STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 113
DOCKET NO. E-100, SUB 121

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-100, SUB 113	)	
	)	
In the Matter of	)	
Rulemaking Proceeding to Implement	)	
Session Law 2007-397	)	ORDER REQUESTING COMMENTS
	)	ON MODIFICATIONS TO RULES R8-64
And	)	THROUGH R8-69 AND INTERIM
	)	OPERATING PROCEDURES FOR
DOCKET NO. E-100, SUB 121	)	NC-RETS
	)	
In the Matter of	)	
Implementing a Tracking System for	)	
Renewable Energy Certificates Pursuant	)	
to Session Law 2007-397	)	

BY THE COMMISSION: By its Orders issued on September 4, 2009, and on February 4, 2010, the Commission invited interested parties to propose amendments to Commission Rules R8-64 through R8-69 for the purpose of streamlining the administration of Senate Bill 3 and the State's Renewable Energy and Energy Efficiency Portfolio Standards (REPS). In response to those Orders, proposed rule changes were filed by ElectriCities of North Carolina, Inc. (ElectriCities) on January 29, 2010; Virginia Electric and Power Company d/b/a Dominion North Carolina Power (Dominion) on February 1, 2010; and by Duke Energy Carolinas, LLC (Duke); Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. (PEC); the North Carolina Sustainable Energy Association (NCSEA); and the Public Staff on March 1, 2010. On April 1, 2010, reply comments were filed by Dominion, Duke, ElectriCities, the North Carolina Electric Membership Corporation (NCEMC), PEC, and the Public Staff.

On January 27, 2010, the Commission issued an Order in Docket No. E-100, Subs 113 and 121 requesting comments on proposed amendments to Rule R8-67 regarding the participation of electric power suppliers and renewable energy facilities in the North Carolina Renewable Energy Tracking System (NC-RETS). The Commission proposed amendments to Rule R8-67, the rule that addresses implementation of REPS. Because the proposed rule changes to Rule R8-67 overlap with the parties' proposed changes to streamline the administration of Senate Bill 3, the Commission is addressing both rulemaking efforts in this Order. The following parties submitted comments in response to the Commission's January 27, 2010 Order: CPI USA North Carolina LLC

(CPI) on March 9, 2010; ElectriCities on February 19, 2010 and March 5, 2010; GreenCo Solutions, Inc. (GreenCo) on March 5, 2010; NCSEA on February 26, 2010 and March 5, 2010; the Public Staff on February 19, 2010; and QVC Rocky Mount, Inc. (QVC) on February 19, 2010. In addition, on February 19, 2010, Dominion, Duke, and PEC filed joint comments.

On July 1, 2010, the Commission issued an Order Adopting Interim Operating Procedures for REC Tracking System in Docket No. E-100, Sub 121, in which it adopted, on an interim basis, procedures detailing the circumstances under which the NC-RETS Administrator is authorized to issue renewable energy certificates (RECs) and energy efficiency certificates (EECs). The Interim Operating Procedures were developed within the NC-RETS Stakeholder Group. The Commission's Order stated:

> Proposed rule changes regarding implementation of Session Law 2007-397, including additional new rules addressing the renewable energy certificate (REC) tracking system, are pending before the Commission in this Docket as well as in Docket No. E-100, Sub 113. The Commission anticipates issuing an order regarding those rules shortly and allowing parties to comment as to whether there are any conflicts or inconsistencies between the proposed revised rules and the Interim Operating Procedures for NC-RETS. Following receipt of comments, the Commission anticipates issuing final Operating Procedures for NC-RETS.

By this Order, the Commission (1) makes its preliminary decisions regarding the parties' proposed amendments to Rules R8-64 through R8-69; (2) proposes additional amendments to those Rules; (3) invites parties to comment on the proposed amendments and the NC-RETS Interim Operating Procedures by August 20, 2010; and (4) establishes that, beginning January 1, 2011, renewable energy facilities that participate in NC-RETS are only eligible for historic REC issuances for energy production going back two years. Appendix A to this Order includes the revised Rules R8-64 through R8-69 (and the application form for registering renewable energy facilities) on which the Commission has decided to seek comments by issuance of this Order. [1] The NC-RETS Interim Operating Procedures are attached to the Commission's July 1, 2010 Order in Docket No. E-100, Sub 121.

[1] Throughout this Order, deletions from the current wording of the rules are shown by strike through, and additions are shown by underlining.

Amendments to Rule R8-64. Application for Certificate of Public Convenience and Necessity by Qualifying Cogenerator or Small Power Producer; Progress Reports

Issue 1: Clarifying That CPCN "Applicant" Is The Owner Of The Facility And Requiring Electronic Mailing Address

Rule R8-64(b)(1)(i) requires an "applicant" for a certificate of public convenience and necessity (CPCN) to provide their name, business address, and telephone number. The Commission will clarify the provision to specify that "applicant" in this context means the owner of the proposed facility. Further, in order to facilitate the Commission's ability to issue orders electronically, applicants will be required to provide an electronic mailing address, consistent with the Commission's March 11, 2010 Order in Docket No. M-100, Sub 134. The Commission will also amend Rule R8-64(b)(1)(ii) to require the owner's agent to provide a business telephone number and electronic mailing address. These changes are shown in Appendix A.

Issue 2: CPCN And Report Of Proposed Construction Filings To Include The Owner's Plan For RECs

Rule R8-64(b)(1)(x) requires a qualifying facility (QF)[2] applicant for a CPCN, or, by reference, a facility that files a report of proposed construction under Rule R8-65, to provide with its application, "the applicant's general plan for sale of the electricity to be generated . . . ." The Commission would find it helpful if such submittals also included the facility owner's "general plan for the disposition of renewable energy certificates or other environmental attributes." This will assist applicants and utilities to identify facilities that also need to register as "renewable energy facilities" under Rule R8-66. The Commission will, therefore, add this filing requirement to Rule R8-64, and by reference, Rule R8-65, as shown in Appendix A.

Issue 3: Proposal To Require Financial Viability Information With CPCN Applications

Rule R8-64(b)(1) specifies the information to be included in an application for a CPCN by a qualifying cogenerator or small power producer. Duke proposes to add a new filing requirement, which would necessitate renumbering the subsequent provisions, as follows:

> (xi) The minimum capacity and energy rates required in order for the facility to be financially viable and the cost justification for such rates and terms. If the rates necessary to make the project viable are significantly higher than the host utility's avoided cost rates the applicant must explain how it intends to generate the additional funds necessary to sustain its operations; and

[2] Under the Public Utility Regulatory Policies Act of 1978 (PURPA), a "qualifying facility" or "QF" is either a small power producer (less than 80 megawatts) whose primary fuel is renewable, or a cogenerator (producing both electricity and useful thermal energy).

In their reply comments, Dominion and PEC support Duke's proposal. Duke argues that, under PURPA, electric public utilities must buy electricity from "qualifying facilities" at the utility's "avoided cost." "However, in many cases, QFs need to receive a rate that is in excess of the host utility's avoided cost rate to make the project commercially viable . . . ." In its comments, Duke asserts that a QF seeking a CPCN from the Commission should be required, in its CPCN application, and subject to any necessary confidentiality protections, to clearly identify the avoided cost rates needed for project viability. Duke argues that granting a CPCN without an understanding of how the facility will pay for itself "may give rise to the implication that the host Electric Public Utility will be required to pay" more than its avoided cost rates for the facility's electric output.

The Public Staff opposes Duke's proposal, stating that it would distort the process by which electric utilities and renewable energy facilities negotiate the price to be paid for renewable energy. The Public Staff asserts that the utility typically has a bargaining advantage, because it routinely deals with many renewable energy suppliers and thus has broad access to information relevant to the negotiations. The utility's advantage would be even greater if the renewable energy facility is required to specify the minimum rates required for it to be viable. In effect, the renewable energy facility would be required to disclose its "bottom line" to the utility before the negotiations began.

In the Public Staff's view, it is not in the public interest if potential renewable energy producers conclude that they cannot obtain a satisfactory price for their power in North Carolina, and locate in other states, or elect not to undertake a renewable energy project at all. Further, the Public Staff argues that Duke's proposed language would be difficult for the Commission to enforce. Renewable energy producers would be inclined to inflate the minimum price figure required by Duke's proposal, and there would be no practical way to distinguish between a minimum figure that reflects a good-faith estimate of expected costs and one that has been intentionally inflated.

The Public Staff also notes that G.S. 132-1.2 provides for a trade secret exception to the State's policy favoring disclosure of public records. In State ex rel. Utilities Commission v. MCI Telecommunications Corp., 132 N.C. App. 625, 514 S.E.2d 276 (1999), the Court of Appeals adopted a very broad interpretation of this statute. It appears to the Public Staff that if Duke's proposed paragraph (b)(1)(xi) were adopted, a renewable energy producer's minimum price estimate could properly be designated as proprietary information and filed under seal. Thus, Duke's proposed filing requirement would serve no useful purpose for utilities. NCSEA also opposes Duke's proposal, stating that the "law is clear on the rate a host utility is required to pay and information Duke seeks does not make it any clearer or more firm."

By granting a CPCN for a QF, the Commission is asserting only that the facility is needed, and that the utility is required to purchase the energy output at the utility's avoided cost. Therefore, the Commission believes existing mechanisms protect customers from subsidizing uneconomic facilities, and agrees with NCSEA that the law

is clear as to payments by a host utility. Duke apparently believes that information regarding a QF's "required" avoided cost payments during the CPCN process would clarify whether a QF project is viable. However, electricity payments are not the only revenue stream available to a QF. Depending on its fuel source, a QF could potentially earn and sell its RECs, and co-generating QFs could potentially have revenues from warm water or steam output. Furthermore, it is highly unlikely that a QF would have firm commitments regarding all of these revenue streams during the CPCN proceeding, leaving its financial viability still unclear during the CPCN proceeding. The Commission notes further that its May 13, 2009 Order Establishing Standard Rates and Contract Terms for Qualifying Facilities in Docket No. E-100, Sub 117 reinforces the Commission's long-standing process for determining the avoided-cost rates to be paid to a QF, including Commission arbitration if necessary. The Commission also agrees with the Public Staff's assertion that a renewable energy developer would likely seek to prevent disclosure of its project's financial status via the State's trade secret protections. Therefore, the Commission will reject Duke's proposed amendment to Rule R8-64(b)(1) because it is appears to be unnecessary and unworkable.

Issue 4: Copies Of CPCN Applications

Rule R8-64(b)(6) requires that a CPCN applicant file 30 copies of its application with the Chief Clerk. The Commission finds that 30 copies are no longer required, and will amend Rule R8-64(b)(6) as shown in Appendix A to reduce the number of copies to 15.

Amendments to Rule R8-65. Report by Persons Constructing Electric Generating Facilities Exempt From Certification Requirement

Issue 5: Copies Of Report Of Proposed Construction Submittals, Electronic Mailing Addresses

Rule R8-65 specifies the information to be included in a "report of proposed construction." Such reports are required to be filed before construction of an electric generating facility that is not required to obtain a CPCN pursuant to G.S. 62-110.1(g), including non-utility owned facilities fueled by renewable energy resources that are under two megawatts in capacity, and electric generating facilities constructed primarily for the owner's own use. No parties suggested changes to Commission Rule R8-65. The Commission notes that the owner of a proposed solar thermal facility, which does not generate electricity, is not required to file either an application for a CPCN pursuant to Rule R8-64 or a report of proposed construction pursuant to Rule R8-65. The owner of the solar thermal facility, however, is required to file a registration pursuant to Rule R8-66 if it intends to earn RECs eligible to be used for compliance with the REPS.

The Commission notes that Rule R8-65(d) requires each applicant to file 30 copies of its application with the Chief Clerk. The Commission has found that 30 copies are no longer required, and will reduce the number of copies to 15. In addition, as Rule R8-65(e) is currently worded, the Chief Clerk is required to provide

16 copies of each report of proposed construction to the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration. The Commission finds that only two copies are needed by the Clearinghouse Coordinator. Therefore, the number of copies will be reduced to two. Further, in order to facilitate the Commission's ability to issue orders electronically, applicants will be required to provide an electronic mailing address consistent with the Commission's March 11, 2010 Order in Docket No. M-100, Sub 134. These changes are shown in Appendix A.

Amendments to Rule R8-66. Registration of Renewable Energy Facilities; Annual Reporting Requirements

Rule R8-66 specifies the information to be included in an application to register a facility as a "renewable energy facility" or a "new renewable energy facility." The RECs associated with the output from such facilities are eligible to be counted toward an electric power supplier's REPS obligation. Rule R8-66 also specifies information to be provided to the Commission annually by such a facility.

Issue 6: Clarify That Renewable Energy Facilities Must Be Registered With The Commission

ElectriCities proposes a minor revision to Rule R8-66(b) to clarify the requirement that the owner of a renewable energy facility that intends to earn RECs must register "the facility," (rather than themselves) with the Commission. The Commission agrees that was the intent of the Rule and will make the revision proposed by ElectriCities and as shown in Appendix A.

Issue 7: Proposal to Exempt Small Generators And Those Participating In Utility Programs From Registering With The Commission

NCSEA proposes changes to Rule R8-66(b) that would exempt renewable energy facilities 10 kW or less, or generators participating in a utility-sponsored and Commission-approved program, from registering with the Commission. NCSEA proposed similar changes to Rules R8-67(c)(i)(viii) and R8-67(g). Unfortunately, NCSEA did not provide comments explaining the need or rationale behind its proposals, especially the 10-kW threshold, or why generators in a utility-sponsored program should be exempt from various aspects of the Commission rules. The Commission will, therefore, reject NCSEA's proposed changes at this time. However, the Commission will continue to solicit input from parties in this proceeding and from the NC-RETS Stakeholder Group[3] as to whether and how the Commission's rules might be changed in order to accommodate smaller generators or those participating in utility programs.

[3] See page 52 for an explanation of the NC-RETS Stakeholder Group.

Issue 8: Registration Statements Required Of Electric Power Suppliers

Rule R8-66(b) states in part:

> The registration statement may be filed separately or together with an application for a certificate of public convenience and necessity, with a report of proposed construction by a person exempt from the certification requirement, or by an electric power supplier with a compliance plan under Rule R8-67(b) if the facility is owned by the electric power supplier or under contract to the electric power supplier as of the effective date of this rule. [Emphasis added.]

Due to the passage of time and the Commission's preference to separate facility registration proceedings from REPS compliance plan/IRP proceedings, the Commission believes that the underlined language is no longer needed and will delete it, as shown in Appendix A.

Issue 9: Renewable Energy Facilities Must Register With The Commission

NCSEA suggests amending Rule R8-66(b) as follows:

> All relevant renewable energy facilities shall be registered prior to their participation in a statewide renewable energy certificate tracking system (NC-RETS). ~~the electric power supplier filing its REPS compliance report pursuant to Rule R8-67(c).~~

In light of the Commission's January 27, 2010 proposal to adopt rules regarding a North Carolina REC tracking system, the Commission believes NCSEA's proposal is helpful, but will change it slightly, as shown in Appendix A, to clarify that a renewable energy facility cannot have RECs issued for its output via NC-RETS until it has first registered with the Commission:

> All relevant renewable energy facilities shall be registered prior to their having RECs issued in the North Carolina Renewable Energy Tracking System (NC-RETS) pursuant to Rule R8-67(h).

Issue 10: Requirements For Registering A Renewable Energy Facility With The Commission[4]

Duke proposes extensive revisions to subsection (b) of Rule R8-66, including a reduction in the amount of information to be provided by registrants. Duke contends that the registration process is overly burdensome and requires registrants to provide more information than is necessary. The Public Staff states that, while some information required by the Rule might not be needed, in general, the information enables the

[4] Unless stated otherwise, in this Order, "renewable energy facility" is intended to include "new renewable energy facilities."

Commission to identify and locate a facility when it becomes the subject of controversy, or when the Commission desires to send a representative to inspect its operating equipment or review its books and records. The Public Staff agrees with Duke that subdivisions (1) and (2) should specifically identify the information to be provided, rather than cross-referencing Rule R8-64 and the federal Form EIA-923. Renewable power producers find it burdensome to look up unfamiliar rules and forms and identify the data required. This is especially true of small facilities that do not file federal Form EIA-923.

The Commission notes that, in initially adopting Rule R8-66, it required for registration only a subset of the information required by an applicant for a CPCN. The Commission is concerned that some of Duke's proposed filing requirement deletions could hinder the Commission's ability to "[e]nsure that the owner and operator of each renewable energy facility that delivers electric power to an electric power supplier is in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment and conservation of natural resources," as required by G.S. 62-133.8(i)(5). Specifically, in reviewing registration applications, the Commission has found it helpful to have information regarding ownership of a facility's site (versus the facility itself), environmental permits, and the facility's exact location. The Commission believes the public could find this information helpful as well. It has been the Commission's experience, however, that receiving actual copies of all permits obtained by wind farms, which often are permitted one turbine at a time, is not necessary. Several such facilities have requested and received waivers of the current Rule such that, instead of providing copies of all permits, they instead provided a complete set of permits for one generator and an attestation that all of its permits are available for inspection if necessary. The Commission will modify the Rule for wind farms consistent with the waivers it has granted. That is, the Commission will require wind facilities with multiple turbines, where each turbine is licensed separately, to provide copies of such approvals for one turbine of each type installed at the facility, and attest that approvals for all of the turbines at the facility are available for inspection. In addition, rather than requiring applicants who have had a registration application(s) approved in the past to file copies of permits as they are acquired, the Commission will amend the Rule to require only that the facility owner notify the Commission when a permit has been acquired or revoked. The Commission will also eliminate the cross-references to requirements in Rule R8-64 and the federal Form EIA-923 and instead specify all of the registration filing requirements directly in Rule R8-66(b). Accordingly, the Commission will modify Rule R8-66(b)(1) and (2), as well as create a new Rule R8-66(h), as shown in Appendix A.

Issue 11: Renewable Energy Facilities To Provide Electronic Mailing Address

The Commission will amend Rule R8-66(b)(1)(i) to require renewable energy facility owners to include an electronic mailing address with their registration applications, consistent with the Commission's March 11, 2010 Order in Docket No. M-100, Sub 134, in order to facilitate the electronic transmission of Commission orders. The Commission will also amend Rule R8-66(b)(1)(ii) to require the

owner's agent to provide a business telephone number and electronic mailing address. These changes are shown in Appendix A.

Issue 12: Owners Of Renewable Energy Facilities To Include Information Regarding Metering And REC Tracking System With Registration

The Commission believes it will help ensure that a facility's RECs are properly issued if applicants provide information regarding the facility's metering and participation in a REC tracking system. Therefore, the Commission will amend Rule R8-66(b)(1) as follows to require the facility owner to provide information regarding what entity does (or will) read the facility's energy production meter(s), and whether the facility participates in a REC tracking system, and if so, which one:

> (ix) The name of the entity that does (or will) read the facility's energy production meter(s) for the purpose of renewable energy certificate issuance; and
> (x) Whether the facility participates in a REC tracking system, and if so, which one. If the facility does not currently participate in a REC tracking system, which tracking system the owner anticipates will be used for the purpose of REC issuance.

Issue 13: Application Form For Registering Renewable Energy Facilities

Duke proposes development of a standard registration form for registrants; the Public Staff and Dominion agree that there should be a standard registration form. The Public Staff reviewed the draft form attached to Duke's comments and believes it is reasonable in format, except that it eliminates some information that the Public Staff prefers be retained. The Commission notes that registrants from time to time have informally suggested that the Commission provide an application form. Therefore, the Commission will adopt such a form that conforms with Rule R8-66, as amended by this Order. That form is attached to this Order near the end of Appendix A.

Issue 14: Annual Recertification Of Renewable Energy Facilities

Current Rule R8-66(b) requires that an owner of a renewable energy facility annually update its registration with the Commission by (1) filing schedules from the federal Form EIA-923; (2) certifying that the facility remains in substantial compliance with all federal and state laws, regulations and rules for the protection of the environment and the protection of natural resources; (3) certifying that the facility continues to be operated as a renewable energy facility; (4) certifying that the owner has not sold the same RECs to more than one party; and (5) certifying that the owner continues to make its books and records available for audit by the Public Staff.

