

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 189

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Consideration of Certain Standards to)
Promote Utility Demand Response Pursuant) ORDER ALLOWING COMMENTS
to the Infrastructure Investment and Jobs Act)

BY THE COMMISSION: On November 15, 2021, the President of the United States signed into law the Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021) (IIJA). Section 40104 of the IIJA amends Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. § 2611 et seq., by adding new federal ratemaking standards relating to demand response practices.

Specifically, IIJA section 40104(a)(1) amends PURPA by adding Section 111(d)(20), 16 U.S.C. § 2621(d)(20), which provides as follows as it relates to North Carolina public utilities:

DEMAND-RESPONSE PRACTICES. –

(A) IN GENERAL. – Each electric utility shall promote the use of demand-response and demand flexibility practices by commercial, residential, and industrial consumers to reduce electricity consumption during periods of unusually high demand.

(B) RATE RECOVERY. –

(i) IN GENERAL. – Each State regulatory authority shall consider establishing rate mechanisms allowing an electric utility with respect to which the State regulatory authority has ratemaking authority to timely recover the costs of promoting demand-response and demand flexibility practices in accordance with subparagraph (A).

Further, Section 40104(a)(2) of the IIJA amends Section 112 of PURPA, 16 U.S.C. § 2622(b), to require each state regulatory authority with ratemaking authority over electric utilities to commence consideration under section 111 of PURPA, 16 U.S.C. § 2611, or to set a hearing date for consideration with respect to the standard established by the IIJA in section 111(d)(20) of PURPA, 16 USC § 2611(d)(20) within one year of the enactment of the IIJA and to complete the consideration and make the determination with respect to the new demand response standards within two years of

enactment of the IIJA. IIJA § 40104(a), amending PURPA section 112(b), 116 U.S.C. 2622(b).

However, such consideration is not required if a state has previously undertaken consideration of the same or equivalent standards before the date of enactment of the IIJA using any of the following methods:

- (1) the State has implemented for the electric utility the standard (or a comparable standard);
- (2) the State regulatory authority for the State or the relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard (or a comparable standard) for the electric utility; or
- (3) the State legislature has voted on the implementation of the standard (or a comparable standard) for the electric utility during the 3-year period ending on that date of enactment.

IIJA § 40431(b), amending PURPA section 112(b), 116 U.S.C. § 2622(b).

The public policy of North Carolina, its statutory laws, and the orders and policies of this Commission promote demand response and demand flexibility practices by retail electric customers. N.C. Gen. Stat. § 62-133.9(c) provides that North Carolina public electric utilities must “include an assessment of demand-side management and energy efficiency in its resource plans submitted to the Commission. *See also* Commission Rule R8-60(c). In particular, as part of the biennial process for developing an integrated resource plan (IRP), “each utility shall assess on an on-going basis programs to promote demand-side management, including costs, benefits, risks, uncertainties, reliability and customer acceptance, where appropriate.” Commission Rule R8-60(f). Further, as part of the IRP process, utilities are required to make detailed reports to the Commission of their existing and potential demand-side management programs. Commission Rule R8-60(i)(6). Thus, North Carolina’s public electric utilities are expected to continually review and assess their demand-side resources.

Each of North Carolina’s public electric utilities has rate schedules that “promote the use of demand-response and demand flexibility practices by commercial, residential, and industrial consumers to reduce electricity consumption during periods of unusually high demand.”

Virginia Electric and Power Company d/b/a Dominion Energy North Carolina (DENC) has twenty-four demand-side management/electrical efficiency (DSM/EE) tariffs with programs for residential and non-residential customers. Virginia Electric and Power Company, Electric-North Carolina Tariff (revised June 1, 2022). In addition, among its service schedules, DENC has a number of schedules for residential and nonresidential that include variable demand charges for on-peak and off-peak hours. *Id.*, Schedule 1P (Residential Service), Schedule 1T (Residential Service), Schedule 5P (Small General

Service), Schedule 6L (Large General Service), Schedule 6P (Large General Service), Schedule 6VP (Large General Service Variable Pricing), Schedule 10 (Large General Service), and Schedule LGS – RTP With Customer Baseline Load Day-Ahead Hourly Pricing, Large General Service Experimental. Finally, for a large manufacturing customer, DENC has a service schedule that provides for interruptible service. *Id.*, Schedule NS.

