caused the Company's PPA tracking system to not automatically flag that the guaranty was expiring and in need of renewal. Witness McLawhorn stated that the lack of an expiration date in the tracking system would have made recovering liquidated damages from Wilkes Solar more difficult, if not impossible, even if DEC was not found to be the defaulting party. Witness McLawhorn went on to state that the justification for the Public Staff's Recommended Adjustment was that Public Staff does not believe that DEC ratepayers should bear the full cost of DEC's error.

On rebuttal, DEC witnesses Tabor and Holstein began their testimony by explaining DEC's recent experience with project delays and PPA terminations in the CPRE Program. They explained that independent power producer project developers faced with increased project costs, execution risks, supply chain challenges, or other changing market circumstances have the option and may elect to terminate their contractual obligation to construct a generating facility and deliver power to the Company if the project is no longer profitable. They further stated that these independent power producers introduce increased risk where development cost is a primary driver and they are subject to limited Commission oversight with no public service obligation to construct the facility to maintain reliable service. However, the witnesses explained that the Company's *pro forma* CPRE Program PPA is designed to manage these commercial risks on behalf of customers.

Witnesses Tabor and Holstein next described the commercial terms of the CPRE Program PPA and explained how the PPA manages the aforementioned risk by establishing delay and default LDs as well as requiring the Seller to maintain Performance Assurance to ensure that the company can recover the LDs in the event of Seller delay or termination of the PPA. They explained that maintaining the required Performance Assurance is an express contractual obligation of the Seller under the Commission-approved *pro forma* CPRE Program PPA. In fact, the Commission notes that DEC has successfully received default LDs from fourother terminating projects in the past year.

Next, witnesses Tabor and Holstein explained that Wilkes Solar had failed to meet its contractual obligation to maintain active Performance Assurance under the PPA and allowing the Guaranty provided by their parent company, DESRI Portfolios, LLC (DESRI), to expire on December 31, 2021, without timely providing renewal or replacement Performance Assurance. Wilkes Solar then abandoned the interconnection process in April 2022 and subsequently notified DEC that it would not construct the Facility as required under the PPA. The witnesses testified that after DEC's good-faith efforts to informally negotiate mutual termination of the PPA were unsuccessful, DEC provided Wilkes Solar written notice of termination of the PPA on August 23, 2022.

Witnesses Tabor and Holstein explained that Wilkes Solar then disputed its obligation to pay the owed default LDs as required by Section 20.5.1 of the PPA. They further explained that Wilkes Solar likely does not have the assets to pay the default LDs owed, which is why Performance Assurance is generally required by the PPA. Wilkes Solar's parent company, DESRI, has taken the position that the Guaranty expired on December 31, 2021 and is no longer effective.

Witnesses Tabor and Holstein's rebuttal explained that due to a data entry error by a credit risk department employee at the time the parent guaranty was submitted by Wilkes Solar, the expiration date of the Performance Assurance was not prospectively identified by the Company as part of its normal security instrument management process. Specifically, the credit risk department employee tasked with manually entering details about the DESRI guaranty into Duke Energy's internal tracking system, Credit Information Manager ("CIM") mistakenly entered the DESRI guaranty as if it did not have an expiration date. Witness Holstein stated that the oversight was a 1 in 1,000 occurrence during his five-year tenure at Duke Energy and that the Company has robust business practices relating to security instrument management, including annual training of credit risk department employees. He testified that the Company undertook a reasonable process to evaluate the likely costs, risks, and potential recoverability of pursuing legal action to enforce the LD provision from the Wilkes Solar PPA. Based on that analysis, the Company believes there is a low probability of receiving the LDs from DESRI Portfolios.

Witnesses Tabor and Holstein also testified that the Company disagrees with the Public Staff that their Recommended Adjustment is fair to customers and would avoid customers bearing the full cost of the unpaid LDs. First, witnesses Tabor and Holstein testified that the Public Staff has not identified any specific actions or failures by DEC that demonstrate unreasonable or imprudent business practices or lack of reasonable management oversight and decision-making based upon the facts known to DEC at the time it received the parent guaranty. They further testify that despite the data entry error, it was not unreasonable for DEC to rely upon Wilkes Solar to meet its contractual obligations to maintain Performance Assurance. Witness Holstein argued that it was reasonable for DEC to rely upon its established security tracking and data management practices despite the error that occurred. Second, they testified that the Company disagrees with the Public

Staff's Recommended Adjustment as speculative because there is no guarantee that but for the data entry error DEC would have certainly recovered the full amount of LDs. Accurate data entry into CIM would have strengthened DEC's claim against DESRI Portfolios. However, it would not have necessarily resulted in DEC recovering the amount of LDs cited by witness McLawhorn. Third, the Company also disagrees with the Recommended Adjustment because there are no direct costs to customers related to Wilkes Solar's termination of its PPA with DEC (i.e., the Company is not seeking to recovery any such costs from customers in this proceeding). Thus, the witnesses testified that the Public Staff's Adjustment will, in effect, disallow other reasonable and prudently incurred CPRE Program costs because there is no other source of the funds the Public Staff asks the Commission to direct DEC to credit to customers.