Duke and ElectriCities propose the elimination of the annual recertification requirement for renewable energy facilities, and in reply comments, Dominion and PEC agree. ElectriCities, for example, argues that "the annual submittals . . . are not

necessary considering that renewable energy certificates (RECs) sold in North Carolina will be verified and validated through their registration with the upcoming North Carolina REC Tracking System . . . and . . . the annual reporting of such information has generally been viewed by out-of-State renewable energy facilities . . . as an unwelcome and unnecessary burden."

NCSEA proposes to add the following new subsection (f) to Rule R8-66, which would simplify the recertification requirements and make it clear that they are due annually on April 1:

> (f) No later than April 1st of each year following initial registration, the owner of the renewable energy facility or an individual duly authorized to act on behalf of the owner shall certify through NC-RETS that all information provided within the registration statement remains true and accurate.

Dominion recommends that out-of-state renewable energy facilities that earn RECs to be used for REPS compliance should only be required to file registration information for the year in which its RECs were purchased by a North Carolina electric power supplier, "rather than re-filing every year regardless of whether any RECs are purchased by the utility during that year. Furthermore, the supplier of any RECs banked by the purchaser and carried over to the next year should not be required to re-file the registration in that following year unless new RECs are also purchased."

The Public Staff believes that the annual recertification requirement should be retained for all renewable energy facilities, including those in the categories cited by Dominion, stating that the primary purpose of recertification is to remind a registrant that it must comply with all applicable laws and regulations for environmental protection; that it must generate its power from renewable sources; that it must not remarket or resell RECs that have previously been sold; and that it must consent to auditing by the Public Staff and provide access to its books and records and its operating facility to the Commission and the Public Staff. Because some renewable energy facilities are relatively small businesses, lacking the resources to consult routinely with legal counsel, the Public Staff believes that both the registrant and the Commission can benefit from this periodic reminder and acknowledgement of the registrant's legal duties.

The Commission believes that the annual recertification of renewable energy facilities assists in maintaining the integrity of North Carolina's portfolio standard. However, the Commission agrees it is possible to structure this recertification in a manner that is less burdensome. Accordingly, those facilities that participate in NC-RETS will be able to complete their annual recertifications online as suggested by NCSEA. However, because not all renewable energy facilities will be account holders in

NC-RETS, the Commission will not adopt the language proposed by NCSEA. Instead, the Commission will add the following provision to Rule R8-66(b):

> (7) Renewable energy facilities and new renewable energy facilities that have RECs issued in NC-RETS shall provide their annual certification electronically via NC-RETS. Annual certifications are due April 1 each year.

The Commission notes that, under new Rule R8-66(h), a renewable energy facility that no longer wishes to participate in NC-RETS or sell RECs to an electric power supplier for REPS compliance may motion the Commission of that fact and have its registration prospectively withdrawn. (See Issue 24.) Therefore, the Commission will decline to adopt the provisions proposed by Dominion.

Issue 15: Whether Renewable Energy Facility Owners Must Provide Federal Form EIA-923

Rule R8-66(b)(2) currently provides that renewable energy facilities that are required to file Federal Form EIA-923 with the Energy Information Administration of the U.S. Department of Energy shall include portions of that form with both its initial registration as well as its annual recertification filings with the Commission. This Rule further provides that the owner of a facility that is not required to file federal Form EIA-923 must nevertheless file the information required by Schedules 1, 5, 6, and 9 of that form with its registration application and annually with the Commission.

NCSEA contends that either this requirement should be eliminated for facilities with 1 MW or less in capacity, or else the subdivision should be rewritten to specifically identify the information that is being required. The Public Staff agrees that the information to be provided by renewable energy facilities should be identified specifically, rather than by cross-reference to federal Form EIA-923 or Rule R8-64. The Public Staff also states that, if the Commission determines that all of the information currently required from federal Form EIA-923 is now available on the REC tracking system, NC-RETS, then it may be possible to delete the requirement that it also be filed annually in a written document. In its reply comments, Dominion disagrees with NCSEA, stating that all facilities "should be subject to the same rules." Dominion believes that "redundant filing requirements, including federal Form EIA-923, should be removed for all facilities." Similarly, PEC agrees that all requirements regarding federal Form EIA-923 should be deleted.

The Commission finds the information contained in Schedules 1, 5, 6 and 9 of federal Form EIA-923 to be helpful as it reviews renewable energy facility registrations and believes that the requirement to provide this information should be retained as part of the Commission's registration process. However, exact copies of the federal Form EIA-923 are not necessarily needed. In addition, once a facility has become operational and been registered with the Commission, and its RECs are being issued in a registry such as NC-RETS, it is no longer necessary for the facility to provide this data

during the annual recertification process. The energy production and fuel data required by and maintained within NC-RETS (or another registry) should suffice. Therefore, the Commission will continue to require this information from facility owners who seek to register their facilities as renewable energy facilities or new renewable energy facilities. The Commission will amend Rule R8-66(b)(1), as shown in Appendix A, to (1) specify the information required of new applicants in both the Rule and in the application form provided near the end of Appendix A to this Order; (2) eliminate the requirement that new applicants provide exact copies of the federal Form EIA-923 schedules; and (3) eliminate the requirement that the federal Form EIA-923 information be provided annually during re-certification.

Issue 16: Facilities Selling Environmental Attributes To The Voluntary Market Cannot Also Have RECs Issued In NC-RETS

The Commission notes that there may be some confusion as to whether an electric generator that uses renewable energy resources, but sells its RECs to NC GreenPower, can also register as a renewable energy facility, create RECs in NC-RETS, and sell them to an electric power supplier for REPS compliance. In fact, a REC associated with one megawatt-hour of generation by a renewable energy resource may only be used for a single purpose, and may not be sold to both NC GreenPower for retirement in the voluntary REC market and to any other entity, including to an electric power supplier to meet its REPS obligation. The Commission, therefore, will amend Rule R8-66(b)(5), renumbered as necessary, as follows:

> ~~(5)~~ (4) The owner of each renewable energy facility shall further certify in its registration statement and annually thereafter that any renewable energy certificates (whether or not bundled with electric power) sold to an electric power supplier to comply with G.S. 62-133.8 have not, and will not, be remarketed or otherwise resold for any other purpose, including another renewable energy portfolio standard or voluntary purchase of renewable energy certificates in North Carolina (such as NC GreenPower) or any other state or country, and that the electric power associated with the certificates will not be offered or sold with any representation that the power is bundled with renewable energy certificates.

Issue 17: Requirement To Report REC Sales

Dominion proposes to delete the final sentence of subdivision (b)(5), which provides that a renewable energy facility, as part of its annual recertification, "shall . . . report whether it sold any renewable energy certificates (whether or not bundled with electric power) during the prior year and, if so, how many and to whom." Dominion states that a merchant facility and the REC purchaser would deem this to be competitive information, and requiring the facility to disclose this information would discourage the sale of RECs. ElectriCities agrees with Dominion that the information "regarding sales and the identification of the purchasers is proprietary." Dominion does

not believe that this part of the Rule is necessary to ensure that the same RECs have not been sold multiple times.

The Public Staff objects to Dominion's proposal, stating that the information required by this provision of the Rule can be useful in investigating charges that a renewable energy facility has sold the same RECs to multiple purchasers. The Public Staff acknowledges that information on REC sales is available on NC-RETS, but states that NC-RETS is designed to deal exclusively with North Carolina transactions, whereas the information required in the annual recertification encompasses all of a facility's REC sales, whether inside or outside the State.

The Commission notes that all renewable energy facilities and new renewable energy facilities are required to participate in NC-RETS or another registry. NC-RETS and other registries were established to ensure that a specific REC can be owned by only one entity at a time. The registries do this by (1) requiring participating facilities to belong to only one registry, where one REC (with narrow exceptions) is issued for each megawatt-hour of qualifying energy production, and (2) managing and tracking the process of transferring RECs from one owner to another, including across registries. The Commission agrees with Dominion that a renewable energy facility, especially one located outside of North Carolina, might balk at supplying a list of all of its REC purchasers and their purchase amounts, especially because many of the purchasers could be entities not located in North Carolina or subject to this State's REPS obligation. A facility's customers might forbid it from releasing that information. In addition, the Public Staff will have the ability to audit all RECs issued in NC-RETS. For RECs imported from another registry, the Public Staff should be able to confer with the originating registry, if necessary. Each renewable energy facility that has registered with the Commission, regardless of its location, has agreed to allow the Public Staff to audit its books and records, and only RECs produced by such facilities are eligible to count toward REPS compliance. This general audit authority should be sufficient to assure the integrity of RECs used for compliance with North Carolina's REPS. The Commission's original rule was developed outside the context of a REC tracking system. With the advent of NC-RETS, the Commission believes the requirement is no longer needed and could, in fact, discourage the sale of RECs to North Carolina electric power suppliers. The Commission, therefore, will eliminate the last sentence of subdivision (b)(4) (previously numbered (b)(5)), thereby no longer requiring a renewable energy facility owner to annually report whether it sold any RECs during the prior year and, if so, how many and to whom. This change is shown in Appendix A.

Issue 18: On-Going Authority To Audit Renewable Energy Facilities

Dominion also proposes to delete Rule R8-66(b)(6), which provides:

> The owner of each renewable energy facility shall certify in its registration statement and annually thereafter that it consents to the auditing of its books and records by the Public Staff insofar as those records relate to transactions with North Carolina electric power suppliers, and agrees to

provide the Public Staff and the Commission with access to its books and records, wherever they are located, and to the facility.

Dominion argues that "REC suppliers may be unwilling to assume such a broad liability or submit to these burdensome requirements," thereby impeding the REC procurement process. Dominion believes that participation in a REC tracking system should be sufficient.

The Public Staff disagrees, stating that this subdivision should be retained. The Public Staff believes it might be essential for its staff to inspect a facility and examine its books and records in order to resolve issues such as the price paid by a utility for RECs from a particular facility, whether the facility is in fact using a renewable energy resource, or whether the facility has sold the same RECs to multiple purchasers.

Since any potential audit of the owner of a renewable energy facility would be limited to transactions with North Carolina electric power suppliers, the Commission agrees with the Public Staff. The Commission, therefore, declines to adopt Dominion's proposal to eliminate Rule R8-66(b)(6). However, the Commission will change the (6) to (5) to accommodate the required re-numbering as a result of the Commission's deletion of Rule R8-66(b)(2).

Issue 19: Copies Of Registration Submittals

Rule R8-66(b)(9) requires a facility owner to file 30 copies of its registration statement. The Commission finds that 15 copies are sufficient, and will revise the Rule accordingly, as shown in Appendix A.

Issue 20: Deadline For REC Issuance

Rule R8-66(c) states:

> Each re-seller of renewable energy certificates derived from a renewable energy facility, including a facility that is located outside of the State of North Carolina, shall ensure that the owner of the renewable energy facility registers with the Commission prior to the sale of the certificates by the re-seller to an electric power supplier to comply with G.S. 62-133.8(b), (c), (d), (e) and (f), except that the filing requirements in subsection (b) [initial registration and annual recertification requirements] of this Rule shall apply only to information for the year(s) corresponding to the year(s) in which the certificates to be sold were earned.

ElectriCities proposes to rewrite Rule R8-66(c) as follows:

> (c) In order for the renewable energy certificates derived from a renewable energy facility, including a facility that is located outside of the State of North Carolina, to comply with G.S. 62-133.8(b), (c), (d), (e) and

(f), the renewable energy facility that generated such renewable energy certificates must be registered pursuant to (b) above during the year(s) in which the certificates were earned or as otherwise provided in this subsection (c). The owner of a renewable energy facility may register its renewable energy facility in any year after the year(s) in which renewable energy certificates were earned such that such certificates comply with G.S. 62-133.8(b), (c), (d), (e) and (f), by requesting in its registration application that it be registered in the year in which the registration statement is filed as well as for the year(s) in which such certificates were earned, and including in its registration statement, not only current information and submittals, but also, the required information or submittals for the year(s) corresponding to the year(s) in which the certificates were earned.

ElectriCities maintains that its proposed changes to subsection (c) are designed to clarify that RECs that are earned by a then unregistered renewable energy facility can be used for compliance by an electric power supplier if the renewable energy facility seeks registration and includes as part of the registration application satisfactory information relating to the year in which the RECs were earned, as well as the current year.

The Public Staff raises issues regarding ElectriCities' proposal. It states that ElectriCities' proposed changes would eliminate the existing requirement that a facility be registered before its RECs are resold. Moreover, the Public Staff is concerned that ElectriCities did not also propose to modify the third sentence of subsection (b), under which a facility must be registered before its RECs are referenced in an electric power supplier's compliance report; nor did it propose to modify the requirement of Rule R8-67(c) that "any renewable energy certificates to be carried forward," as well as any RECs to be retired for REPS compliance, be identified in the annual compliance report. The Public Staff asserts that, if ElectriCities' rewrite of Rule R8-66(c) were adopted, it would be in tension with these other provisions. The Public Staff is concerned that, if ElectriCities' proposal is approved, a utility in the future may purchase a quantity of RECs dating back to the initial operation of a facility that has been operating for several years but has only recently registered, and may seek to recover the incremental costs of these RECs from ratepayers through the REPS Experience Modification Factor (EMF) rider. It might be difficult to verify the legitimacy of RECs whose underlying energy was produced such a long time previously.

The Public Staff states that, when NC-RETS begins operation, it will be important to enter RECs into the system as soon as possible after they are earned. Until a renewable energy facility is registered, however, it cannot establish an NC-RETS account, and its RECs cannot be entered into the tracking system. The Public Staff believes renewable energy facilities should register promptly and record their RECs in NC-RETS without delay, and that ElectriCities is asking the Commission to do exactly the opposite of what is needed. In addition, the Public Staff has taken the position that if a facility is not registered, payments to that facility may not be recovered by a utility

through its REPS rider. The Public Staff states that it is not aware that any utility has taken issue with its position in this regard.

As an alternative to ElectriCities' proposal, the Public Staff recommends that the Commission modify Rule R8-66(c) as follows:

> (c) The owner of each renewable energy facility required to register under subsection (b) of this Rule shall register prior to selling or otherwise transferring any renewable energy certificates that it has earned to any electric power supplier. In addition, eEach re-seller of renewable energy certificates derived from a renewable energy facility, including a facility that is located outside of the State of North Carolina, shall ensure that the owner of the renewable energy facility registers with the Commission prior to the sale of the certificates by the re-seller to an electric power supplier to comply with G.S. 62-133.8(b), (c), (d), (e) and (f), except that the filing requirements in subsection (b) of this Rule shall apply only to information for the year(s) corresponding to the year(s) in which the certificates to be sold were earned. [5]

The practical effect of the currently existing requirements is that RECs earned by a renewable energy facility prior to registration may be used for REPS compliance; however, the facility must be registered before either (a) any RECs that it has sold to a re-seller can be resold to an electric power supplier, or (b) any RECs that it has sold can be included in an electric power supplier's compliance report, whether for the purpose of using them for REPS compliance or for the purpose of banking them for future use. Thus, if a facility earns RECs in January 2011 and immediately sells them to Duke, Duke will need to make reference to them in its compliance report for 2011, which, under the existing rules, is due in February 2012. Accordingly, the facility must be registered by February 2012. If, however, the RECs earned in January 2011 are sold to some purchaser who proceeds to resell them a few days later, then the facility must register by the time the resale occurs.

The Commission notes that the current rules were developed before it had established the functional requirements for NC-RETS and early in the Commission's experience with REC registries around the country. The Commission was concerned that RECs emanating from renewable energy facilities in North Carolina would be sold and re-sold prior to the existence of a third-party tracking system. The tracking system now in place will help ensure the legitimacy of each REC and also help ensure that each facility from which RECs emanate is eligible to create RECs for REPS compliance. The Commission believes that its rules should encourage the issuance of RECs in a

[5] The term "electric power supplier" is defined in G.S. 62-133.8(a)(3) to include only entities that sell power to North Carolina retail customers. Thus, the proposed language would not require a renewable energy facility to register in North Carolina before selling its RECs to a utility whose retail customers are all outside the State, or to any entity that is not a North Carolina electric power supplier. Before such a purchaser could resell the RECs to a North Carolina electric power supplier for REPS compliance purposes, however, it would have to ensure that the facility is registered.

tracking system as soon as possible following the production of the energy associated with the RECs. The Commission agrees with the Public Staff that renewable energy facilities should register promptly and record their meter data for REC issuance in NC-RETS (or another registry) without delay. This will enhance the integrity of RECs issued by NC-RETS and ease the Public Staff's auditing responsibilities. Therefore, beginning January 1, 2011, renewable energy facilities registered in NC-RETS will only be allowed to enter historic energy production data for REC issuance that goes back up to two years from the then current date. Renewable energy facilities participating in other registries will have to abide by their registries' rules regarding the entering of historic metering data for REC issuance.[6] (As provided in Rule R8-67(d)(1), RECs associated with energy generated prior to January 1, 2008, cannot be used for compliance with the North Carolina REPS.) The Commission will add this provision to the new Rule R8-67(h)(4), as shown in Appendix A. The Commission will decline to adopt the provision proposed by ElectriCities for the reasons cited by the Public Staff. The Commission will also decline to adopt the alternative provision proposed by the Public Staff, believing other rules, including the new Rule R8-67(h)(4), make it unnecessary.

Issue 21: Option To Deny A Registration

Rule R8-66(e) currently allows the Commission to accept a registration or set the matter for hearing. The Commission notes that it might also have good cause to deny a registration without a hearing, and so it will add that procedural option to Rule R8-66(e), as shown in Appendix A.

Issue 22: Automatic Registration In NC-RETS

Rule R8-66(e) describes the timeline and process for Public Staff review and Commission approval of registration statements filed by owners of renewable energy facilities. ElectriCities proposes to add the following sentence to Rule R8-66(e): "Upon acceptance of its registration by the Commission hereunder, the facility shall automatically be registered under the North Carolina REC Tracking System."

The Public Staff does not believe that this language is practicable. The responsibility for creating an account in NC-RETS rests upon the owner of the facility, not the Commission. Furthermore, it is acceptable for facilities, especially those located outside of North Carolina that are already participating in a different tracking system, to decline to participate in NC-RETS. The Commission agrees with the Public Staff and, therefore, declines to adopt the language proposed by ElectriCities.

[6] The Commission acknowledges that there are renewable energy facilities located in North Carolina that are interconnected with Dominion and that participate in PJM's Generation Attribute Tracking System (GATS). It is not the Commission's intent to disrupt those situations or to preclude additional North Carolina generators from participating in GATS in the future, should they be interconnected with Dominion or participate in the PJM market.

Issue 23: Revocation Of Registration Of Renewable Energy Facility

Rule R8-66(f) describes the actions that may result in revocation of a renewable energy facility's registration. Duke proposes to add the following new subdivision (5) to Rule R8-66(f): "The Commission shall establish a generic docket to which all registration statement revocations shall be posted." The Public Staff agrees with Duke's proposal, but believes that it would also be helpful for the State's electric power suppliers and other interested parties to have available, in that same generic docket, a list of facilities that have failed to file their annual recertification by the April 1 deadline and thus are at risk of revocation. In addition, as a technical matter, the Public Staff notes that Duke's proposed language could most appropriately be designated as a new subsection (g), since the four existing subdivisions of subsection (f) all identify types of conduct that may result in revocation of registration. The Public Staff therefore recommends, as an alternative to Duke's proposal, that the following new subsection (g) be added to Rule R8-66:

> (g) The Commission shall establish a generic docket to which all registration statement revocations shall be posted. As soon as practicable after April 1 of each year, the Commission shall also post in that docket a list of all renewable energy facilities that have failed to make the annual filing required by Rule R8-66(b)(10).

The Commission agrees with the Public Staff and Duke that it would be helpful for electric power suppliers to be able to easily track which facilities are no longer able to create valid RECs. However, rather than establish a system that would require submissions, pleadings and orders relative to revocation processes to be captured in two dockets (the facility's docket and a generic revocation docket), the Commission will require NC-RETS to (1) post on its website a list of facilities whose registrations have been revoked by the Commission, and (2) provide an automated electronic mail notification to NC-RETS participants and other individuals on the NC-RETS distribution list whenever a facility is added to the revocation list.

The Commission notes that its rules currently do not address the consequences to the owner of a renewable energy facility that fails to provide its annual recertification. The Commission, will, therefore, amend Rule R8-66(f) as shown in Appendix A to include failure to provide the annual recertifications required in Rule R8-66(b) among the actions that may result in revocation of registration by the Commission.