Duke Energy Progress, LLC (DEP) has a number of residential and nonresidential DSM/EE Programs, for instance the Residential Service – Load Control Rider LC-9, the Low-Income Weatherization Pay For Performance Program LWP-1 (Pilot), Demand Response Automation Rider DRA-9, and the Energywise For Business Rider EWB-3. It has three residential rate schedules with time-of-use rates, Residential Service Time-of-Use Schedule R-TOUD-74, Residential Time-Of-Use Schedule R-TOU-74, and Residential Service Time of Use With Critical Peak Pricing Schedule R-TOU-CPP-74. Finally, it has a number of rate schedules for nonresidential customers that include time-of-use charges for on-peak, off-peak, and shoulder hours, such as Small General Service All-Energy Time-Of-Use Schedule SGS-TOUE-74, Large General Service (Time-Of-Use) Schedule LGS-TOU-74.

Similarly, Duke Energy Carolinas, LLC (DEC) has over a dozen residential and nonresidential DSM/EE programs, including the Solar Photovoltaic Distributed Generation Program (NC), Residential – Smart \$aver® Energy Efficiency Program, and the Business Energy Saver Program (NC). It has several residential rate schedules that provide pricing incentives for customers to reduce use during peak load periods, such as Schedule RSTC (NC) Residential Service: Time-of-Use with Critical Peak Pricing and Schedule RT (NC) Residential Service, Time-Of-Use, as well as several nonresidential schedules that encourage customers to shift load to off-peak periods, including Schedule SGSTC (NC) Small General Service: Time-Of-Use With Critical Peak Pricing and Schedule Opt-V (NC) Optional Power Service, Time-of-Use With Voltage Differential. Pursuant to the Commission’s March 31, 2021 Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Customer Notice in Docket No. E-7, Sub 1214 and its April 16, 2021 Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Customer Notice in Docket No. E-2, Sub 1219, DEC and DEP are presently involved in a comprehensive rate design study that includes leveraging the functionality of Advanced Metering Infrastructure with an objective of designing new TOU periods that will better reflect cost causation, more accurately reflect the benefits of distributed energy technologies, and make it easier for customers to modify energy consumption patterns and save on their energy bills. See Comprehensive Rate Design Study Roadmap, Docket Nos. E-7, Sub 1214 and E-2, Sub 1219 at 6 (Mar. 31, 2022).

Prior to the enactment of the IIJA, the North Carolina Utilities Commission promulgated rules creating “rate mechanisms allowing an electric utility with respect to which the State regulatory authority has ratemaking authority to timely recover the costs of promoting demand-response and demand flexibility practices.” Specifically, the Commission’s rules provide procedures for establishing a DSM/EE rider, defined as “a charge or rate established by the Commission annually pursuant to G.S. 62-133.9(d) to allow the electric public utility to recover all reasonable and prudent costs incurred in adopting and

implementing new demand-side management and energy efficiency measures after August 20, 2007, as well as, if appropriate, utility incentives, including net lost revenues.” Commission Rule R8-69(a)(2). DSM/EE riders are established in annual proceedings. Commission Rule R8-69(b). The utility can seek incentives for DSM/EE measures, including lost revenue. Commission Rule R8-69(c). Utilities must submit detailed applications supporting cost recovery under the DSM/EE riders, Commission Rule R8-69(f)(1), and intervenors may participate in the proceedings. Commission Rule R8-69(f)(4).

Therefore, the Commission draws the preliminary conclusion that it has, prior to the enactment of the IIJA, considered or implemented the demand response and demand flexibility standards (or comparable standards) as required by IIJA section 40104 and that it has fully complied with the IIJA with respect to those standards. The Commission finds good cause to allow interested parties to file written comments regarding this preliminary conclusion and whether the Commission is required to take any further action with regard to utility demand response standards set forth in section 4104 of the IIJA.

IT IS, THEREFORE, ORDERED as follows:

1. That Duke Energy Progress, LLC, Duke Energy Carolinas, LLC, and Virginia Electric and Power Company d/b/a Dominion Energy North Carolina are hereby made parties of record in this proceeding;
2. That other parties desiring to become formal participants and parties of record shall file petitions to intervene or notices of intervention in accordance with the applicable Commission rules on or before December 22, 2022;
3. That parties may file written comments as provided herein on or before December 22, 2022;
4. That parties may file written reply comments on or before January 19, 2023;
5. That the Chief Clerk shall serve this Order upon all parties of record in this docket and upon all parties of record in Docket No. M-100, Sub 164.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of November, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "Erica N. Green".

Erica N. Green, Deputy Clerk