At the hearing, witness McLawhorn testified that the issue in this case was that DEC accepted a guaranty that had an expiration date prior to when Wilkes Solar's obligations under the PPA would be satisfied. This represented an apparent distinction from his pre-filed direct testimony, in which he described the issue in the case as a data entry error. Notably, under direct questioning from presiding Commissioner Duffley, witness McLawhorn declined to describe the standard it used in determining that the Public Staff's Adjustment was appropriate. Witness McLawhorn also refused to take the position that DEC acted imprudently with respect to its PPA with Wilkes Solar. The relevant line of questioning was as follows:

Q.Okay. And are you saying or asserting that DEC has acted imprudently? I'm just trying to gain knowledge or information about what the standard is that Public Staff was using.

A. Well, I think that we believe, I believe, that by allowing this, such a short – clearly, Duke said they made an error by not entering the expiration date in their tracking system, in which case they would have been notified that it was about to expire, but I have concerns that they ever allowed such a short date to be put in place to begin with. To me, that should have been a red flag for the Company.

Q. And again, but are you stating this error is – rises to the level of imprudent behavior?

A. I believe that the Company should have been more diligent in their efforts when they were signing this PPA and the Guaranty.

Witness Holstein testified at the hearing that it was not out of the ordinary or otherwise inconsistent with the credit risk department's routine business practices for the parent guaranty submitted by Wilkes Solar to have an expiration date of roughly 14 months after submission, despite the fact that Wilkes Solar would not satisfy its obligations under the PPA before that time. Witness Holstein explained that such "short" guaranties are relatively common in the industry. Many companies have policies against providing guaranties that expire beyond the end

of the company's subsequent fiscal year. Mr. Holstein further testified that the Company interpreted Section 19.18 of the PPA, which states that it is an Event of Default under the PPA for the Seller to fail to "replenish, renew, or replace" the Performance Assurance, to mean that it is reasonable to accept Performance Assurance in the form of a guaranty with an expiration date that expires prior to completion of the counter-party's obligations in the PPA with the expectation that the Performance Assurance would be renewed or replaced by the counter-party prior to expiration.

Witness Holstein further testified that he is unaware of Duke Energy previously experiencing difficulty collecting damages owed due to a similar premature performance assurance expiration or security management oversight since he was hired by Duke Energy in 2018. He testified that the Company has robust practices for managing security instruments and maintains a library of training and procedures documents that set forth the procedures for managing security with CIM. He further explained that the credit risk department employees (who have between 4 and 11 years of experience) are required to complete annual training on the department's business processes. As part of that training, the employees must review and certify the continuing accuracy and completeness of the credit risk department's Credit Policy and Credit Risk Management Procedures.

Witness Holstein testified that the quality of the department's processes, employees, and managerial oversight is demonstrated by the fact that DEC has not experienced similar difficulties collecting damages due to issues in the security instrument management process. The department's operational success in light of the fact—as shown by DEC's Late-Filed Exhibit 2—that roughly half of the guaranties currently managed in CIM either: 1) have an expiration date prior to the end of the term of the underlying agreement; or 2) support an agreement that does not have a defined date of termination supports a conclusion that it was not unreasonable or imprudent for the Company to accept the DESRI guaranty despite the fact that it was initially set to expire prior to a possible COD date for Wilkes Solar.

DEC has the burden of proof to show that its proposed CPRE Rider is just and reasonable. N.C.G.S. § 62-134(c). However, the reasonableness and prudence of the costs contained therein is presumed unless the Public Staff produces "affirmative evidence tending to show that the expenses that the utility seeks to recover are exorbitant, unnecessary, wasteful, extravagant, or incurred in abuse of discretion or in bad faith…" *State ex rel. Utils. Comm'n v. Stein,* 375 N.C. 870, 908 (2020). If the Public Staff meets its burden of production, then the ultimate burden of persuasion shifts back to DEC. Further, the Commission has previously held that to successfully challenge costs as imprudently incurred, the Public Staff must: 1) identify specific and discrete instances of imprudence; 2) demonstrate the existence of prudent alternatives; and 3) quantify the effects of the imprudence on customers. *Order Accepting Stipulation, Deciding Contested Issues and Granting Partial Rate Increase* at 196*,* Docket Nos. E-2, Sub 1131,

1142, 1103, and 1153 at 196 (Feb. 23, 2019).