Issue 24: Material Changes At Renewable Energy Facilities

The Commission further notes that, with the advent of NC-RETS, it is necessary for the Commission and, by extension, the NC-RETS Administrator, to be informed as soon as possible as to (1) the change in ownership of a renewable energy facility; and (2) a change in kinds of fuel consumed by a renewable energy facility. This is necessary to ensure that RECs emanating from energy produced by the facility are issued to the legal owner of the facility and to make sure that each REC's designation (e.g., poultry

waste versus biomass) is accurate. Therefore, the Commission will add a further provision, the new Rule R8-66(h) as shown in Appendix A, requiring owners of renewable energy facilities to inform the Commission and the appropriate REC tracking system within 15 days of any material changes in their status, such as an ownership change, fuel type change, or permit revocation. The Commission will also require a renewable energy facility owner to notify the Commission if it wants to withdraw its registration.

Amendments to Rule R8-67. Renewable Energy and Energy Efficiency Portfolio Standard (REPS)

Rule R8-67 creates the processes and requirements for each electric power supplier to demonstrate its compliance with REPS. It establishes the requirement that electric power suppliers shall annually file both a REPS compliance plan and a REPS compliance report. It establishes the process for electric public utilities to seek cost recovery for REPS incremental costs in a rider. This Rule also establishes requirements for metering at renewable energy facilities. On January 27, 2010, the Commission issued an Order Proposing Rules and Requesting Comments in Docket No. E-100, Sub 121, in order to add provisions to Rule R8-67 regarding establishment of a REC tracking system.

Issue 25: Definition Of Avoided Cost Rates

Rule R8-67(a)(2) provides a definition of "avoided cost rates" that is a key determinant of the REPS incremental costs that can be recovered in the REPS Rider. Duke proposes to change Rule R8-67(a)(2), asserting that the definition of "avoided cost rates" should be modified in order to allow greater flexibility and ensure that the definition reflects an electric power supplier's actual avoided costs at the time of contract execution. To accomplish this, Duke proposes to revise the first two sentences of the definition as follows:

> "Avoided cost rates" mean an electric power supplier's most recently approved or established avoided cost rates in North Carolina, as of the date the contract is executed, for purchases of electricity from qualifying facilities pursuant to the provisions of Section 210 of the Public Utility Regulatory Policies Act of 1978, provided, however, when determined by the Commission to be in the public interest, the avoided cost shall be a good faith estimate of the electric power supplier's avoided cost, levelized over the duration of the contract, determined as of the date the contract is executed. Unless the Commission determines otherwise, ~~I~~if the Commission has approved an avoided cost rate for the electric power supplier for the year when the contract is executed, applicable to contracts of the same nature and duration as the contract between the electric power supplier and the seller, that rate shall be used as the avoided cost.

Duke states that this revision would "avoid the impact of regulatory lag on avoided cost rates and allow for the use of updated estimates in appropriate situations when circumstances have changed since the Electric Power Supplier's most recent avoided cost rates were approved by the Commission."

Dominion and the Public Staff agree in concept with Duke's proposed change, which would give the Commission discretion in appropriate circumstances to adopt a method of calculating avoided costs that is different from the exact procedure specified in the Rule, noting that the Commission did just that in PEC's 2009 REPS rider proceeding.[7] In order to maximize the Commission's discretion and ensure that it may be exercised on a case-by-case basis, the Public Staff recommends certain modifications to Duke's proposed language. The Public Staff proposes that subdivision (a)(2) be revised as follows:

> (2) For purposes of determining an electric power supplier's avoided costs, "~~A~~avoided cost rates" mean an electric power supplier's most recently approved or established avoided cost rates in ~~North Carolina~~this State, as of the date the contract is executed, for purchases of electricity from qualifying facilities pursuant to ~~the provisions of~~ Section 210 of the Public Utility Regulatory Policies Act of 1978. If the Commission has approved an avoided cost rate for the electric power supplier for the year when the contract is executed, applicable to contracts of the same nature and duration as the contract between the electric power supplier and the seller, that rate shall be used as the avoided cost. Therefore, for example, for a contract by an electric public utility with a term of 15 years, the avoided cost rate applicable to ~~such a~~that contract would be the comparable, Commission-approved, 15-year, long-term, levelized rate in effect at the time the contract was executed. In all other cases, the avoided cost shall be a good faith estimate of the electric power supplier's avoided cost, levelized over the duration of the contract, determined as of the date the contract is executed,~~; provided~~, ~~however, that development of such estimates of avoided cost by an electric public utility shall include~~ taking into consideration ~~of~~ the avoided cost rates then in effect as established by the Commission. In any event, when found by the Commission to be appropriate and in the public interest, a good faith estimate of an electric public utility's avoided cost, levelized over the duration of the contract, determined as of the date the contract is executed, may be used in a particular REPS cost recovery proceeding. Determinations of avoided costs, including estimates thereof, shall be subject to continuing Commission oversight and, if necessary, modification should circumstances so require.

[7] In Docket No. E-2, Sub 948, the Public Staff supported PEC's use of current year (2009), rather than PEC's approved 2007 avoided cost rates, because PEC's approved rates "were no longer reflective of the Company's avoided costs." The Order stated that "The Commission finds the reasoning of PEC and the Public Staff persuasive and approves the application of PEC's avoided cost rates for the purposes of calculating PEC's REPS rates." (Page 14 of the November 12, 2009 Order.)

NCSEA opposes Duke's proposed change, but did not provide a reason, other than arguing that the Commission should reject any "substantive changes" as being "beyond the scope of this proceeding."

The Commission agrees with the Public Staff that it has allowed such an alternative calculation of avoided cost rates in the past, and finds that the Rule should be modified to allow such a practice in future proceedings. The Commission shall, therefore, adopt the Public Staff's proposed revisions to Rule R8-67(a)(2), as shown in Appendix A.

Issue 26: Calculation Of Number Of Customer Accounts

Rule R8-67(a)(4) provides a definition of "Year-end number of customer accounts." The number of accounts is important because it is used to determine the amount of money an electric power supplier can spend on REPS compliance before hitting the per-customer cost caps established in G.S. 62-133.8(h)(4). Duke proposes to revise the definition of "year-end number of customer accounts" in order to ensure that it is consistent with the decisions issued by the Commission in the 2009 REPS rider proceedings for Duke and PEC. The Public Staff and Dominion agree with Duke's proposed change, which is as follows:

> (4) "Year-end number of customer accounts" means the number of accounts within each customer class as of December 31 for a given calendar year ~~and, unless~~ determined in a manner approved ~~otherwise~~by the Commission pursuant to subsection (c)(4).~~determined in the same manner as that information is reported to the Energy Information Administration (EIA), United States Department of Energy, for annual electric sales and revenues reporting~~.

NCSEA opposes Duke's proposal, stating "while perhaps intended as clarifications, these changes appear to have a substantive component and should not be made in the context of a proceeding designed to deal with process." NCSEA did not provide a substantive basis for opposing Duke's proposal, and several parties support it.

The Commission agrees with Duke that the proposed change is consistent with the practice employed by the Commission. The determination of number of customer accounts as reported to the EIA has been the starting point in each proceeding before the Commission. In Rule R8-67(c)(4) the Commission, however, allowed electric power suppliers to propose an alternative method of determining number of customer accounts. The Commission will, therefore, adopt the change to Rule R8-67(a)(4) proposed by Duke and as shown in Appendix A.

Issue 27: Minor Editorial Changes

Rule R8-67(b) specifies that electric power suppliers shall annually file with the Commission a REPS compliance plan covering the current and subsequent two calendar years. For an electric power supplier subject to Rule R8-60 [integrated resource planning], the REPS compliance plan shall be filed and reviewed with its integrated resource plan.

ElectriCities proposes a minor editorial change to subdivision (b)(1) to clarify that the REPS compliance plan shall cover "the calendar year in which the plan is filed …". Since no party objected to the change, and because the change is helpful, the Commission finds good cause to adopt the unopposed change proposed by ElectriCities and as shown in Appendix A. In addition, the Commission will amend Rule R8-67(b)(1) to allow for the filing of REPS compliance plans by a utility compliance aggregator. (See Issue 37.)

Issue 28: Timing Of REPS Compliance Plans And REPS Compliance Reports

Rule R8-67(b)(2) requires each electric power supplier to file its REPS compliance plan by September 1 of each year. Rule R8-67(b)(3) requires each electric power supplier that is subject to the Integrated Resource Planning (IRP) Rule (R8-60) to file its REPS compliance plan with its IRP, which is due September 1 each year. Commission Rule R8-67(c)(2) requires each electric public utility to file its annual REPS compliance report at least 30 days before it files the information required for its annual fuel proceeding. Rule R8-67(c)(3) requires each electric membership corporation (EMC) and municipal electric supplier to file its REPS compliance report by September 1 each year. Finally, Rule R8-67(e)(1) provides that an annual rider hearing to review REPS costs for electric public utilities "will be scheduled as soon as practicable after" each electric public utility's annual fuel proceeding hearing.[8]

NCSEA proposes extensive changes to subsection (b) of Rule R8-67, with the intention of separating the review of REPS compliance plans from the IRP process. Under NCSEA's proposal, all electric power suppliers would be required to file their REPS compliance plans by March 1 rather than the current September 1. The Commission would complete its review of the REPS compliance plans prior to the September 1 filing date for IRPs, and each electric power supplier required to file an IRP – that is, the electric public utilities and EMCs – would include its approved REPS compliance plan in its IRP. NCSEA expresses frustration with the slow pace of IRP proceedings, and especially with the fact that any delay in reviewing a supplier's IRP carries with it a corresponding delay in review of its REPS compliance plan. NCSEA notes, for example, that the REPS compliance plans filed in 2008 were for the period

[8] Pursuant to Rule R8-55, annual fuel hearings are staggered throughout the year, with Duke's hearing scheduled in May, PEC's hearing scheduled in August, and Dominion's hearing scheduled in November.

2008-10; it is now 2010, the final year covered by the plans, and NCSEA states that the Commission's review of these plans may not be completed until late this year.[9]

PEC opposes NCSEA's proposal to require electric power suppliers to file REPS compliance plans by March 1 and to file approved REPS compliance plans with IRPs by September 1 each year. PEC states that NCSEA's proposed timeline is "unworkable." Similarly, NCEMC and ElectriCities oppose a March 1 REPS compliance plan filing date, with ElectriCities stating that:

> . . . neither of North Carolina Eastern Municipal Power Agency or North Carolina Municipal Power Agency Number 1 . . . , 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 report year . . . . As a result, the Power Agencies would be unable to file . . . before July . . . .

While the Public Staff sympathizes with NCSEA's frustration, it does not support separating the review of the REPS compliance plan from the review of the IRP. Instead, the Public Staff suggests that the problem might be addressed by requiring the REPS compliance plan to address the three, rather than two, coming years, while also containing an update on the current year. Under this approach, the REPS compliance plan filed in September 2010 would not cover the years 2010-12, as the Commission's rules currently provide; instead, it would cover the period 2011-13, but it would also include an update on the electric power supplier's plans for compliance in 2010.

The Public Staff states that the primary reason for linking the REPS compliance plan with the IRP is that these two documents are closely intertwined. If a utility's resource planning process is truly integrated, it must encompass planning for renewable generation resources as well as traditional nonrenewable resources. More specifically, subdivision (i)(7) of Rule R8-60, the rule that governs IRPs, provides that a utility must include an assessment of alternative supply-side energy resources in its IRP report. Rule R8-60(e) states that "[a]lternative supply-side energy resources include, but are not limited to, hydro, wind, geothermal, solar thermal, solar photovoltaic, municipal solid waste, fuel cells, and biomass." The Public Staff believes that this assessment is closely related to an electric power supplier's plan for REPS compliance.

The Public Staff argues further that another reason why the review of the REPS compliance plan and the IRP are closely linked is that both of these documents serve the same purpose. The great majority of proceedings before the Commission are designed to resolve substantive issues. The annual IRP proceeding, however, is different. In State ex rel. Utilities Commission v. North Carolina Electric Membership

[9] The hearings in Docket No. E-100, Subs 118 and 124 (the 2008 and 2009 IRP dockets) were held in March of 2010. On May 11, 2010, the Public Staff requested an extension of time to file proposed orders and briefs, which the Commission granted. Proposed orders and briefs were filed June 11, 2010, and the Commission's order is pending.

Corp., 105 N.C. App. 136, 143-44, 412 S.E.2d 166, 170 (1992), the Court of Appeals stated:

> General Statutes section 62-110.1(c) makes it clear that the only purpose of a least-cost planning proceeding is to assist the Utilities Commission in 'develop[ing], publiciz[ing], and keep[ing] current an analysis of the long-range needs for expansion of facilities for the generation of electricity in North Carolina.' Nowhere is it suggested in section 62-110.1(c) that the purpose of the proceeding is to issue directives which fundamentally alter a given utility's operations. Rather, we believe that the least-cost planning proceeding should bear a much closer resemblance to a legislative hearing, wherein a legislative committee gathers facts and opinions so that informed decisions may be made at a later time.

The Public Staff notes that, if an issue is identified in an IRP proceeding that requires a substantive decision, such as issuance or cancellation of a CPCN to construct a generating facility, the Commission addresses that issue in a separate docket. Similarly, the Commission's REPS compliance plan rule, Rule R8-67(b)(3), states that "[a]pproval of the REPS compliance plan . . . shall not constitute an approval of the recovery of costs associated with REPS compliance or a determination that the electric power supplier has complied with GS 62-133.8(b), (c), (d), (e), and (f)." Because of the unique nature of the REPS compliance plan and the IRP, the Public Staff believes it is appropriate that the REPS compliance plan be included in the IRP and be reviewed together with the IRP.

Duke, like NCSEA, proposes major changes in the schedule for reviewing an electric power supplier's annual REPS compliance plan, its REPS compliance report, its IRP, and, in the case of an electric public utility, its REPS rider filing. Under Duke's proposal to amend Rule R8-67(c)(2), a utility's REPS compliance plan, its REPS compliance report, and its REPS rider application would all be due on the same date as the information required for an electric public utility's annual fuel proceeding – for Duke, in early March -- and the utilities' IRPs would continue to be filed in September. Duke argues that the current processes "result in three (3) separate REPS filings with two (2) distinct evaluation and review periods." Duke states that "it makes sense for the Compliance Report to be submitted for review contemporaneously with the application for REPS cost recovery. In this way, a single set of direct testimony can be submitted in support of a utility's Compliance Report and application for cost recovery under REPS." Duke argues that REPS compliance plan filings should coincide with the REPS compliance report and cost recovery filings "so that all aspects of the REPS compliance process can be reviewed and evaluated in a consolidated fashion." PEC supports Duke's proposal to consolidate the REPS compliance plan, report, and cost recovery filings.

The Public Staff agrees with Duke that it is appropriate for a utility to file its REPS compliance report at the same time it files its REPS rider application, rather than

30 days in advance of the rider application as the Rule currently requires. However, as discussed above, the Public Staff believes that the REPS compliance plan should continue to be filed at the same time as, and should constitute a part of, the IRP.

Dominion proposes that it be allowed to file its annual REPS compliance report at the same time as it now files its REPS compliance plan and IRP, or, in the alternative, at the same time as it now files its REPS rider application. Similarly, PEC and NCEMC do not support NCSEA's proposal, with NCEMC arguing that the REPS compliance plan and IRP filings are "inextricably linked and mutually dependent."

NCSEA proposes that all electric power suppliers be required to file their REPS compliance reports on March 1. NCSEA states that its proposal would make more information available to interested parties so that they can develop a better understanding of the suppliers' compliance activities. NCSEA notes that it is not proposing to make corresponding changes in the schedule for hearings on compliance reports; it believes that the Commission should continue to review the utilities' reports in their REPS rider proceedings.

The Public Staff notes that the filing dates for Duke's REPS compliance report, and its REPS rider application, are currently very close to NCSEA's proposed March 1 deadline.[10] The Public Staff believes, however, that it is inadvisable for the REPS compliance reports of PEC and Dominion to be filed on March 1 and then sit on the shelf until the companies file their rider applications. According to the Public Staff, it is possible that between March 1 and the filing deadline for their rider applications, PEC and Dominion would become aware of information that enables them to file more accurate REPS compliance reports. As to whether the EMCs and municipalities should be required to file their REPS compliance reports on March 1, as NCSEA proposes, or on September 1, as Rule R8-67(c)(3) currently provides, the Public Staff believes that both deadlines are equally acceptable and encourages the Commission to adopt whichever deadline will promote scheduling efficiency and minimize backups and delays.

ElectriCities, on the other hand, states that neither the North Carolina Eastern Municipal Power Agency nor the North Carolina Municipal Power Agency Number 1, each of which files consolidated REPS compliance plans and reports on behalf of its members, will receive information concerning its members' retail sales for the prior year before May of each reporting year. As a result, the power agencies would be unable to file their REPS compliance reports before July of each year. Therefore, ElectriCities proposes that any change in the due date for the Power Agencies' filing their REPS compliance reports be no earlier than July 1. Similarly, NCEMC opposes NCSEA's proposal to require power suppliers to submit their REPS compliance reports on March 1.

[10] Rule R8-67(c)(2), as currently worded, actually requires Duke to file its compliance report in early February. However, the Commission authorized Duke to delay filing its 2009 report until early March 2010, and the Public Staff, in its comments in this proceeding, does not oppose Duke's request to make this change permanent.

Rule R8-67(c)(2) requires the REPS compliance reports to be filed in advance of the REPS rider application in order to allow more time for review by the Public Staff and others. For the reasons argued by the Public Staff, the Commission will amend Commission Rule R8-67(c)(2) as shown in Appendix A such that REPS compliance reports are filed concurrently with an electric public utility's REPS rider filing. The Commission continues to agree with NCEMC and the Public Staff that the REPS compliance plans and IRPs are inextricably linked and mutually dependent, and will, therefore, retain the requirement that REPS compliance plans be filed concurrently with IRPs. The Commission agrees with Duke that compliance reports should be filed the same day as the information needed for annual fuel proceedings, for electric public utilities. The Commission declines to adopt NCSEA's proposed March 1 deadline for the filing of REPS compliance reports and REPS compliance plans for the reasons stated by the electric power suppliers and the Public Staff.

Issue 29: EMC Compliance Plans Informational Only

Rule R8-67(b)(4) states that a REPS compliance plan filed by an electric power supplier that is not subject to the IRP Rule R8-60 "shall be for information only."

Duke proposes that REPS compliance plans filed by the State's EMCs should be informational only, as are the plans filed by municipalities. The Public Staff disagrees with Duke's proposal that the REPS compliance plans of the State's EMCs be considered "for information only." The Public Staff notes that the Commission's jurisdiction over EMCs is more extensive than its jurisdiction over municipalities. For example, EMCs are required to file IRPs while municipalities are not. The Public Staff asserts that the Commission's review of the EMCs' REPS compliance plans should not be subject to the same limitations as those that apply to municipalities.

The Commission agrees with the Public Staff that REPS compliance plans filed by EMCs should be reviewed and approved as part of the IRP process, and will, therefore, reject Duke's proposal to make EMC compliance plans informational only.

Issue 30: Proposal To Prohibit Redaction Of REC Contract Information

Rule R8-67(b)(1)(ii) requires each electric power supplier to include in its REPS compliance plan "a list of executed contracts to purchase renewable energy certificates (whether or not bundled with electric power), including type of renewable energy resource, expected MWh, and contract duration." NCSEA proposes to add language prohibiting an electric power supplier from redacting this list. NCSEA argues that renewable energy developers and investors need information regarding how many RECs are needed and what kind of RECs are needed. NCSEA states that "Duke redacted all of its megawatt-hour or REC information" from its REPS compliance plan in Docket No. E-100, Sub 118.

While the Public Staff expresses support for NCSEA's desire to make this information available to the public, the Public Staff nevertheless points out that electric power suppliers have a right to file their contract lists confidentially. PEC, ElectriCities, NCEMC, Dominion, and Duke oppose NCSEA's proposal, with Duke arguing that it does not streamline the Commission's rules "and would merely serve to benefit NCSEA's members at the expense of the utilities' respective customers." Duke asserts that "market information related to a utility's respective compliance position in the face of a statutory and regulatory mandate can significantly impact pricing," and "NCSEA's allegations regarding the relative lack of demand information in the marketplace are simply incorrect."

