

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 177

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| In the Matter of |) | Reply Comments |
| Rulemaking Proceeding to Implement |) | of the North Carolina Retail |
| Securitization of Early Retirement of |) | Merchants Association |
| Sub-critical Coal-fired Generation Facilities |) | |

Pursuant to the October 14, 2021, *Order Requesting Comments and Proposed Rules* issued by the North Carolina Public Utilities Commission (“Commission”), the North Carolina Retail Merchants Association (“NCRMA”) respectfully submits the following reply comments.

Upon review of the initial comments filed in this proceeding, NCRMA: 1) agrees with Public Staff and several other parties that the legal foundation for the proposed rule and the securitization bonds is essential for protecting both utility and ratepayer interests, and 2) disagrees with the proposal by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (“the Duke utilities”) to receive a return from the bonds that exceeds their actual debt costs.

First, Public Staff states at page 4 of its initial comments:

Public Staff believes it advisable to seek input from the investment community, and from independent bond counsel in particular, as to the sufficiency of adopting a rule pursuant to S.L. 2021-165 as it relates to the Statutory Pledge.

Several other parties make similar suggestions. *See, e.g.*, CIGFUR initial comments p.3 (recommending the securement of opinion letters from bond counsel as to whether the existing legislation is “sufficient to enable the competitive selection of underwriters for Duke’s future coal retirement bonds and, if not, whether and how the Commission can cure same through rulemaking.”). The NCRMA agrees that it would be a disservice to the utility and its ratepayers to go far down the securitization road without assurances that the program is protected against collateral attack

from third parties. Accordingly, the Commission should follow this course of securing such assurance from bond counsel.

Second, the Duke utilities at page 13 of their initial comments propose subsection (h)

3.b.viii (1):

The Commission may require that the public utility's capital contributions to an issuing entity earn a return at the interest rate of the highest tranche of the coal retirement bonds, which is expected to be less than the public utility's weighted average cost of capital.

However, by statute, bonds for storm (or coal retirement) cost recovery are to be structured to produce the "lowest storm [or coal retirement] recovery charges consistent with market conditions *at the time the [] recovery bonds are priced* and the terms set forth in such financing order." N.C.G.S. § 62-172(b)(3)b.3 (emphasis added). Duke's proposal appears to request a return that is higher than the return at the time an individual recovery bond is priced. Also, such a determination would not result in the *lowest* recovery charges, but instead generate charges higher than actual cost. Nor would this be consistent with traditional ratemaking principles that allow the utility to recover only actual cost. Finally, even if the Commission had statutory authority to allow the utility to earn a return different than the actual interest rate for each bond, it would be discriminatory to include in the rule language "allowing" the Commission to require a return only at the highest bond tranche level. In the interests of fairness, why not also have language "allowing" the Commission to require a return at the lowest bond tranche level? To the extent that the Commission adopts portions of the rule proposed by the Duke utilities at all, the appropriate course would be to strike proposed rule subsection (h)3.b.viii(1).

WHEREFORE, NCRMA respectfully requests that the Commission incorporate these reply comments into its securitization rules.

Respectfully submitted, this 20th day of December, 2021.

/s/ Brian O. Beverly

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ATTORNEYS FOR INTERVENOR, THE NORTH CAROLINA RETAIL MERCHANTS
ASSOCIATION

CERTIFICATE OF SERVICE

I certify that a copy of the reply comments of NCRMA in Docket No. E-100, Sub 177 has been served on each party of record by electronic mail.

This 20th day of December, 2021.

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