The Public Staff has not identified specific and discrete instances of imprudence and witness McLawhorn, when given the opportunity at the hearing, declined to take the position that the Company was imprudent in any material respect. Therefore, the Commission finds that the Public Staff has not met its burden in challenging costs as unreasonable or imprudently incurred. Accordingly, the Commission agrees with DEP that it would be inappropriate for the Commission to impose the Recommended Adjustment in the form of a disallowance. A "determining principle" or prudency standard is missing from the Public Staff's Recommended Adjustment that customers "share" with DEC shareholders the cost of LDs uncollected from Wilkes Solar. *See Tate Terrace Realty Investors, Inc. v. Currituck Cty.,* 127 N.C. App. 212, 222-23, 488 S.E.2d 845, 851-52 (1997). As such, were the Commission to adopt it, the Commission very well could be found to be acting arbitrarily and capriciously, and subject itself to reversal. *See, e.g., Sanchez v. Town of Beaufort*, 211 N.C. App. 574, 710 S.E.2d 350 disc. review denied, 365 N.C. 349, 715 S.E.2d 152 (2011).

Moreover, as explained by DEC, were the Commission to impose the Public Staff's Recommended Adjustment in the form of a penalty (a recommendation not explicitly put forth by the Public Staff), the Commission would effectively be penalizing DEC in a way that disallowed recovery of CPRE Program costs not actually challenged by Public Staff as unreasonable or imprudently incurred. As DEC argues in its Post-Hearing Brief, this would constitute unprecedented Commission action and the Commission finds such action is not appropriate on the facts contained in the evidentiary record in this proceeding. The Commission finds that it was reasonable and appropriate for DEC to accept the DESRI guaranty despite its relatively short duration. It was also reasonable and appropriate for DEC to accept the guaranty under the expectation that Wilkes Solar would meet its contractual obligations under the PPA to ensure that its Performance Assurance was renewed or replenished. The Commission further finds that the data entry error was a mistake. The uncontroverted evidence presented by DEC witness Holstein shows that the error was an isolated incident, and not part of a larger pattern. There was no evidence presented that would demonstrate that the mistake was proximately caused by any management misfeasance by DEC. To the contrary, the evidence in the record reveals that the credit risk department had a high level of operational performance. In sum, the evidence in the record reveals that DEC conducted itself reasonably and prudently in managing its PPA with Wilkes Solar. To hold otherwise would be to impermissibly hold DEC to a standard of perfection. The Commission declines to hold DEC to such a standard through imposition of the Public Staff's Recommended Adjustment.

Pursuant to N.C.G.S. § 62-110.8(g), DEC *shall be* authorized to recover the costs of all purchases of energy, capacity, and environmental and renewable attributes from third-party renewable energy facilities and to recover the authorized revenue of any utility-owned assets that are procured pursuant to the CPRE Program through the annual CPRE Rider. Based on the foregoing analysis, the

Commission finds that it would be improper to disallow DEC's prudently incurred CPRE Program costs, as suggested by the Public Staff.

IT IS, THEREFORE, ORDERED, as follows:

1. That DEC's request to establish a prospective rate component as described herein is approved and that this rider shall remain in effect for a 12-month period beginning on September 1, 2023, and expiring on August 31, 2024;

2. That DEC's request to establish an EMF rate component as described herein is approved and that this rider shall remain in effect for a 12-month period beginning on September 1, 2023, and expiring on August 31, 2024;

3. That DEC's request to establish an EMF interest rate component as described herein is approved and that this rider shall remain in effect for a 12-month period beginning on September 1, 2023, and expiring on August 31, 2024;

4. That DEC shall file the appropriate rate schedules and riders with the Commission not later than ten days after the date of this Order so as to implement the provisions of this Order as soon as practicable;

5. That DEC shall work with the Public Staff to prepare a notice to customers of the rate changes ordered by the Commission in this docket, and DEC shall file such notice for Commission approval as soon as practicable, but not later than ten days after the Commission issues orders in all three dockets;

6. That DEC's 2022 CPRE Compliance Report is hereby approved; and,

7. DEC shall continue to furnish to the Public Staff copies of all IA invoices upon receipt.

ISSUED BY ORDER OF THE COMMISSION.

This the ___th day of _____, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Proposed Order*, as filed in Docket No. E-7, Sub 1281, was served electronically or via U.S. mail, first-class, postage prepaid, upon all parties of record.

This, the 24th day of July, 2023.

/s/Kristin M. Athens
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