Further, Duke notes that commercial information regarding the cost estimates of new generation resources constitute a trade secret under G.S. 66-153 and thus warrant confidential treatment under G.S. 132-1.2.

The Commission notes that, in other proceedings, utilities have objected to filing REC data, asserting that it is subject to trade secret protection. The Commission does not believe it is appropriate to decide such a matter in a rulemaking proceeding, but rather in the context of a specific case with specific facts. The Commission will, therefore, decline to adopt NCSEA's proposed amendment to prohibit an electric power supplier from redacting information regarding REC contracts.

Issue 31: Electric Power Suppliers Must Register Renewable Energy Facilities Before Filing REPS Compliance Plans

Rule R8-67(b)(1)(ix) requires an electric power supplier to include in its annual REPS compliance plan:

> the electric power supplier's registration information and certified statements required by Rule R8-66, to the extent they have not already been filed with the Commission.

Duke proposes to delete Rule R8-67(b)(1)(ix), but did not provide any rationale for the deletion. The Commission notes that this provision was intended to address the situation in which an electric power supplier is also an owner of a renewable energy facility and to provide a deadline (the compliance plan filing date) by which such an electric power supplier must register the facility with the Commission. The Commission believes this requirement is still appropriate and will, therefore, not adopt Duke's proposal to delete it. The Commission will instead amend the provision so that it simply sets a deadline, the date when the electric power supplier files its REPS compliance plan, for an electric power supplier to also file registration statements for renewable energy facilities that it owns. The Commission will amend R8-67(b)(1)(ix) as show below and in Appendix A:

> (ix) ~~the electric power supplier's registration information and certified statements required by Rule R8-66,~~to the extent ~~they have~~ not already

~~been~~ filed with the Commission~~,~~ the electric power supplier shall, on or before September 1 of each year, file a renewable energy facility registration statement pursuant to Rule R8-66 for any facility it owns and upon which it is relying as a source of power or RECs in its REPS compliance plan.

Issue 32: Proposal To Allow Intervening Parties To File REPS Compliance Plans

NCSEA proposes to amend Rule R-67(b)(2) such that "the Public Staff or any other intervenor may file a REPS compliance plan of its own as to any electric power supplier . . . ." NCSEA did not provide any comments explaining why this change is needed or how it would streamline administration of Senate Bill 3. Existing rules allow intervenors to provide comments regarding any electric power supplier's REPS compliance plan filed as part of its IRP. Specifically, Rule R8-60(j), allows an intervenor to "file an integrated resource plan or a report of its own as to any utility . . . ." Therefore, the Commission finds that intervenors already have ample opportunities to influence REPS compliance plans, and the Commission concludes that it should decline to adopt NCSEA's proposed amendment.

Issue 33: Testimony And Hearings For REPS Compliance Reports

ElectriCities proposes to delete the introductory language in Rule R8-67(c)(1) requiring that each electric power supplier's REPS compliance report include "supporting documentation and direct testimony and exhibits of expert witnesses." In the Public Staff's view this proposed change would serve no useful purpose because there will always be a hearing to determine whether the electric power supplier filing a REPS compliance report has in fact complied with the REPS, and at some point the electric power supplier will need to file testimony and exhibits.

It is customary in Commission proceedings that when a regulated entity files a report that will be the subject of an evidentiary hearing, the accompanying testimony and exhibits are filed concurrently with the report. However, because of the annual nature of REPS filings, the Commission believes a hearing might not always be needed for all EMCs and municipal power suppliers. The Commission agrees with the Public Staff that the requirement to file supporting documentation is important, as it will assist in the determination as to whether a hearing is needed. The Commission, will, therefore, retain this requirement for REPS compliance reports filed by all electric power suppliers, but will amend Rule R8-67(c)(1) and (2) as shown in Appendix A to clarify that only electric public utilities must file direct testimony and exhibits of expert witnesses with their REPS compliance reports.

Rules R8-67(c)(3) states as follows:

(3) Each electric membership corporation and municipal electric supplier shall file an REPS compliance report on or before September 1 of each year. The Commission shall issue an order scheduling a hearing to

consider the REPS compliance report filed by each electric membership corporation or municipal electric supplier, requiring public notice, and establishing deadlines for intervention and the filing of additional direct and rebuttal testimony and exhibits.

The Commission finds that it may not always be necessary to schedule a hearing for electric membership corporations and municipal electric suppliers as currently required by Rule R8-67(c)(3). Therefore, the Commission will amend the Rule as shown in Appendix A to make the hearing optional, at the Commission's discretion, rather than mandatory. The Commission will also amend Rule R8-67(c)(3) to provide that (1) utility compliance aggregators may file REPS compliance reports on behalf of electric membership corporations and municipal electric suppliers, and (2) REPS compliance reports must be verified. (See Issue 37 for an explanation of utility compliance aggregators.)

Issue 34: Editorial Changes

ElectriCities' proposes to change Rule R8-67(c)(1)(i) as follows:

(i) ~~the sources, amounts, and costs of~~for each renewable energy ~~certificates, by source~~certificate used to comply with G.S. 62-133.8(b), (c), (d), (e), and (f): the sources, amounts, and costs of such renewable energy certificates, by source, and the name and address of the renewable energy facility producing such renewable energy certificates. Renewable energy certificates for energy efficiency may be based on estimates of reduced energy consumption through the implementation of energy efficiency measures, to the extent approved by the Commission;

The Public Staff states that ElectriCities' proposed revisions are editorial in nature and are not objectionable in themselves, but they are contingent on ElectriCities' proposed deletion of paragraph (c)(1)(viii). Since the changes proposed by ElectriCities appear to be unnecessary, the Commission will decline to adopt them.

Issue 35: REPS Compliance Reports To Include Information Regarding RECs To Be Carried Forward

Rule R8-67(c)(1)(vii) currently provides that a REPS compliance report must include "the identification of any renewable energy certificates to be carried forward…". ElectriCities proposes to modify this language to read "the identification of any renewable energy certificates, electric power, or savings to be carried forward." The Public Staff and Dominion agree with this change, and state that it is consistent with the Commission's current practice. The Commission will, therefore, adopt ElectriCities' proposal with one change: since qualifying "electric power," whether purchased or produced by the electric power supplier itself, must be converted into RECs, it is not necessary to list it separately. Thus, the Commission will amend Rule R8-67(c)(1)(vii)

as shown in Appendix A to read: “the identification of any renewable energy certificates or energy savings to be carried forward…”

Issue 36: Information Required In REPS Compliance Reports

Rule R8-67(c)(1)(viii) lists some of the information required to be filed in a REPS compliance report:

> For each renewable energy facility providing renewable energy certificates used by the electric power supplier to comply with G.S. 62-133.8(b), (c), (d), (e) and (f): the name, address, and owner of the renewable energy facility; and an affidavit from the owner of the renewable energy facility certifying that the energy associated with the renewable energy certificates was derived from a renewable energy resource, identifying the renewable technology used, and listing the dates and amounts of all payments received from the electric power supplier and all meter readings;

Duke, Dominion, and ElectriCities propose to eliminate much of the information currently required in REPS compliance reports, including the affidavits from renewable energy facilities verifying that all RECs provided to the supplier filing the report were in fact derived from renewable energy resources, specifying the renewable technology used, and listing the dates and amounts of payments received and the associated meter readings. Duke, Dominion, and ElectriCities contend that the requirements of this paragraph are onerous and that the information required can be supplied more easily through NC-RETS rather than through affidavits. The Public Staff states that it would not object to eliminating paragraph (c)(1)(viii) if the information now being provided through affidavits could be made available via NC-RETS.

It is the Commission’s understanding that the tracking of RECs in NC-RETS will make most of the information requirements in R8-67(c)(1)(viii) redundant. Specifically, each REC will contain a unique serial number that specifies the facility from which it originated, the month and year in which the associated energy was produced, and the renewable technology or fuel that produced that energy. A REC cannot be imported into NC-RETS unless the facility from which it emanated is registered with the Commission. Each facility that registers with the Commission must provide information as to the ownership and location of the facility. And the owner must certify in that registration, and annually thereafter, that its facility remains a “renewable energy facility.” Therefore, given the Commission’s more informed understanding of the functionality to be provided by NC-RETS, the Commission believes that functionality, combined with the requirements for registering renewable energy facilities, makes many of the data requirements contained in Rule R8-67(c)(1)(viii) unnecessary, with the exception of the requirement to provide “the dates and amounts of all payments received from the electric power supplier.” That information is still necessary because it impacts the electric public utility’s rider request and all electric power suppliers’ calculations regarding the customer cost cap. In that context the Commission believes it is more

appropriate for the burden of proving such costs to fall squarely on the electric power suppliers. Therefore, the Commission will modify this requirement somewhat by shifting the responsibility for this data from the renewable energy facility owner to the electric power supplier. The Commission now believes it is appropriate for each electric power supplier to rely on invoices from REC suppliers (rather than on affidavits from renewable energy facility owners) in developing and supporting its REPS compliance report. Therefore, the Commission will amend Rule R8-67(c)(1)(viii) as shown in Appendix A such that electric power suppliers must include in their REPS compliance reports, "the dates and amounts of all payments made for renewable energy certificates." The Commission agrees that the advent of NC-RETS eliminates the need for affidavits from the owners of renewable energy facilities whose RECs are being used by an electric power supplier for REPS compliance. The Commission will, therefore, eliminate the requirement that such affidavits be included with REPS compliance reports, as shown in Appendix A. However, in making this rule change, the Commission is not limiting the Public Staff's authority to audit a renewable energy facility's books and records, as provided for in Rule R8-66(b)(5) and R8-66(f)(4), if the Public Staff believes such an audit is required.

Issue 37: Utility Compliance Aggregators May File REPS Compliance Plans And Reports For Electric Power Suppliers; Electric Power Suppliers May Comply As A Group

> Rule R8-67(c)(1) states that:
>
> Each year, beginning in 2009, each electric power supplier shall file with the Commission a report describing the electric power supplier's compliance with the requirements of G.S. 62-133.8(b), (c), (d), (e) and (f) during the previous calendar year. The report shall include all of the following…
>
> Rule R8-67(c)(3) states, in part:
>
> Each electric membership corporation and municipal electric supplier shall file an REPS compliance report on or before September 1 of each year.
>
> Rule R8-67(b)(1) states, in part:
>
> Each year, beginning in 2008, each electric power supplier shall file with the Commission the electric power supplier's plan for complying with G.S. 62-133.8(b), (c), (d), (e), and (f).

GreenCo, NCEMPA, NCMPA1, Dominion, Duke, and PEC have each filed submittals in various dockets indicating that they will be providing REPS reporting services on behalf of either their members or a group of electric power suppliers that includes themselves. The Commission has approved these arrangements, granting waivers of its rules as requested. The Commission believes that it is appropriate to

accommodate these arrangements in its rules. Therefore, the Commission will include a new Rule R8-67(a)(5), as shown in Appendix A, to define a "utility compliance aggregator" as an "organization that assists an electric power supplier in demonstrating its compliance with REPS." An electric public utility that provides REPS compliance services for an electric membership corporation or municipality must demonstrate compliance for those organizations separately from itself because the allowable compliance methods and REPS obligations differ. The Commission will, therefore, add Rule R8-67(c)(6) to clarify that "a group of electric power suppliers may aggregate their REPS obligations and compliance efforts provided that all electric power suppliers in the group are subject to the same REPS obligations and compliance methods as stated in either G.S. 133.8(b) or (c)." The Commission will also amend Rule R8-67 to clarify in the same Rule and as shown in Appendix A, that if a group of electric power suppliers has aggregated its REPS obligations and compliance efforts, and subsequently the Commission concludes that the group has failed to meet its REPS obligations, the Commission shall find and conclude that each electric power supplier in the group, individually, has failed to meets its REPS obligations. The Commission will amend Rule R8-67(a)(5) as shown in Appendix A to also allow a "designated utility compliance aggregator" to file a REPS compliance plan on behalf of an electric power supplier. Similarly, the Commission will amend Rule R8-67(c)(1) as shown in Appendix A to allow a "designated utility compliance aggregator" to file a REPS compliance report for an electric power supplier.

Issue 38: Recovery Of Stranded REC Costs

PEC proposes to add a new sentence at the end of Rule R8-67(c)(4). The purpose of the additional language, as PEC explains it, is to protect an electric power supplier against the possibility of incurring stranded costs if the Commission revises its procedure for calculating the annual utility-wide ceiling on incremental REPS costs under G.S. 62-133.8(h)(3). The new sentence proposed by PEC is as follows:

> If the Commission on its own motion or the motion of a party other than the electric power supplier, changes the methodology for determining the electric power supplier's cap on incremental costs, the effect of which is to reduce the cap, the Commission shall take all steps necessary to ensure the electric power supplier is allowed to recover all REPS contractual commitments made prior to the Commission changing the methodology to reduce the cap.

While Dominion and Duke support PEC's proposal, the Public Staff believes that PEC's proposed language is too broadly worded, arguing that an electric power supplier should not be assured of recovering "all REPS contractual commitments made prior to the Commission changing the methodology." It may be that even under the previously existing methodology, the electric power supplier would have exceeded the ceiling. It is also possible that some of the costs incurred by the electric power supplier prior to the

change in methodology were imprudent. As an alternative to PEC's proposal, the Public Staff recommends adding the following sentence to Rule R8-67(c)(4):

> If the Commission, on its own motion or the motion of a party other than the affected electric power supplier, changes the methodology for determining the electric power supplier's annual limitation on aggregate incremental costs under G.S. 62-133.8(h)(3), in such a way as to effectually reduce the limitation, the Commission may take such steps as are just to ensure that the supplier is not compelled to absorb costs that it reasonably and prudently incurred in reliance on the previously existing methodology.

The Commission is not persuaded that the proposed changes are necessary. Rate-making decisions, such as that sought by PEC, are best addressed in the context of specific rate proceedings. The Commission is aware of its obligations under the traditional regulatory compact and will establish fair and reasonable rates as provided by law. Therefore, the Commission will decline to adopt either the language proposed by PEC or the language proposed by the Public Staff.

Issue 39: Recovery Of Costs For RECs From Renewable Energy Facilities Whose Registrations Are Revoked By The Commission

Duke proposes to add the following new sentence at the end of Rule R8-67(d)(3) in order to protect electric power suppliers against the possibility that they may lose RECs following the revocation of a renewable energy facility's registration:

> Any renewable energy certificates earned by a renewable energy facility before the date the facility's registration is revoked by the Commission may be used to comply with G.S. 62-133.8(b), (c), (d), (e) and (f), and costs associated with those RECs may be recovered under G.S. 62-133.8(h).

Duke argues that, because an electric public utility can wait seven years after cost recovery before retiring a REC for REPS compliance, "the rules should clearly articulate the implication of a registration revocation on those RECs earned prior to the date of revocation."

The Public Staff is concerned that Duke's language might establish the right for the utility to use RECs earned prior to revocation for REPS compliance and to recover the costs of such RECs under G.S. 62-133.8(h). The Public Staff argues that a utility should not be assured of recovering the costs of RECs earned by a renewable energy facility prior to the revocation of its registration if the costs would cause the utility to exceed the per-account cap, or if the utility purchased the RECs imprudently. Moreover, the facility's registration may have been revoked because its RECs were only "pieces of paper" and did not in fact represent one megawatt-hour of renewable generation. The Commission should not be placed in the position of guaranteeing that a utility will be

able to recover the cost of fictitious RECs. When a facility's registration is revoked, a utility should ordinarily be permitted to recover the cost of valid RECs that it prudently purchased from the facility prior to revocation, but the Commission must have authority to invalidate RECs whose legitimacy cannot be established.

ElectriCities proposes to add to Rule R8-67(d)(3) a sentence that is very similar to the one proposed by Duke, except that it does not include the final clause relating to recovery of costs associated with RECs. ElectriCities contends that if a facility's registration is revoked, but subsequently the facility obtains reinstatement of its registration, RECs earned during the period of revocation should be eligible for REPS compliance.

The Public Staff disagrees with ElectriCities' position. RECs earned after reinstatement, including RECs bundled with the underlying electric energy, as well as those sold separately, should be eligible for REPS compliance. Similarly, those earned prior to revocation should also be eligible, subject to the possibility of invalidation by the Commission if their legitimacy cannot be established. However, during the period of revocation, a facility should not be able to earn RECs that are eligible for compliance. Revocation of a facility's registration should have meaningful consequences; specifically, those consequences should include the ineligibility of its RECs for REPS compliance.

The Commission declines to provide the assurances sought by Duke. A utility will be allowed to seek recovery of reasonable and prudently incurred costs. However, in some cases, its recourse will be against the REC supplier rather than the utility's customers. Similarly, the Commission declines to adopt ElectriCities' proposed amendment for the reasons stated by the Public Staff.

Issue 40: Recovery Of Incremental Costs of REPS Compliance, Include Gross Receipts Tax And Regulatory Fee

Rule R8-67(e)(9) describes how an electric public utilities' incremental costs from REPS compliance are to be recovered from customers. PEC proposes to amend the current Rule as follows:

> (9) The incremental costs to be recovered by an electric public utility in any ~~calendar year~~ cost recovery period from its North Carolina retail customers to comply with G.S. 62-133.8(b), (d), (e), and (f) shall not exceed the per-account charges set forth in G.S. 62-133.8(h)(4) applied to the electric public utility's year-end number of customer accounts determined as of December 31 of the previous calendar year. These annual charges ~~may~~ shall be collected through fixed monthly charges~~, energy-based amounts per kilowatt-hour, or by a combination of both~~. Each electric public utility shall ensure that the incremental costs recovered under the REPS rider and REPS EMF rider during the cost recovery period, inclusive of gross receipts tax and the regulatory fee,

> from any given customer account do not exceed the applicable per-account charges set forth in G.S. 62-133.8(h)(4).

Both Duke and the Public Staff support PEC's proposed elimination of the option to collect costs based on a per kilowatt-hour charge. For example, Duke argues that "the fixed monthly charge eliminates any potential for mismatches in the calculations of the amount of available annual REPS compliance dollars under the cost caps as applied to variable amounts of energy over which to distribute the available REPS dollars."

The Commission agrees that collecting REPS costs via a fixed monthly charge is superior to collecting the costs via a per-kilowatt-hour charge in that it is straight-forward, easy to administer, easy to explain to customers, and fully consistent with G.S. 62-133.8(h)(4). In its July 25, 2008 Order on Public Staff Motion to Disapprove Proposed Rider BA-1 in Docket No. E-2, Sub 930, the Commission rejected the Public Staff's proposal that PEC be required to collect REPS costs via per-kilowatt-hour charges. The Commission concluded that a per-kilowatt-hour approach would leave a utility at risk of being unable to recover its full REPS compliance costs. Therefore, the Commission will adopt PEC's proposal to eliminate the option of collecting REPS costs via a per-kilowatt-hour charge and amend Rule R8-67(e)(9) as shown in Appendix A.

PEC also proposes to set charges based on a "cost recovery period," rather than a "calendar year." The Public Staff opposes this change, arguing that establishing the cost cap (REPS spending) limitations on a calendar-year basis is more appropriate because G.S. 62-133.8 provides that REPS compliance is to be determined on a calendar-year basis.

Dominion and Duke support PEC's proposal to replace "calendar year" with "cost recovery period" in Rule R8-67(e)(9), with Duke stating:

> In this way, the annual per-account cost limitations would track with the charges assessed to a utility's retail customers through one cost recovery rider period and create a clear and straight forward process for the utilities, its respective customers, and the Commission to account for the annual per-account costs recovered from customers.

Duke argues that the Public Staff's proposal would lead to confusion and administrative problems for both the utilities and the Commission. Duke states that:

> [The Public Staff's] proposal would require the utilities to take into account two separate REPS cost recovery riders to measure the amount that its respective customers could be charged for REPS compliance costs on an annual basis. [Duke], for example, would have to make sure that the costs charged for the REPS rider from the previous year (which would be charged to the customer during the months of January through August of a given year) and the REPS rider for the current year (which would be

> charged to the customer during the months of September through December of that year) did not exceed the per-account cost caps set forth in Senate Bill 3. Those riders reflect REPS compliance costs from different "compliance years" and allowing the rider from the previous year to dictate how much the Company could charge its customers in the next year, regardless of the actual costs incurred, clearly stifles the intent of Senate Bill 3.

Duke argues further that:

> G.S. 62-133.8(h)(3) makes no mention of whether annual REPS incremental compliance costs incurred by an electric power supplier or recovered from an electric power supplier's retail customers are to be measured over the course of a calendar year or over the course of each electric power supplier's respective cost recovery period. The statute merely states that such incremental costs are "annual" and "shall not exceed an amount equal to the per-account annual charges" set forth in G.S. 62-133.8(h)(4) (emphasis supplied). Based on [Duke's] experience to date, and for the reasons set forth above, the annual period over which those costs should be measured is the utility's cost recovery period and NCUC Rule R8-67(e)(9) should be amended accordingly.

The Commission agrees with Duke that G.S. 62-133.8(h)(3) and (4) require the costs caps to be calculated on an annual (12-month) basis, but not necessarily on a calendar-year basis. In fact, no customer should be charged in excess of the annual per-account cost cap in any 12-month period. The Commission believes PEC's proposal will make it easier to track REPS cost recovery from one recovery period to the next, and will, therefore, adopt PEC's proposal to amend Rule R8-67(e)(9), by replacing "calendar year" with "cost recovery period."

Both the Public Staff and PEC propose to further amend Rule R8-67(e)(9) to include a clarification that revenues collected from customers for REPS costs shall not exceed the annual cost caps established in G.S. 62-133.8(h)(4), even when the related gross receipts tax and regulatory fee are included. Dominion supports this clarification. On the other hand, NCSEA argues that PEC's proposal would substantively change the definition of "incremental cost," and is therefore beyond the scope of this proceeding.

The REPS rider charge on a customer's bill is grossed up to reflect the gross receipts tax and regulatory fee. To avoid customer confusion, this should be the amount compared to the per-account cost cap. The Commission therefore, believes the amendment is appropriate and will provide needed certainty if electric public utilities' REPS expenditures approach the statutory cost recovery caps. The Commission will, therefore, approve the clarifying language proposed by the Public Staff and PEC, as shown in Appendix A.

Issue 41: Cost Caps Refer To Costs Recovered From Customers

Rule R8-67(e)(10) states in part:

> Incurred costs may be recovered by an electric public utility in any year after a renewable energy certificate is acquired or obtained until the renewable energy certificate is used to comply with G.S. 62-133.8(b), (d), (e), and (f) as long as the electric public utility's total annual incremental costs incurred in that year do not exceed the per-account annual charges provided in G.S. 62-133.8(h)(4). [Emphasis added.]

The Commission believes this specific use of "incurred" is inconsistent with the intent of G.S. 62-133.8(h)(4), which focuses on the maximum amount that can be recovered from customers annually. The Commission, therefore, will replace the word "incurred" with the phrase "recovered from customers" in this Rule as shown in Appendix A.

Issue 42: Length Of Utility Contracts With Solar Facilities

Rule R8-67(f)(1) states:

> The terms of any contract entered into between an electric power supplier and a new solar electric facility or new metered solar thermal energy facility shall be of sufficient length to stimulate development of solar energy.

ElectriCities contends that this provision interferes with the rights of electric power suppliers and renewable energy facilities to contract on such terms as they deem appropriate, and therefore it should be deleted. The Public Staff disagrees, arguing that the Commission adopted the provision in order to implement the second sentence of G.S. 62-133.8(d), and it should be retained.

The Commission notes that the provision is essentially identical to the statute cited by the Public Staff. Therefore, the Commission will not delete the provision as proposed by ElectriCities. This provision is not intended to stifle parties' ability to negotiate mutually agreeable terms, but to give a solar developer recourse to the Commission if it believes that the electric power supplier is not willing to enter into a contract of sufficient duration to satisfy G.S. 62-133.8(d).

Issue 43: Metering Requirements For Renewable Energy Facilities

Commission Rule R8-67(g) addresses the metering of renewable energy facilities. ElectriCities proposes to revise subdivision (g)(1) as follows:

> (1) Except as provided below, for the purpose of receiving renewable energy certificates, the electric power generated by a

renewable energy facility shall be measured by an electric meter, or effective with the implementation of the North Carolina REC Tracking System, as otherwise provided by the rules of such tracking system ~~supplied by and read by an electric power supplier~~.

ElectriCities argues that it is impractical and expensive to require that a meter be "supplied by and read" by the electric power supplier since the term "electric power supplier" is defined in G.S. 62-133.8(a)(3) to include only those entities that provide service to retail electric customers in North Carolina, and many suppliers are purchasing RECs from facilities located in distant states. The Public Staff agrees with ElectriCities' proposed change.

The Commission is concerned that the specific amendment proposed by ElectriCities would empower REC tracking system administrators, rather than the Commission, to determine the appropriate metering requirements for renewable energy facilities, even those renewable energy facilities that are located in North Carolina. Therefore, the Commission will adopt a modified version of ElectriCities' proposed amendment to Rule R8-67(g)(1) as shown below and in Appendix A:

(1) Except as provided below, for the purpose of ~~receiving~~ renewable energy certificate~~s,~~ issuance in NC-RETS, the electric power generated by a renewable energy facility shall be measured by an electric meter supplied by and read by an electric power supplier. Facilities whose renewable energy certificates are issued in a tracking system other than NC-RETS shall be subject to the requirements of the applicable state commission and/or tracking system.

Issue 44: Metering Required For Renewable Energy Facilities Located Behind The Utility's Meter

ElectriCities proposes to amend Rule R8-67(g)(3) as follows:

(3) The electric power generated by a renewable energy facility ~~with a nameplate capacity of 1 MW or less~~ interconnected behind the utility meter at a customer's location may be measured accurately by an ~~ANSI certified electric meter not provided by an electric power supplier.~~industry accepted metering, controls and verification system. The data provided by this meter may be read and self-reported by the owner of the renewable energy facility. ~~The owner of the meter shall comply with the meter testing requirements of Rule R8-13.~~

ElectriCities argues that:

> there are existing renewable energy facilities, some with nameplate capacities greater than 1 MW, that do not supply electricity to the grid (behind the meter generation), and do not exclusively use ANSI-certified meters, but still have adequate metering and verification equipment to provide auditable data to NC-RETS . . . [R]equiring only certain types of metering only adds significant additional costs . . . .

The Commission agrees with the intent of ElectriCities' proposed revisions, but believes some generators might find it helpful if the Rule retained the existing language regarding ANSI-certified meters. Therefore, the Commission will adopt ElectriCities' proposal with the minimal changes necessary to make it clear that ANSI-certified meters remain acceptable devices for measuring the output of behind-the-meter generation. Accordingly, the Commission will modify Rule R8-67(g)(3) as follows:

> The electric power generated by a renewable energy facility ~~with a nameplate capacity of 1MW or less~~ interconnected ~~behind~~ on the customer's side of the utility meter at a customer's location may be measured by (1) an ANSI-certified electric meter not provided by an electric power supplier, provided that the owner of the meter complies with the meter testing requirements of Rule R8-13, or (2) another industry-accepted, auditable and accurate metering, controls, and verification system. The data provided by ~~this~~ such meter or system may be read and self-reported by the owner of the renewable energy facility, subject to audit by the Public Staff. ~~The owner of the meter shall comply with the meter testing requirements of Rule R8-13.~~

Issue 45: Metering For Thermal Energy Facilities

The Commission observes that issues have recently arisen in some renewable energy facility registration proceedings as to the proper metering and/or estimation of energy output from thermal energy facilities, including solar thermal facilities. The Commission believes this is an appropriate time to address this matter and, therefore, will amend Rule R8-67(g)(4) as follows:

> (4) Thermal energy produced by a combined heat and power system or solar thermal energy facility shall be the thermal energy recovered and used for useful purposes other than electric power production. The useful thermal energy may be measured by meter, or if that is not practicable, by other industry-accepted means that show what measureable amount of useful thermal energy the system or facility is designed and operated to produce and use. Renewable energy certificates shall be earned based on one ~~megawatt-hour~~ certificate for every 3,412,000 British thermal units (Btu) of useful thermal energy produced. Btu meters shall be located so as to measure the actual thermal energy consumed by the load served by the

facility. Thermal output that is used as station power or to process the facility's fuel is not eligible for RECs. Thermal energy production, whether based on engineering estimates or Btu metering, shall explicitly address thermal energy flows as well as heat energy transfers.

Issue 46: All Renewable Energy Facility Production Data Subject To Audit

ElectriCities proposes to delete R8-67(g)(5), which provides the following: "Except in those cases where the electric meter is supplied by and read by an electric power supplier, electric generation or thermal energy production data is subject to audit by the Commission, the Public Staff, or an electric power supplier." As ElectriCities points out, other provisions of the Commission's rules require a renewable energy facility to consent to auditing by the Commission and the Public Staff.

The Public Staff notes that Rule R8-67(g)(5) differs from these other provisions, however, in that it grants limited audit rights – relating only to electric generation or thermal energy production data – to the electric power supplier purchasing RECs or bundled electric energy from the facility. The Public Staff believes that this subdivision should be retained, but does not state why.

The Commission agrees with ElectriCities. Regardless of what entity is reading the meter of a renewable energy facility, that facility's production data should be subject to audit by the Commission and the Public Staff. The Commission, therefore, will delete R8-67(g)(5).

Amendments to New Rule R8-67(h), Renewable Energy Certificate Tracking System

On January 27, 2010, the Commission issued an Order Proposing Rules and Requesting Comments in Docket No. E-100, Subs 113 and 121. The Commission requested comments on the proposed new Rule R8-67(h), Renewable Energy Certificate Tracking System:

(h) Renewable Energy Certificate Tracking System

(1) Each electric power supplier shall participate in the REC tracking system established by the Commission and shall provide REPS compliance data to the system, which data may be audited by the Public Staff and the Commission to verify REPS compliance. Municipalities and electric membership corporations may elect to have their compliance data reported by a third party.

(2) Each renewable energy facility and new renewable energy facility shall participate in a REC tracking system and facilitate the transfer of production data to such tracking system for the creation, tracking, and retirement of RECs. Multi-fuel facilities shall calculate on a monthly basis the percentage of their energy output that is attributable to qualifying fuels.

Such facilities shall retain documentation verifying those calculations for audit by the Public Staff. Multi-fuel facilities shall monthly provide the results of the calculations to the REC tracking system. The REC tracking system shall create appropriate RECs only for the qualifying portion of the multi-fuel facility's energy output.

(3) Each balancing area operator shall provide, at least monthly, electric generation production data to the REC tracking system for renewable and new renewable energy facilities that are interconnected to the operator's electric transmission system. Such balancing area operator shall retain documentation verifying the production data for audit by the Public Staff.

(4) Each electric power supplier that has renewable energy facilities and new renewable energy facilities interconnected with its electric distribution system, and that routinely reads the electric generation production meters for those facilities, shall provide, at least monthly, the facilities' production data to the REC tracking system. Such electric power supplier shall retain documentation verifying the production data for audit by the Public Staff.

(5) A renewable energy facility or new renewable energy facility that produces thermal energy that qualifies for RECs shall self-report to the REC tracking system the facility's qualifying thermal output at least once a year. Such facilities shall retain documentation verifying the production data for audit by the Public Staff.

(6) A renewable energy facility or new renewable energy facility that self-reports its production data pursuant to Commission Rule R8-67(g)(3) shall self-report its output to the REC tracking system at least once a year. Such facilities shall retain documentation verifying the production data for audit by the Public Staff.

(7) The owner of an inverter-based solar photovoltaic system with a nameplate capacity of 10 kW or less may estimate its output using generally accepted analytical tools pursuant to Commission Rule R8-67(g)(2). Such a facility shall self-report its output to the REC tracking system at least once a year. Such facilities shall retain documentation verifying their production data for audit by the Public Staff.

(8) All energy production and fuel data provided to the tracking system, including underlying calculations and estimates, shall be retained by the facility's owner and made available to the Public Staff for audit for at least ten (10) years.

(9) Each electric power supplier that complies with REPS by implementing energy efficiency and/or demand-side management programs shall use the REC tracking system to track the forecasted and verified energy savings of those programs.

(10) Each participant in the REC tracking system established by the Commission shall pay the REC tracking system administrator for REC tracking system services according to the following fee schedule:

a. $0.01 for each REC exported to an account residing in a different REC tracking system.

b. $0.01 for each REC retired for reasons other than compliance with North Carolina's REPS.

c. All other Commission-approved costs of developing and operating the REC tracking system shall be allocated among all electric power suppliers based upon their relative megawatt-hours of electricity sales in North Carolina in the previous calendar year.

Issue 47: RECs Must Be Tracked In NC-RETS

ElectriCities proposes to add language to Rule R8-67(d)(1) specifying that RECs, "effective with the implementation of the North Carolina REC Tracking System, must have been registered on such tracking system." The Public Staff agrees with ElectriCities' wording as far as it goes, but argues that it does not go far enough because it could be interpreted to mean that RECs already in existence at the implementation of NC-RETS do not have to be registered on the system. The intention of the NC-RETS Stakeholder Group, in which the Public Staff participated, was that once NC-RETS becomes operational, all RECs, even those already in existence, must be entered into the system in order to be used for REPS compliance.

The Public Staff proposes new language for subdivision (1), which reads in part: "Only RECs created by or imported into NC-RETS are eligible RECs under G.S. 62-133.8(b)(2)e. or G.S. 62-133.8(c)(2)d." The Public Staff believes that this language is a more accurate statement of the Stakeholder Group's intent than ElectriCities' proposal, and consequently ElectriCities' language should not be adopted.

The Commission agrees with the Public Staff's analysis, and will, therefore, adopt a slightly modified version of the Public Staff's proposed language as set forth in Appendix A in the new Rule R8-67(h)(2) clarifying that only RECs issued by or imported into NC-RETS are qualifying RECs under G.S. 62-133.8.

Issue 48: The Public Staff's Proposed Amendments To New Rule R8-67(h)

The Public Staff proposed amendments to the Commission's proposed new Rule R8-67(h), stating the intent of the amendments to be to:

a. Establish NC-RETS and give a third-party vendor selected by the Commission authority to administer the system.
b. Make it clear that only RECs created in or imported into NC-RETS are eligible for meeting REPS compliance.

c. Change the phrase "the REC tracking system" and similar phrases with the name of the system, "NC-RETS."
d. Clarify what a "multi-fuel facility" is and how the energy output of those facilities would be calculated and reported.
e. Change the phrase "production data" to "energy output" so that the phrase is consistent throughout the rule.
f. Clarify who is responsible for reporting meter readings for renewable energy facilities.
g. Consolidate record retention provisions into one subdivision.
h. Make other drafting technical changes.

The Commission appreciates the Public Staff's careful critique of the proposed Rules and will adopt most of its suggestions. However, the Commission believes that some of the Public Staff's specific revisions are potentially problematic. For example, the Public Staff proposes to revise Rule R8-67(h)(1) to give the NC-RETS Administrator authority to "prescribe the specific types of and manner in which information shall be reported to NC-RETS." The Commission is concerned that this delegation of authority is too broad – that the NC-RETS Administrator would be authorized to essentially define what constitutes a valid REC. In late-filed comments, CPI expressed similar concerns. The Commission believes it should retain for itself that responsibility, relying on Senate Bill 3 for guidance and implementing it via its rules and orders, with input from parties and the NC-RETS Stakeholder Group.

The Public Staff's proposed revision of Rule R8-67(h)(3) would require renewable energy facilities to participate in NC-RETS, apparently to the exclusion of other state and regional tracking systems. This is inconsistent with the Commission's many orders accepting registration of renewable energy facilities and new renewable energy facilities. For facilities located outside of North Carolina, the Commission's registration orders typically state: "To the extent that [facility owner] is not otherwise participating in a REC tracking system, it will be required to participate in the North Carolina REC tracking system in order to facilitate the issuance of RECs."[11]

In addition, it is possible for a renewable energy facility to be located in North Carolina and interconnected with Dominion's transmission system. Since PJM operates Dominion's transmission system and acts as its balancing authority, those facilities are already required to participate in PJM's Generation Attribute Tracking System. The Commission sees no advantage to forcing such facilities to participate in NC-RETS.

The Public Staff's proposed consolidation of Rule R8-67(h) subdivisions (3) and (4) appears to be based on the assumption that balancing area operators (Duke and PEC) literally read the energy output meters for all generating facilities interconnected to the transmission system. It is the Commission's understanding that this is not always the case. Rather, balancing area operators compile generator output data from a variety of sources and reconcile it monthly against the energy used by load-serving electric utilities.

[11] See, for example, the Commission's March 31, 2010 Order in Docket No. EMP-31, Sub 0.

Thus, because of these concerns, the Commission will adopt most, but not all, of the Public Staff's proposed revisions, as shown in Appendix A.

Issue 49: Aggregated Compliance To Be Allowed

GreenCo offers several revisions throughout Rule R8-67(h) to clarify that the Commission will allow electric power suppliers to consolidate their REPS compliance data and to report that data as a group, as well as via a utility compliance aggregator. The Commission finds those revisions to be consistent with the waivers it has granted in order to facilitate aggregated compliance efforts, and will, therefore, accept GreenCo's proposed revisions as shown in Appendix A.

Issue 50: Utility Compliance Aggregators May Report Meter Readings To NC-RETS

GreenCo and ElectriCities propose an amendment to Rule R8-67(h) that would allow a third party to report (and/or retain) distribution-level renewable energy facility meter readings to NC-RETS on behalf of an electric power supplier. They state that such revisions are consistent with waivers granted by the Commission to allow the Power Agencies and GreenCo to file consolidated REPS compliance plans and REPS compliance reports on behalf of their respective members. GreenCo argues that the proposed amendment would "afford GreenCo the opportunity to perform the role for which it was formed by its members and to allow those members to forego unnecessary expense and administrative burden." Similarly, ElectriCities states:

> A requirement that the Power Agencies' municipal members must establish their own individual accounts in NC-RETS, individually report such production data information, and individually maintain records of such production data information, creates unnecessary and burdensome administrative duties for the municipal members that are duplicative of duties that the Power Agencies have agreed to undertake on their behalf.

The Commission appreciates the many efforts by the Power Agencies and GreenCo to assist their members to comply with Senate Bill 3 as efficiently as possible. The Commission believes it may be more efficient to allow utility compliance aggregators to report meter readings to NC-RETS on behalf of their members. However, the Commission understands that the renewable energy facility meter reads at issue here will be used to create RECs. Those RECs will have a financial value to the generators and a compliance value to the electric power suppliers that acquire them. Such meter reads can be the source of disputes, and it is important that such disputes be resolved quickly and in a manner that assures the credibility of RECs issued by NC-RETS. The Commission is concerned that allowing member electric power suppliers to shift responsibility for reporting their metering data to the Power Agencies or GreenCo will result in delays, either in reporting the data initially or resolving meter data disputes. In addition, the Public Staff presumably will want to audit a sample of RECs, which would require it to trace each REC in a sample back to the original metering data

from which the REC emanated. It is possible that allowing utility compliance aggregators such as the Power Agencies and GreenCo to retain the metering data on behalf of their members could hamper such audit activities. Therefore, while the Commission will approve the revisions proposed by GreenCo and the Power Agencies, the Commission requests the Public Staff's assistance in monitoring these two issues. The Commission will, therefore, adopt the following language in Rule R8-67(h)(6), as shown in Appendix A: "Municipalities and electric membership corporations may elect to have the [renewable energy] facilities' production data reported to NC-RETS and retained for audit by a utility compliance aggregator."

Issue 51: Electric Power Suppliers Must Use NC-RETS To Calculate Their REPS Obligations, Including NC-RETS Charges

ElectriCities proposes to amend the Commission's proposed Rule R8-67(h) by specifying that electric power suppliers' data submissions to NC-RETS shall be made "contemporaneously with the filing of its REPS Compliance Report" and that the "compliance information required should be no more than that information required in the REPS Compliance Report." The Commission agrees with ElectriCities' revisions from the perspective of using NC-RETS to demonstrate compliance with Senate Bill 3. However, NC-RETS will require additional information from electric power suppliers in order to generate the billings by which the NC-RETS Administrator will be paid. Therefore, the Commission will accept ElectriCities' proposed revisions, but will modify them as necessary to assure the NC-RETS Administrator can generate monthly bills. Specifically, the Commission will amend Rule R8-67(h)(11) as shown in Appendix A to state that each electric power supplier, or its utility compliance aggregator, shall, within 60 days of NC-RETS beginning operations, and by May 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.

Issue 52: Utility Compliance Aggregator May Report EE/DSM Savings In NC-RETS For Municipal Power Suppliers Or Electric Membership Corporations

ElectriCities proposes that subsection (9) of proposed Rule R8-67(h) be modified to allow municipalities and electric membership corporations to elect to have their forecasted and verified energy savings from their energy efficiency and/or demand-side management programs reported to NC-RETS by their agents, presumably their "utility compliance aggregators," and to have their reported savings consolidated with the reported savings of other municipalities or electric membership corporations, as shown below:

> Each electric power supplier that complies with REPS by implementing energy efficiency and/or demand-side management programs shall use the REC tracking system to track the forecasted and verified energy savings of those programs. Municipalities and electric membership corporations may elect to have their forecasted and verified energy

savings from their energy efficiency and/or demand-side management programs reported to the REC tracking system by a third party, and to have their reported savings consolidated with the reported savings from other municipalities or electric membership corporations, as applicable.

GreenCo supports ElectriCities' proposal, but suggests slight modifications to accommodate aggregated reporting of DSM/EE savings via an agent. The Commission finds ElectriCities' proposal and GreenCo's additions to be reasonable and consistent with the waivers it has granted the Power Agencies and GreenCo. However, the Commission believes it is appropriate to specify that a "utility compliance aggregator," rather than a "third party," may report the EE and/or DSM information on behalf of a municipality or EMC. The Commission will, therefore, adopt a slightly different version of the amendment as Rule R8-67(h)(10), as shown in Appendix A.

Issue 53: NC-RETS Costs To Be Considered Incremental REPS Costs

G.S. 62-133.8(h)(1) allows electric power suppliers to recover the "incremental costs" of REPS compliance from their customers, and G.S. 62-133.8(h)(4) establishes specific maximum per-account annual charges via which electric power suppliers can recover their REPS "incremental costs." G.S. 62-133.8(h)(3) provides that "An electric power supplier shall be conclusively deemed to be in compliance with the requirements of subsections (b), (c), (d), (e), and (f) of this section if the electric power supplier's total annual incremental costs incurred equals an amount equal to the per-account annual charges set out in subdivision (4)…".

ElectriCities proposes additional language in Rule R8-67(h) such that "all costs paid by an electric power supplier for REC tracking system services shall be deemed to be incremental costs pursuant to G.S. 62-133.8(h)(1)." GreenCo supports ElectriCities' proposal.

Duke, Dominion, and PEC agree in concept, and offer slightly different language for Rule R8-67(h):

All reasonable and prudent costs incurred by the electric power supplier to comply with NC-RETS rules are recoverable pursuant to G.S. 62-133.8(h) and in a manner consistent with Rule R8-67(e). All costs required to develop and operate a REC tracking system which are allocated to electric power suppliers by the Commission, shall be considered reasonable and prudent incremental costs and shall be recovered through each electric power supplier's annual rider established pursuant to G.S. 62-133.8(h) and Commission Rule R8-67(e).

The Commission generally agrees with the proposed revisions to Rule R8-67(h), but notes that it is possible for an electric power supplier to incur NC-RETS charges that are unrelated to REPS compliance, and hence inappropriate to apply toward the maximum annual customer charges in G.S. 62-133.8(h)(4). For example, an electric

power supplier would incur additional NC-RETS charges if it exported RECs to another tracking system (presumably to effectuate a REC sale) or if it voluntarily retired RECs for reasons other than REPS compliance. Those NC-RETS charges would not fit the definition of "incremental costs" in G.S. 62-133.8(h)(1) and could not be included in the annual customer charges specified in G.S. 62-133.8(h)(4). The Commission will, therefore, clarify the Rule to better address NC-RETS billings to electric power suppliers and cost recovery of same with the following language in Rule R8-67(h)(11), as shown in Appendix A:

> 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 May 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. NC-RETS shall update its billings beginning each June based on retail sales data for the previous calendar year. Such NC-RETS charges shall be deemed to be costs that are reasonable, prudent, incremental, and eligible for recovery through each electric public utility's annual rider, pursuant to G.S. 62-133.8(h).

Issue 54: Multi-Fuel Renewable Energy Facilities

ElectriCities offered revisions to Rule R8-67(h) regarding metering data for multi-fuel facilities that appear to be intended to simply clarify the provision. CPI suggests that the Commission clarify "that multi-fuel facilities that utilize more than one renewable energy resource must provide the percentage calculations for each type of renewable fuel." The Commission agrees with CPI's suggestion and notes that such specificity will be especially important for facilities that use swine or poultry waste and other renewable fuel in order to assure NC-RETS issues the appropriate number of RECs that are eligible to count toward the specific provisions of Senate Bill 3 regarding the poultry waste and swine waste carve outs. The Commission's revisions to Rule R8-67(h)(4), as shown below and in Appendix A, accommodate suggestions by ElectriCities, CPI, and the Public Staff, recognizing that some of their suggestions are at cross purposes:

> Facilities that produce energy using one or more renewable energy resource(s) and another resource that does not qualify toward REPS compliance under G.S. 62-133.8 shall calculate on a monthly basis and provide to NC-RETS the percentage of energy output attributable to each fuel source. NC-RETS will issue RECs only for energy emanating from sources that qualify under G.S. 62-133.8.

Issue 55: NC-RETS Fees

Proposed Rule R8-67(h)(10) states as follows

> (10) Each participant in the REC tracking system established by the Commission shall pay the REC tracking system administrator for REC tracking system services according to the following fee schedule:
>
> a. $0.01 for each REC exported to an account residing in a different REC tracking system.
>
> b. $0.01 for each REC retired for reasons other than compliance with North Carolina's REPS.
>
> c. All other Commission-approved costs of developing and operating the REC tracking system shall be allocated among all electric power suppliers based upon their relative megawatt-hours of electricity sales in North Carolina in the previous calendar year.

ElectriCities proposes to amend proposed Rule R8-67(h)(10) so that the transaction fees for (1) exporting a REC to another tracking system or (2) retiring a REC for reasons other than REPS compliance would not apply to electric power suppliers. ElectriCities argues that since North Carolina electric power suppliers are responsible for all NC-RETS costs, "additional fees by an electric power supplier . . . is unnecessary."

The Commission disagrees. The fees cited by ElectriCities are for transactions unrelated to REPS compliance that would be voluntary for ElectriCities and/or its members. The billing and administration related to these transactions will require attention by the NC-RETS Administrator. The Commission believes that it is appropriate that NC-RETS account holders, including electric power suppliers, performing such transactions absorb such costs. Therefore, the Commission will retain the fees in the Rule as set forth in Rule R8-67(h)(12) of Appendix A.

PEC, Duke, and Dominion argue that it is

> unfair that the electric power suppliers and their ratepayers should have to bear the cost of the system when others (aggregators, brokers, etc.) may utilize NC-RETS at no cost. Therefore, the Utilities request that a registration fee of some amount be assessed to all users of the system. In addition, all fees collected from NC-RETS participants should be used to offset the overall cost associated with operating the NC-RETS.

On the surface, the utilities' assertions are correct. The Commission's proposed fee structure allows any entity to establish an account in NC-RETS, and they can transfer RECs into that account and never accrue an NC-RETS fee. However, there are only three potential final dispositions for those RECs. An account holder that exports RECs to another tracking system or retires RECs for voluntary compliance will incur a

fee from NC-RETS. If the RECs are transferred to a North Carolina electric power supplier and that entity uses the RECs for REPS compliance, no charge will be incurred for the transfer under the rationale that the REC purchaser, here the electric power supplier, has already paid its "load ratio share" of NC-RETS costs, and any additional transfer fees paid by the seller would be passed on to the electric power supplier and embedded in the REC price.

The Commission believes its proposed pricing structure, as shown in Rule R8-67(h)(11) and (12), is sound and fair and will retain it. However, the Commission will require the NC-RETS Administrator to provide data at the end of 2011 indicating the number of accounts and the number of RECs associated with them that can be attributed to REC aggregators and brokers, relative to all NC-RETS account holders and all RECs in NC-RETS.

Finally, the Commission notes that it has structured its Agreement with the NC-RETS Administrator such that fees collected in excess of the monthly fees from electric power suppliers shall be used, as available, to offset the cost of system enhancements that are recommended by the NC-RETS Stakeholder Group and approved by the Commission.

Issue 56: Extended Comment Period

ElectriCities suggests (and GreenCo agrees) that the Commission "consider extending the comment period . . . until the vendor selected by the Commission . . . has had sufficient time to consider and discuss with the NC-RETS Stakeholder Group and Commission Staff its suggestions for the structure and operation of NC-RETS."

The Commission appreciates ElectriCities' suggestion, which appears intended to ensure NC-RETS is as efficient as possible, but notes that since NC-RETS is now operational, such a suggestion is moot.

Issue 57: Accurate Meter Data, Timing Of Meter Data Uploads Into NC-RETS

CPI reiterates the need for accurate meter data, which the Commission believes is addressed by revised Rule R8-67(g), as discussed in Issues 43, 44, and 45 this Order. CPI agrees with the Public Staff's suggestion that, for purposes of REC issuances, the phrase "production data" should be replaced with "energy output" for consistency. The phrase "energy output" is more precise. Therefore, the Commission will adopt the Public Staff's proposed phrasing throughout Rule R8-67(h) as shown in Appendix A.

CPI requests that monthly meter reports not be required any sooner than the 15th day of the following month. The Commission notes there is no deadline for facilities that are allowed to self-report their energy output pursuant to Rule R8-67(g). The NC-RETS Interim Operating Procedures require that electric power suppliers and balancing area operators provide metering data within 30 days to NC-RETS. The Commission finds

that there is no reason to modify the Rule as suggested by CPI. Therefore, the Commission declines to adopt CPI's proposal.

Issue 58: Qualifying Thermal Output, Definition Of Useful Thermal Energy

CPI agrees with the suggestion of the Public Staff that the term "qualifying thermal output" as used in proposed Rule R8-67(h)(5) be replaced with "qualifying thermal energy output." Furthermore CPI suggests that "qualifying thermal energy output" be specified as "useful thermal energy output." This term is used by the Federal Energy Regulatory Commission (FERC) in its definition of a "qualifying facility." The FERC rules define "useful thermal energy" as:

> . . . the thermal energy: (1) That is made available to an industrial or commercial process (net of any heat contained in condensate return and/or makeup water); (2) That is used in a heating application (e.g., space heating, domestic hot water heating); or (3) That is used in a space cooling application (i.e., thermal energy used by an absorption chiller). 18 C.F.R. § 292.202(h).

The Commission believes CPI's proposed use of and definition of "useful thermal energy output" is appropriate and will incorporate it into the Rule at this time as shown in Rule R8-67(h)(1)(iv) and R8-67(h)(7) in Appendix A.

Issue 59: Renewable Energy Facility NC-RETS Fees

CPI requests clarification as to whether renewable energy facilities would be considered "participants" in NC-RETS, and hence subject to the proposed fees for exporting RECs to another tracking system or retiring RECs for reasons other than REPS compliance. The Commission's intent is that the term "participant" includes any entity or person that establishes an account in NC-RETS, so it does include the owners of renewable energy facilities, and such account holders would be subject to the two fees cited by CPI. The Commission notes, however, that owners of renewable energy facilities will not be charged fees for 1) establishing an account in NC-RETS; 2) having RECs issued into its account based on meter data or qualifying estimates; 3) transferring RECs to another NC-RETS account holder such as an electric power supplier; or 4) advertising its RECs for sale on NC-RETS. The Commission believes that the proposed fee schedule appropriately minimizes NC-RETS charges for owners of renewable energy facilities. Simultaneously, it protects the State's electric ratepayers from subsidizing NC-RETS transactions that are unrelated to REPS compliance.

Issue 60: Data Retention

QVC expresses concern with the 10-year data retention requirements in proposed Rule R8-67(h)(8). QVC asserts that, since "an electric power supplier with a new renewable energy facility interconnected with its electric distribution system which routinely reads the production meter must provide the production data to the tracking

system, it would appear that the energy production data . . . would be held [retained] by the electric power supplier and not the facility's owner." The Commission agrees with QVC and will amend Rule R8-67(h)(6) as shown in Appendix A to clarify that the requirement to retain meter data accrues to the electric power supplier that reads the meter. However, there are other data retention requirements that must accrue to the facility owner, such as documentation of various fuels used when some of the fuels qualify for RECs and others do not. Therefore, the Commission will clarify in Rule R8-67(h)(9) as shown in Appendix A that all energy output and fuel data for multi-fuel facilities, including underlying documentation, calculations, and estimates, shall be retained for audit for at least ten years.

Further, QVC asserts that electric power suppliers should be required to provide the facility with copies of production data. The Commission is of the opinion that this is not necessary because NC-RETS will notify a facility owner when a meter reading has been submitted to NC-RETS for the owner's facility. The owner will have the options of (1) immediately accepting the meter read, which will initiate REC issuance; (2) disputing the meter read within 14 days; or (3) doing nothing, which will cause its RECs to issue in 14 days. In any case, all meter read data entered into NC-RETS will be retained in NC-RETS.

QVC suggests that the Rule should be revised to allow data to be retained electronically. The Commission finds this suggestion to be reasonable and will adopt it as shown in Rule R8-67(h)(14) in Appendix A.

Issue 61: EE And DSM Tracking In NC-RETS

The Commission's proposed REC tracking system Rule R8-67(h)(9) includes the following provision regarding EE and DSM:

> Each electric power supplier that complies with REPS by implementing energy efficiency and/or demand-side management programs shall use the REC tracking system to track the forecasted and verified energy savings of those programs.

PEC, Dominion, and Duke suggest revising this language to clarify that EE may not be the sole source of compliance credits and to simplify reporting of EE in the tracking system. They state that NC-RETS is not an appropriate mechanism for forecasting EE program savings. Rather, NC-RETS is a system for reporting EE savings claimed for REPS compliance. They assert that EE savings will be verified through the EE program measurement and verification (M&V) process. EE savings reported in NC-RETS will be corrected, if needed, after the M&V process is completed. However, that process is a function of EE program management rather than NC-RETS tracking.

Accordingly, the three electric public utilities suggest revising Rule R8-67(h)(9) as follows:

> (9) Each electric power supplier that uses energy savings resulting from energy efficiency and/or demand-side management programs to meet its REPS requirements ~~complies with REPS by implementing energy efficiency and/or demand-side management programs~~ shall use the REC tracking system to ~~track~~ report the ~~forecasted and verified~~ energy savings of those programs.

The Commission believes the revisions proposed by PEC, Dominion, and Duke are appropriate clarifications, and will, therefore, adopt them. In addition, the Commission will modify this provision to accommodate utility compliance aggregators and to require that records regarding EE and DSM program achievements be retained for audit. In sum, new Rule R8-67(h)(10) reads as follows and as shown in Appendix A:

> (10) Each electric power supplier that complies with G.S. 62-133.8 by implementing energy efficiency or demand-side management programs shall use NC-RETS to report the estimated and verified energy savings of those programs. Municipal power suppliers and electric membership corporations may elect to have their estimated and verified energy savings from their energy efficiency and demand-side management programs reported to NC-RETS by a utility compliance aggregator, and to have their reported savings consolidated with the reported savings from other municipal power suppliers or electric membership corporations if and as necessary to permit aggregated reporting through their utility compliance aggregators. Records regarding which electric power supplier achieved the energy efficiency and demand-side management, the programs that were used, and the year in which it was achieved, shall be retained for audit.

Issue 62: Definitions

NCSEA suggests the Commission's Rule regarding the REC tracking system would benefit from the addition of definitions for the terms "multi-fuel facility," "qualified fuel," "qualifying portion," "balancing area operator," "participant," and "REPS compliance data." The Commission agrees and will amend the Rule to include definitions for those terms that are used in Rule R8-67(h), as shown in Appendix A. (Since some of the terms have been eliminated, it is not necessary for the Rule to include definitions for all of them.)

Issue 63: Electric Power Supplier To Provide Meter Reads For Facilities That It Owns

NCSEA seeks clarification of proposed Rule R8-67(h)(4) that electric power suppliers that read meters for renewable energy facilities that are interconnected with the power supplier's distribution system should provide those meter reads to the REC

tracking system even if the facilities are owned by the electric power supplier. The Commission finds this clarification to be unnecessary, and will decline to adopt NCSEA's proposal.

NCSEA further states that it is unclear what is meant by "routinely reads the electric generation production meters," and suggests deleting "routinely." The Commission agrees with NCSEA that the qualifier "routinely" is potentially problematic and will, therefore, delete it from Rule R8-67(h)(6) as shown in Appendix A.

Issue 64: NC-RETS Charges Allocated To Electric Power Suppliers

NCSEA suggests that the very last provision of the proposed Rule R8-67(h)(10)(c) regarding allocating the tracking system's costs should be re-stated as a stand-alone subsection. The Commission agrees and has, therefore, modified the Rule such that Rule R8-67(h)(11), as shown in Appendix A, addresses the allocation of NC-RETS costs.

In addition, NCSEA proposes to add the following sentence to that subsection:

> Each electric power supplier shall pay its share of such costs to the REC tracking system administrator on or before [date] of the following year.

The Commission believes this proposal would authorize electric power suppliers to pay their tracking system costs via one payment a year. Since this is contrary to the Commission's agreement with the NC-RETS Administrator, the Commission will not adopt NCSEA's proposed new language.[12]

Issue 65: NC-RETS Stakeholder Group, Changes To NC-RETS

NCSEA suggests that the proposed rule be amended to provide for (1) a stakeholder process, and (2) management of tracking system changes. The Commission established a Stakeholder Group on September 4, 2008, when it issued its first Order in Docket No. E-100, Sub 121. The Stakeholder Group has provided valuable assistance in defining the tracking system's functional requirements, drafting the RFP, reviewing vendor proposals, and beta testing the system itself. The Commission believes the Stakeholder Group can continue to provide an efficient forum for educating users and proposing system changes for Commission consideration. The Commission finds that it is appropriate to include these concepts in the Rule and, therefore, adopts them in revised Rule R8-67(h)(13) as shown in Appendix A.

Issue 66: Costs To Collect And Transfer Meter Data

NCSEA observes that the proposed Rule fails to address the costs electric public utilities will incur to "collect meter data and transfer that data into the tracking system."

[12] Details regarding the NC-RETS Administrator's billing procedures can be found in the NC-RETS Interim Operating Procedures, which were issued July 1, 2010, in Docket No. E-100, Sub 121.

Since the utilities themselves have not expressed this concern, the Commission will not address this issue at this time, believing that once all participants in the tracking system have established the required work practices the subject costs will most likely be immaterial.

Issue 67: Public Information On NC-RETS

NCSEA asserts that proposed rule R8-67(h) does not address the public information aspects of NC-RETS. The Commission notes that the Interim NC-RETS Operating Procedures issued in Docket No. E-100, Sub 121 lists in Section 9 the following "Public Reports" that will be accessible to the general public via the public pages of the NC-RETS website as follows:

1) Directory of Account Holders.
2) Directory of NC-RETS Projects [renewable energy facilities] by Fuel Type.
3) Annual Report of RECs issued by year, starting with 2008.
4) Annual Report of energy efficiency certificates issued by year, starting with 2008.
5) A Public Utility Compliance Report for each utility or utility group.
6) Imported Facilities Report listing out-of-state facilities whose RECs have been imported into NC-RETS.
7) Bulletin Board, which shows RECs that are available for purchase.

This list was developed by the Stakeholder Group, with some additions suggested by the NC-RETS Administrator in order to facilitate importing RECs that were issued in other tracking systems. The Commission believes the list of public reports is robust and will provide the public and REC sellers with much useful information. Even so, the Commission is open to specific Stakeholder Group proposals for making additional information available to the public via NC-RETS in the future. The Commission believes it is not necessary to address this issue in the Rule.

Amendments to Rule R8-68. Incentive Programs for Electric Public Utilities and Electric Membership Corporations, Including Energy Efficiency and Demand-Side Management Programs

Issue 68: Electric Membership Corporations Included In Definition Of Consideration

Rule R8-68(b)(2) contains a definition of "consideration," to which the Public Staff recommends a revision. This revision is intended to clarify that the definition applies to electric membership corporations as well as electric public utilities. Dominion supports the Public Staff's proposed revision, which reads as follows:

> (2) "Consideration" means anything of economic value paid, given or offered to any person by any electric public utility or electric membership corporation (regardless of the source of the "consideration")

including, but not limited to: payments to manufacturers, builders, equipment dealers, contractors including HVAC contractors, electricians, plumbers, engineers, architects, and/or homeowners or owners of multiple housing units or commercial establishments; cash rebates or discounts on equipment/appliance sales, leases, or service installation; equipment/appliances sold below fair market value or below their cost to the electric public utility or electric membership corporation; low interest loans, defined as loans at an interest rate lower than that available to the person to whom the proceeds of the loan are made available; studies on energy usage; model homes; and payment of trade show or advertising costs. Excepted from the definition of "consideration" are favors and promotional activities that are de minimis and nominal in value and that are not directed at influencing fuel choice decisions for specific applications or locations.

The Commission agrees with the Public Staff that the definition of "consideration" was never intended to exclude electric membership corporations. Therefore, the Commission will adopt the Public Staff's unopposed proposed amendment.

Issue 69: Duke's Proposed Definition Of Net Lost Revenues

Rule R8-68(b)(5) provides the following definition of "net lost revenues":

(5) "Net lost revenues" means the revenue losses, net of marginal costs avoided at the time of the lost kilowatt-hour sale(s), or in the case of purchased power, in the applicable billing period, incurred by the electric public utility as the result of a new demand-side management or energy efficiency measure. Net lost revenues shall also be net of any increases in revenues resulting from any activity by the electric public utility that causes a customer to increase demand or energy consumption, whether or not that activity has been approved pursuant to this Rule R8-68.

Duke recommends altering this definition of net lost revenues "to significantly streamline future applications for cost recovery for new energy efficiency and demand-side management measures and programs." Specifically, Duke proposes that net lost revenue recovery be limited to 36 months from the vintage year of installation of the measure, and that the provision that offsets recovery of net lost revenues by any increases in revenues be eliminated. Accordingly, Duke's proposal is as follows:

(5) "Net lost revenues" means the revenue losses, net of marginal costs avoided at the time of the lost kilowatt-hour sale(s), or in the case of purchased power, in the applicable billing period, incurred by the electric public utility as the result of a new demand-side management or energy efficiency measure. ~~Net lost revenues shall also be net of any increases in revenues resulting from any activity by the electric public utility that causes a customer to increase demand or energy consumption, whether or not~~

~~that activity has been approved pursuant to this Rule R8-68.~~ Net lost revenues resulting from a new demand-side management or energy efficiency measure shall only be recoverable for up to thirty-six (36) months from the vintage year of the installation of the measure. The recovery of net lost revenue will end upon the implementation of new rates in a general rate case or comparable proceeding to the extent that rates set in a rate case or comparable proceeding are set to explicitly or implicitly recover those net lost revenues.

Dominion supports Duke's proposal. Duke first contends that its proposed alteration of Rule R8-68(b)(5) is consistent with the Agreement and Stipulation of Settlement between PEC, the Public Staff, and Wal-Mart (the PEC Agreement), approved by the Commission in its June 15, 2009 Order Approving Agreement and Stipulation of Settlement, Subject to Certain Commission-Required Modifications, in Docket No. E-2, Sub 931, and the Agreement and Joint Stipulation of Settlement (SAW Agreement[13]), which the Commission approved in its February 9, 2010 Order Approving Agreement and Joint Stipulation of Settlement Subject to Certain Commission-Required Modifications and Decisions on Contested Issues, in Docket No. E-7, Sub 831. Duke further contends that its proposal will streamline administration of Rule R8-68 by eliminating the need for "lengthy and contested proceedings over what constitutes 'found' revenues in favor of a bright-line test, whereby recovery is limited to 36 months."

The Public Staff disagrees with Duke's characterization of the provisions governing net lost revenue recovery in both agreements, and objects to Duke's proposed amendment on several grounds. The Public Staff states that the Commission's Order initiating this proceeding requested "specific amendments to these procedural rules that would streamline the Commission's administration of G.S. 62-133.8 and G.S. 62-133.9." The Commission admonished parties again by Order issued on February 4, 2010 that its "intent in issuing its September 4, 2009 Order was to solicit non-controversial proposals to modify the rules to streamline the Commission's administration of Senate Bill 3 or to conform the rules to Commission practice after having gained some experience with the current rules and not to solicit substantive changes . . . ." Duke sought clarification and reconsideration of the Commission's Order approving the SAW Agreement in Docket No. E-7, Sub 831. Specifically, Duke sought clarification of the language in the SAW Agreement regarding the limits on its recovery of net lost revenues. The language questioned by Duke in that proceeding is substantially similar to the language it seeks to eliminate in Rule R8-68(b)(5) in this proceeding. The Public Staff argues that, since this issue is in dispute in another pending docket, it cannot be described as "non-controversial" here.

The Public Staff also disagrees with Duke's argument that its proposal will harmonize Rule R8-68(b)(5) with the PEC Agreement and the SAW Agreement. The Public Staff states that Duke's proposed amendment to Rule R8-68 is inconsistent with

[13] On June 12, 2009, Duke, the Environmental Defense Fund, the Natural Resources Defense Council, the Southern Alliance for Clean Energy, the Southern Environmental Law Center, and the Public Staff filed an Agreement and Joint Stipulation of Settlement (SAW Agreement) in Docket No. E-7, Sub 831.

the provisions of both Agreements, and it effectively eliminates one of their material terms. Duke contends that its proposed limited recovery period "inherently takes into account the possibility of any increase in revenues resulting from any activity by the utility that causes customers to increase demand or energy consumption." Both the PEC and SAW Agreements, however, contain explicit limitations on the recovery of net lost revenues, according to the Public Staff.

The Commission recently addressed this matter in Docket No. E-7, Sub 831. In the Order Denying Motion for Clarification and Reconsideration issued on July 7, 2010, the Commission ruled against Duke and, in effect, reaffirmed the provisions of Rule R8-68(b)(5). Accordingly, the Commission finds good cause to deny Duke's proposal in this Docket. In so ruling, the Commission reaffirms the decision set forth in the July 7, 2010 Order in Docket No. E-7, Sub 831, and hereby incorporates that reasoning by reference. In addition, the comments filed by the Public Staff in this proceeding support the decision to deny Duke's proposal.

Issue 70: PEC's Proposed Definition Of Net Lost Revenues

PEC recommends a different amendment to the definition of "net lost revenues" in R8-68(b)(5), suggesting that, "Costs and revenues recognized or collected in an annual rider proceeding may be appropriately excluded from this calculation" be added to the end of that subdivision. PEC contends that this change will clarify that, because of the true-up, avoided annual rider costs will always result in a matching reduction in annual rider revenue. Therefore, according to PEC, these items may be excluded from the calculation without impacting the result. Dominion supports PEC's proposed amendment. NCSEA argues that PEC's proposal is a substantive change and hence beyond the scope of this proceeding.

The Public Staff asserts that PEC's proposed change is unnecessary, and recommends that the definition of "net lost revenues" remain unchanged. The situation addressed by PEC's proposal arose as part of a specific PEC cost recovery proceeding and, in the Public Staff's opinion, does not rise to the level of concern necessary to justify explicit consideration in the Commission's rules. If, however, the Commission disagrees with the Public Staff's recommendation, the Public Staff suggests a sentence be added at the conclusion of Rule R8-68(b)(5) as shown below:

> (5) "Net lost revenues" means the revenue losses, net of marginal costs avoided at the time of the lost kilowatt-hour sale(s), or in the case of purchased power, in the applicable billing period, incurred by the electric public utility as the result of a new demand-side management or energy efficiency measure. Net lost revenues shall also be net of any increases in revenues resulting from any activity by the electric public utility that causes a customer to increase demand or energy consumption, whether or not that activity has been approved pursuant to this Rule R8-68. Costs and revenues that are subject to true-up against each other in another

Commission proceeding may be excluded from this calculation if the exclusion is found appropriate by the Commission.

The Commission agrees with the Public Staff that the rule change proposed by PEC is not necessary. Therefore, the Commission will decline to adopt PEC's proposal or the Public Staff's alternative, leaving the definition of "net lost revenues" unchanged.

Issue 71: Definition Of Vintage Year

Duke proposes to add a new definition, Rule R8-68(b)(10), as follows:

"Vintage year" means the identified twelve (12) month period in which a specific demand-side management or energy efficiency measure or program is installed for an individual participant or group of participants.

The Commission believes that this definition is not needed and notes that in Docket No. E-7, Sub 831 (Petition for Approval of Save-a-Watt Approach, Energy Efficiency Rider and Portfolio of Energy Efficiency Programs), the first vintage year is 18 months, rather than 12 months, in length. Therefore, the Commission will decline to adopt Duke's proposed definition.

Issue 72: Filing Requirements For EE And DSM Program Applications

Rule R8-68(c)(2) specifies the filing requirements for new energy efficiency and demand-side management program applications. PEC proposes a substantial reorganization of the filing requirements under Rule R8-68(c)(2) and (3) for seeking approval of an energy efficiency or demand-side management program or measure. According to PEC, it aims to consolidate certain similar requirements and prevent duplication of others.

The Public Staff agrees with PEC's goal; however, the Public Staff notes that Rule R8-68 is designed to apply to both electric public utilities and to electric membership corporations (EMCs). While EMCs must file for approval of demand-side management and energy efficiency programs and measures, they do not file for approval to recover their costs or any incentives for those programs and measures under Rule R8-69, which sets forth the annual rider proceedings, as electric public utilities do. Consequently, Rule R8-68(c)(3) sets forth more detailed filing requirements that apply to electric public utilities only. While the Public Staff believes that some consolidation is advisable and that some duplication can be remedied, it cautions that these additional filing requirements should generally remain distinct from the EMCs' filing requirements and should not be consolidated at this time.

PEC initially suggested a rewrite of R8-68(c)(2) that lists the requirements for an energy efficiency or demand-side management program application. NCEMC and the Public Staff expressed concern that PEC's rewrite inadvertently would have caused certain provisions to apply to EMCs that do not apply to them today. In its reply

comments, PEC proposed a second revision. NCEMC states that PEC allowed them to review this second version, which NCEMC supports. Dominion also supports PEC's efforts to streamline the filing requirements in Rule R8-68(c)(2)-(3). The Public Staff recommends striking subparagraph (c)(2)(i)(f) of PEC's second version, which requests "the duration of the proposed measure or program," because it is completely redundant with (c)(2)(ii)(b).

The Commission believes PEC's second re-write, as amended by the Public Staff, helps clarify the rules and will therefore adopt the proposed revisions as detailed below and in Appendix A:[14]

(c)(2) Filing Requirements. – Each application for the approval shall include:

(i) Cover Page. – The electric public utility or electric membership corporation shall attach to the front of an application a cover sheet generally describing:

(a) the measure or program;

(b) the consideration to be offered;

(c) the anticipated total cost of the measure or program;

(d) the source and amount of funding to be used; and

(e) the proposed classes of persons to whom it will be offered.

(ii) Description. – The electric public utility or electric membership corporation shall provide a description of each measure and program, and include the following:

(a) the program or measure's objective;

(b) the duration of the program or measure;

(c) the targeted sector and eligibility requirements;

(d) examples of all communication materials and the related cost for each program year to be used with the measure or program;

(e) the estimated number of participants;

(f) the impact that each measure or program is expected to have on the electric public utility or electric membership corporation, its customer body as a whole, and its participating North Carolina customers; and

(g) any other information the electric public utility or electric membership corporation believes is relevant to the application, including information on competition known by the electric public utility or the electric membership corporation.

[14] For simplicity, the Commission will portray these proposed revisions as consisting entirely of new language; parties should refer to existing Rule R8-68(c)(2), which shows that most of the provision exists in current rules.

(iii) Additionally, an electric public utility shall include or describe:

(a) the measure's proposed marketing plan, including a description of market barriers and how the electric public utility intends to address them;
(b) the total market potential and estimated market growth throughout the life of the measure;
(c) the estimated summer and winter peak demand reduction by unit metric and in the aggregate by year;
(d) the estimated energy reduction per appropriate unit metric and in the aggregate by year;
(e) the estimated lost energy sales per appropriate unit metric and in the aggregate by year;
(f) the estimated load shape impacts; and
(g) a description of how the measure's impacts will be evaluated, measured, and verified.

Issue 73: Costs And Benefits Of EE/DSM Programs, Communications And M&V Costs

The current Rule R8-68(c)(2)(iii) details the information required in a DSM/EE program application regarding the costs and benefits of the measure or program. PEC recommends amending this rule to include communications and M&V costs by adding the following underlined language:

(iii) Costs and Benefits. — The electric public utility or electric membership corporation shall provide the following information on the costs and benefits of each proposed measure or program: (a) the estimated total and per unit cost and benefit of the measure or program to the electric public utility or electric membership corporation, reported by type of benefit and expenditure (e.g., capital cost expenditures; administrative costs; operating costs; participation incentives, such as rebates and direct payments; ~~and advertising~~ communications costs, and the costs of measurement and verification) and the planned accounting treatment for those costs and benefits; (b) the type, amount, and reason for any participation incentives and other consideration and to whom they will be offered, including schedules listing participation incentives and other consideration to be offered; and (c) service limitations or conditions planned to be imposed on customers who do not participate in the measure.

PEC argues that the reporting of costs relating to communications activities, which now resides in paragraph R8-68(c)(2)(v), should be consolidated into paragraph R8-68(c)(2)(iii) for uniformity. As a consequence of PEC's proposal, it also

proposes to strike the entire Communications paragraph of Rule R8-68(c)(2)(v), which is as follows:

> (v) Communications. — The electric public utility or electric membership corporation shall provide detailed cost information on the amount it anticipates will be spent on communications materials related to each proposed measure or program. Such costs shall be included in the Commission's consideration of the total cost of the measure or program and whether the total cost of the measure or program is reasonable in light of the benefits. To the extent available, the electric public utility or electric membership corporation shall include examples of all communication materials to be used in conjunction with the measure or program.

The Public Staff disagrees, noting that PEC's proposed consolidation would not incorporate the existing requirement to provide "detailed information" regarding communication costs. Based on the Commission's interest in the costs and impacts of communications materials associated with energy efficiency and demand-side management programs and measures, the Public Staff states that this information remains relevant to the Commission's consideration of a petition for approval of a new energy efficiency or demand-side management measure or program. Therefore, the Public Staff recommends that each utility or EMC should continue to be required to provide detailed cost information on the amount it anticipates it will spend on communications materials and that the Commission should continue to include consideration of those specific costs in its consideration of the total costs of the program or measure. The Public Staff, however, does not object to PEC's general suggestion that information regarding the costs of communications materials be included in the paragraph on Costs and Benefits.

The Commission agrees with the Public Staff that it is interested in the costs and impacts of communications materials associated with EE and DSM programs. The Commission believes that such materials can be an integral component of such programs, and therefore will require electric public utilities and electric membership corporations to provide not only "examples of all communication materials to be used with the measure or program," as currently required, but also the costs of those materials. The Commission will amend Rule R8-68(c)(2)(ii)(d), as shown in Appendix A, to require that communication materials costs be included with DSM/EE program applications. The Commission will also amend Rule R8-68(c)(2)(iii) as shown below and in Appendix A and renumbered to be provision (iv), so that communication costs, in addition to advertising costs, are considered in program cost/benefit analyses. Finally, as suggested by the Public Staff, the Commission will consolidate the current requirements of Rule R8-68(c)(2)(v) regarding communications costs into the provision regarding costs and benefits.

Rule R8-68(c)(3)(i) and (iii) require the electric public utilities to file detailed M&V plans, as well as provide information on the cost of those plans. These requirements

currently apply only to electric public utilities. While the Public Staff does not want to add this detailed M&V requirement to the EMCs at this time, it believes that the estimated costs of an EMC's M&V of the proposed measure or program is relevant to the Commission's consideration of the total costs and benefits of that proposed measure or program. Therefore, the Public Staff does not object to PEC's proposal to include the costs of M&V as an express requirement of Rule R8-68(c)(2)(iii), thereby making it apply to both EMCs and electric public utilities.

The Commission agrees with the Public Staff's reasoning, and notes, in addition, that EMCs will likely want to apply M&V costs towards the REPS cost cap. The Commission notes that the Public Staff's proposed revisions would also require the electric public utility or EMC to provide "the maximum and minimum amount of participation incentives" to be paid. The Commission believes that this change will be helpful as it reviews DSM/EE program applications, and will, therefore, make the modification. Therefore, to address communications costs, M&V costs, and participation incentives, the Commission will adopt the following revisions to current

Rule R8-68(c)(2)(iii), which will be renumbered and modified as shown below and in Appendix A:

> ~~(iii)~~(iv) Costs and Benefits. — The electric public utility or electric membership corporation shall provide the following information on the costs and benefits of each proposed measure or program: (a) the estimated total and per unit cost and benefit of the measure or program to the electric public utility or electric membership corporation, reported by type of benefit and expenditure (e.g., capital cost expenditures; administrative costs; operating costs; participation incentives, such as rebates and direct payments; advertising and ~~advertising~~ communications costs; and the costs of measurement and verification) and the planned accounting treatment for those costs and benefits; (b) the type, the maximum and minimum amount of participation incentives to be made to any party, and the reason for any participation incentives and other consideration and to whom they will be offered, including schedules listing participation incentives and other consideration to be offered; and (c) service limitations or conditions planned to be imposed on customers who do not participate in the measure. With respect to communications costs, the electric public utility or electric membership corporation shall provide detailed cost information on communications materials related to each proposed measure or program. Such costs shall be included in the Commission's consideration of the total cost of the measure or program and whether the total cost of the measure or program is reasonable in light of the benefits.

Issue 74: Cost-Effectiveness Evaluations

PEC proposes amending current Rule R8-68(c)(2)(iv), which pertains to the information required regarding the cost-effectiveness evaluations of the proposed measure or program, by adding the following sentence: In addition, the utility shall describe the methodology used to produce the impact estimates, as well as, if appropriate, methodologies considered and rejected in the interim leading to the final model specification. PEC argues that this will make the paragraph uniform with respect to rules covering cost-effectiveness testing and consolidate other sections.

The Public Staff disagrees, however. The language that PEC proposes to add is from the Additional Filing Requirements portion of Rule R8-68(c)(3)(i)l that today applies to electric public utilities only. The Public Staff does not believe that the requirements applying to EMCs should be amended unless it is to streamline application of Rule R8-68 as outlined by the Commission. The Public Staff argues that the Commission should deny PEC's request to amend R8-68(c)(2)(iv), and that the Rule should remain as is.

The Commission agrees with both PEC and the Public Staff. As shown in Appendix A, this requirement will continue to apply only to electric public utilities as Rule R8-68(c)(2)(v), Cost-Effectiveness Evaluation. In order to address the Public Staff's concern, the Commission will adopt a slightly different version of PEC's proposal, drafted so as not to apply to electric membership corporations:

> In addition, an electric public utility shall describe the methodology used to produce the impact estimates, as well as, if appropriate, methodologies considered and rejected in the interim leading to the final model specification.

Issue 75: Re-Locating References To Guidelines Regarding Incentive Programs Into Rule R8-68

PEC proposes to delete Rule R8-68(c)(2)(vi) as follows:

> ~~(vi) Commission Guidelines Regarding Incentive Programs. The electric public utility or electric membership corporation shall provide the information necessary to comply with the Commission's Revised Guidelines for Resolution of Issues Regarding Incentive Programs, issued by Commission Order on March 27, 1996, in Docket No. M-100, Sub 124, set out as an Appendix to Chapter 8 of these rules.~~

PEC proposes that paragraph R8-68(c)(2)(vi), the requirement to provide information relative to compliance with the Commission Guidelines Regarding Incentive Programs, be eliminated in its entirety, along with the Appendix to Chapter 8 of the

Rules.[15] PEC argues that, given the program filing requirements provided by the rulemaking for Senate Bill 3, this paragraph and the Appendix are redundant and should be deleted. The Public Staff disagrees with PEC's proposal to eliminate the Appendix entirely. The Appendix is the Commission's Revised Guidelines for Resolution of Issues Regarding Incentive Programs (Guidelines), issued by the Commission on March 27, 1996 in Docket No. M-100, Sub 124. In that docket, the Commission resolved certain issues concerning competition between electric and natural gas programs that provided incentives for participation under G.S. 62-140. G.S. 62-140 remains in effect, even with passage of Senate Bill 3. Therefore, the Public Staff believes that Rule R8-68 should continue to include the Guidelines, as these issues remain relevant.

In its reply comments, the Public Staff instead recommends a new paragraph R8-68(c)(2)(v), that would include a portion of the Guidelines pertaining to participation incentives provided by electric and gas utilities to third-party builders. This information is currently included in the Guidelines (Appendix to Chapter 8) at paragraph 3, which is as follows:

> 3. If a program involves an incentive paid to a third party builder (residential or commercial), the builder shall be advised by the sponsoring utility that the builder may receive the incentive on a per structure basis without having to agree to: (a) a minimum number or percentage of all-gas or all-electric structures to be built in a given subdivision development or in total; or (b) the type of any given structure (gas or electric) to be built in a given subdivision development.
>
> (a) Electric and gas utilities may continue to promote and pay incentives for all-electric and all-gas structures respectively, provided such programs are approved by the Commission.
>
> (b) A builder shall be advised by the sponsoring utility of the availability of natural gas or electric alternatives, as appropriate.
>
> (c) A builder receiving incentives shall not be required to advertise that the builder is exclusively an all-gas or all-electric builder for either a particular subdivision or in general.

The Public Staff recommends incorporating that paragraph from the Guidelines into Rule R8-68 as a new Rule R8-68(c)(2)(v) as follows:

> <u>(v) Information Regarding Participation Incentives Provided to Third Party Builders. – If a program or measure involves a participation incentive paid to a third party builder (residential or commercial), the electric public utility or electric membership corporation shall provide documentation showing that it has advised the builder(s): (1) of the availability of natural</u>

[15] Chapter 8 of the Commission's Rules is an Appendix entitled <u>Revised Guidelines for Resolution of Issues Regarding Incentive Programs.</u> It is attached hereto near the end of Appendix A. In this context, incentives means a "participation incentive" as defined in Rule R8-68(b)(7), specifically, "any consideration associated with a new demand-side management or energy efficiency measure."

gas or electric alternatives, as appropriate; (2) that the builder(s) may receive the participation incentive on a per structure basis without having to agree to a minimum number or percentage of all gas or electric structures to be built in a given subdivision development or in total; or to the type of any given structure (gas or electric) to be built in a given subdivision or development; and (3) that the builder shall not be required to advertise that the builder is exclusively an all gas or all electric builder for either a particular subdivision or in general. Electric public utilities may continue to promote and pay incentives for all-electric structures respectively, provided such programs are approved by the Commission.

The Public Staff proposes this explicit addition to Rule R8-68 because of PEC's proposed deletion of filing requirement Rule R8-68(c)(2)(vi).

The Public Staff also states that some of the Guidelines are obsolete or redundant. For example, paragraphs 1(b), 1(c), paragraph 7, and portions of paragraph 5 of the Guidelines concern the timing of certain filings after the Guidelines were issued. The Public Staff believes that these paragraphs may now be eliminated. Moreover, paragraphs 1 and 1(f) are superseded by G.S. 62-133.9 and the Commission's Rules R8-68 and R8-69 with respect to requiring cost-effectiveness and participant incentive information when applying for approval of new energy efficiency and demand-side management programs and measures and with respect to rate recovery.

The Public Staff also believes that the Guidelines, which resulted from a previous Commission proceeding, remain in effect regardless of the outcome of this rulemaking, even if the need to expressly attach them to these procedural rules regarding program approval and cost-recovery no longer exists. For example, paragraph 1(d) of the Guidelines provides that the Commission cannot resolve the matter of the "relative efficiency of electricity versus natural gas under various scenarios" and that "a better approach at this time would be to determine the acceptability of incentive programs based on the energy efficiency of electricity alone or natural gas alone, as applicable." At the time the Guidelines were developed, natural gas and electric incentives programs were both approved under Commission Rule R1-38. Now, however, the Rules provide for separate consideration of natural gas incentive programs under Rule R6-95 and electric incentive programs under Rule R8-68. Therefore, while that provision of the Guidelines remains in effect, it is no longer necessary to include it expressly in Rule R8-68, according to the Public Staff.

The Public Staff believes, however, that paragraphs 1(a), 1(e), as well as paragraphs 2(a) - (c) and 3(a) - (c), should be generally retained for purposes of the filing requirements set forth in Rule R8-68. To that end, the Public Staff recommends incorporating those provisions into the text of Rule R8-68 itself rather than presenting them in a separate Appendix.

Similarly, the Public Staff recommends locating all of the requirements for promotional programs in Rule R8-68 as follows:

> (d) Promotional Programs. – If a program or measure involves a participation incentive under this Rule, and the participation incentive affects the decision to install or adopt natural gas service or electric service in the residential or commercial market, there shall be a rebuttable presumption that the program is promotional in nature.
>
> (i) If the presumption that a program or measure is promotional is not successfully rebutted, the cost of the incentive may not be recoverable from the ratepayers unless the Commission finds good cause to do so.
>
> (ii) If the presumption that a program or measure is promotional is successfully rebutted, the cost of the participation incentive may be recoverable from the ratepayers. The cost shall not be disallowed in a future proceeding on the grounds that the program is primarily designed to compete with other energy suppliers.
>
> (iii) The presumption that a program is promotional may generally be rebutted at the time it is filed for approval by demonstrating that the participation incentive will encourage construction of dwellings and installation of appliances that are more energy efficient than required by state or federal building codes and appliance standards, subject to Commission approval.

The Public Staff recommends incorporating paragraph 1(e) of the Guidelines into the Commission's scope of review for approval of new or modified energy efficiency or demand-side management programs or measures. The Public Staff recommends that the first sentence of Rule R8-68(e) be modified as follows:

> (e) Scope of Review. – In determining whether to approve in whole or in part a new measure or program or changes to an existing measure or program, the Commission shall not consider the impact of an electric program on the sales of natural gas, or vice versa, but may consider any other information it determines to be relevant, including any of the following . . .

The Public Staff also seeks to relocate the portion of the Guidelines dealing with cost recovery into Rule R8-68(f). The Public Staff recommends substituting the following language from paragraph 1(f) of the Guidelines into Rule R8-68(f) as follows:

> (f) Cost Recovery for New Measures. – Approval of a program or measure under Commission Rule R8-68 does not constitute approval of rate recovery of the costs of the program or measure. With respect to new

demand-side management and energy efficiency measures, ~~Except for those costs found by the Commission to be unreasonable or imprudently incurred,~~ the costs of those new ~~demand-side management or energy efficiency~~ measures, approved by application of this rule, that are found to be reasonable and prudently incurred shall be recovered only through the annual rider described in G.S. 62-133.9 and Rule R8-69. The Commission may ~~also~~ consider in the annual rider proceeding whether to approve ~~any~~ the inclusion of any utility incentive pursuant to G.S. 62-133.9(d)(2)a.-c. in the annual rider.

The Commission agrees with the Public Staff that Chapter 8 of its Rules, the Appendix entitled Revised Guidelines for Resolution of Issues Regarding Incentive Programs, is outdated. However, the Commission is reluctant to make changes relative to the Guidelines in this Docket because the Guidelines impact both gas and electric utilities, and gas utilities have not filed comments on this issue. Therefore, the Commission will decline to adopt changes that would move any Guideline provisions into Rule R8-68 at this time, but will instead request that the Public Staff work with the affected electric and natural gas utilities to develop a proposal for stream-lining and updating the Guidelines and file it with the Commission in Docket No. M-100, Sub 124 within three months.

Issue 76: M&V Plans

PEC proposes to move the language in Rule R8-68(c)(3)(i)(k), which states that the electric public utility shall include a description of how the measure's impacts will be evaluated, measured, and verified, into Rule R8-68(c)(3)(iii), which addresses M&V plans. The Public Staff does not object to PEC's proposed amendment but believes that certain additional revisions may clarify the paragraph further. The Public Staff recommends the following revised paragraph (c)(3)(iii), incorporating its proposed changes with PEC's proposal:

(iii) Measurement and Verification Reporting Plan for New Demand-Side Management and Energy Efficiency Measures. — The electric public utility shall be responsible for the measurement and verification of energy and peak demand savings and may use the services of an independent third party for such purposes. The costs of implementing the measurement and verification process may be considered as operating costs for purposes of Commission Rule R8-69. In addition, t~~T~~he electric public utility shall:

a. describe the industry-accepted methods to be used to evaluate, measure, and verify, and validate the energy and peak demand savings estimated in ~~paragraph (i)~~(2)(iii)c above ~~and~~;

b. ~~shall~~ provide a schedule for reporting the savings to the Commission~~. The electric public utility shall be~~

~~responsible for the measurement and verification of energy and peak demand savings and may use the services of an independent third party for such purposes. If the electric public utility plans to utilize an independent third party for purposes of measurement and verification, an identification of the third party and all of the costs of third party should be included. The costs of implementing the measurement and verification process may be considered as operating costs.~~;

c. describe the methodologies used to produce the impact estimates, as well as, if appropriate, the methodologies it considered and rejected in the interim leading to final model specification; and

d. identify any third party and include all of the costs of that third party, if the electric public utility plans to utilize an independent third party for purposes of measurement and verification.

The Commission finds that the Public Staff's proposed revisions, as shown above, are reasonable and will, therefore adopt them as shown in Appendix A, but re-numbered as Rule R8-68(c)(3)(ii).

Issue 77: Cost Estimates For Utility Incentives

Rule R8-68(c)(3)(vi) provides that:

(vi) Utility Incentives. – When seeking approval of new demand-side management and energy efficiency measures, the electric public utility shall indicate whether it will seek to recover any utility incentives, including, if appropriate, net lost revenues, in addition to its costs. If the electric public utility proposes recovery of utility incentives related to the proposed new demand-side management or energy efficiency measure, it shall describe the utility incentives it desires to recover and describe how its measurement and verification reporting plan will demonstrate the results achieved by the proposed measure. If the electric public utility proposes recovery of net lost revenues, it shall describe estimated net lost revenues by appropriate capacity, energy and measure unit metric and in the aggregate by year.

The Public Staff notes that the Commission has issued orders requiring additional information from PEC with respect to the above paragraph.[16] The Public Staff believes that incorporating the Commission's requested information expressly into the portion of Rule R8-68 setting forth the filing requirements for new programs would

[16] See, e.g., Order Requiring Additional Information, Docket No. E-2, Sub 950 (October 6, 2009) and Order Requiring Additional Information, Docket No. E-2, Sub 970 (January 15, 2010).

streamline the application process. Therefore, the Public Staff proposes that the following requirement be added at the end of Rule R8-68(c)(3)(vi):

> If the electric public utility seeks recovery of utility incentives, including net lost revenues, apart from its recovery of its costs under G.S. 62-133.9, it shall file estimates of the utility incentives and the net lost revenues associated with the proposed measure for each year of the proposed recovery. If the electric public utility seeks only the recovery of net lost revenues apart from its recovery of combined costs and utility incentives, it shall file estimates of net lost revenues for each year of the proposed recovery.

The Public Staff believes that its suggested language will provide the yearly estimates of utility incentives that the Commission has requested prior to approving new EE and DSM programs and measures in Docket No. E-2, Subs 950 and 970. The first sentence of the Public Staff's addition refers to the approved stipulation on cost recovery for DSM and EE programs with PEC in Docket No. E-2, Sub 931. Under that stipulation, as well as the Commission rules, PEC may seek to recover, in the appropriate cost recovery proceedings, its reasonable and prudent costs incurred in adopting and implementing EE and DSM measures, and, in certain circumstances, net lost revenues and a program performance incentive (PPI) separately for each proposed measure. Therefore, under the Public Staff's proposed language, PEC would file its estimated net lost revenues and estimated PPI for each year of its proposed recovery. The second sentence of the Public Staff's proposed addition refers to the approved stipulation with Duke in Docket No. E-7, Sub 831. Under that stipulation and the Commission's rules, Duke recovers, in the appropriate cost recovery proceedings, a utility incentive that is designed both to recover the costs of the program and to provide a utility incentive to Duke. In certain circumstances, Duke may recover net lost revenues separately from its recovery of the integrated program cost/utility incentive recovery. Therefore, under the Public Staff's proposed second sentence, Duke would file only its estimated net lost revenues for each year of the proposed recovery with its applications for approval of EE programs and measures.

The Commission believes that the Public Staff's proposed addition to Rule R8-68(c)(3)(vi) will speed the process of reviewing EE and DSM program applications because it will require the electric public utilities to provide information regarding all program costs, including utility incentives, with the initial application. Furthermore, no comments were filed in opposition to the Public Staff's recommendation. Therefore, the Commission will approve the Public Staff's proposed additional language to Rule R8-68(c)(3)(vi), re-numbered as necessary and with the slight clarifications noted below, and as shown in Appendix A:

> (v) If the electric public utility seeks recovery of utility incentives, including net lost revenues, apart from its recovery of its costs under G.S. 62-133.9, it shall file estimates of the utility incentives and the net lost revenues

associated with the proposed measure for each year of the proposed recovery period. If the electric public utility seeks only the recovery of net lost revenues apart from its recovery of combined costs and utility incentives, it shall file estimates of net lost revenues for each year of the proposed recovery period.

Issue 78: Suspension Of Tariffs Related To EE And DSM Programs

Under Rule R8-68(c)(3)(v), the electric public utility "shall provide proposed tariffs or modifications to existing tariffs that will be required to implement each measure or program." The Public Staff states that G.S. 62-134(a) provides that no public utility shall make any changes in any rate which has been duly established under Chapter 62 without giving 30 days notice to the Commission, and that G.S. 62-134(b) provides that the Commission may suspend operation of a proposed rate for a period of no longer than 270 days from the time the rate would otherwise go into effect. The Public Staff argues that, because the electric public utilities are filing proposed tariffs with their applications for approval, the Commission is required to suspend the proposed tariffs on a case-by-case basis.[17] To eliminate the piecemeal suspension of tariffs, and to provide sufficient time for the investigation, review, and decision by the Commission on applications for approval of DSM and EE programs, the Public Staff proposes the following subdivision be added as a new Rule R8-68(d)(1):

(1) If an electric public utility files a proposed tariff or tariff amendment in connection with an application for approval of a measure or program, the tariff filing shall be automatically suspended pursuant to G.S. 62-134 pending investigation, review, and decision by the Commission.[18]

While PEC does not object to the Public Staff's proposal to automatically suspend tariffs, so long as existing provisions relative to service of filings, responses, public notice, and procedural schedules remain intact, PEC believes the 300-day suspension period (270 days plus 30 days) in G.S. 62-134 was intended for major rate changes, and is longer than needed for tariffs filed to implement DSM and EE programs. Therefore, PEC proposes to delete the reference to G.S. 62-134 in the Public Staff's proposed new rule, and instead provide for an automatic suspension of DSM/EE program tariffs for up to 45 days following filing. If the Commission schedules the matter for hearing, the tariff would be automatically suspended for up to 75 additional days. PEC's concern is that the Public Staff's proposal would create an apparent conflict between a 300-day maximum extension period and the existing Rule R8-68(d)(1), which requires a hearing in 90 days.

[17] See, e.g., Order Suspending Tariff Filing, Docket No. E-2, Sub 927 (May 15, 2008).

[18] Under the Public Staff's proposal, the current R8-68(d)(1) and (d)(2) would be renumbered (d)(2) and (d)(3), respectively.

The Commission finds good cause to approve the Public Staff's proposed rule revision, as shown in Appendix A. G.S. 62-134 is the statute that authorizes the Commission to suspend proposed tariff filings and it is entirely appropriate, if not necessary, to include a reference to that statute in the rule revision adopted herein. PEC's procedural concerns are misplaced in that Rule R8-68(d) clearly sets forth procedural requirements and guidelines that remain intact and are sufficient to ensure against unreasonable processing delays for applications requesting approval of new programs. Furthermore, the suspension language proposed by the Public Staff generally tracks the language used by the Commission in suspension orders. The Commission always endeavors to consider applications in the most expeditious manner possible and will continue to do so in the future in order to minimize, to the maximum extent practicable, any potential for procedural unfairness or denials of due process to the parties to a proceeding.

Issue 79: Parties May Comment On DSM/EE Program Applications

Existing Rule R8-68(d)(1) outlines the procedure for service and response for applications for approval of DSM and EE programs by electric public utilities and electric membership corporations. The third sentence of this subdivision provides that: "Those served, and others learning of the application, shall have thirty (30) days from the date of the filing in which to petition for intervention pursuant to Rule R1-19 or file a protest pursuant to Rule R1-6." The Public Staff states that this language originated with the now superseded Commission Rule R1-38. Having gained experience in reviewing applications for DSM and EE programs, the Public Staff believes it is appropriate to characterize its reporting of its review and recommendations concerning such applications as "comments," instead of a "protest" as defined by Rule R1-6. Moreover, the Public Staff believes that the scope of its comments may be broader than simply recommending approval or disapproval. Therefore, it recommends the following revisions to the current Rule R8-68(d)(1):

> Service and Response. – The electric public utility or electric membership corporation filing for approval of a measure or program shall serve a copy of its filing on the Public Staff; the Attorney General; the natural gas utilities, electric public utilities, and electric membership corporations operating in the filing electric public utility's or electric membership corporation's certified territory; and any other party that has notified the electric public utility or electric membership corporation in writing that it wishes to be served with copies of all filings. If a party consents, the electric public utility or electric membership corporation may serve it with electronic copies of all filings. Those served, and others learning of the application, shall have thirty (30) days from the date of the filing in which to petition for intervention pursuant to R1-19 ~~or file a protest pursuant to Rule R1-6.~~and, if desired, to file comments on the proposed measure or program. In comments, any party may recommend approval or disapproval of the measure or program or identify any issue that it believes requires further investigation. The filing electric public utility or

electric membership corporation shall have the opportunity to respond to the petitions or ~~protests~~ comments within ten (10) days of their filing. If any party raises an issue of material fact, the Commission shall set the matter for hearing. The Commission may determine the scope of this hearing.

While no party opposes the Public Staff's proposed revision, the Commission notes that it should remain procedurally possible for a party to protest a DSM or EE program application. Therefore, the Commission will accept the Public Staff's proposal with slight modifications to allow for protests, as follows and as shown in Appendix A, with re-numbering as necessary:

~~(1)~~(2) Service and Response. -- … Those served, and others learning of the application, shall have thirty (30) days from the date of the filing in which to petition for intervention pursuant to R1-19, ~~or~~ file a protest pursuant to Rule R1-6, or file comments on the proposed measure or program. In comments, any party may recommend approval or disapproval of the measure or program or identify any issue relative to the program application that it believes requires further investigation. The filing electric public utility or electric membership corporation shall have the opportunity to respond to the petitions, ~~or~~ protests, or comments within ten (10) days of their filing. If any party raises an issue of material fact, the Commission shall set the matter for hearing. The Commission may determine the scope of this hearing.

Amendments to Rule R8-69. Cost Recovery for Demand-Side Management and Energy Efficiency Measures of Electric Public Utilities

Rule R8-69 addresses cost recovery of DSM and EE programs by electric public utilities, as well as utility incentives and the ability of large customers to "opt out" of programs, including paying any program costs via the DSM/EE rider.

Issue 80: Interest And Return Calculations On Refunds And Deferral Account Balances

Subdivisions (b)(3) and (b)(6) of Rule R8-69 each address the interest associated with an electric public utility incurring and recovering DSM and EE costs. In particular, subdivision (b)(3) deals with interest on refunds pursuant to G.S. 62-130(e) and reads as follows:

Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently incurred costs to be refunded to an electric public utility's customers through operation of the DSM/EE EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.

Subdivision (b)(6), which authorizes deferral accounting for costs considered for recovery through the annual rider, reads, in pertinent part, as follows:

> The balance in the deferral account, net of deferred income taxes, may accrue a return at the net-of-tax rate of return approved in the electric public utility's most recent general rate proceeding. The return so calculated will be adjusted in any rider calculation to reflect necessary recoveries of income taxes. This return is not subject to compounding.

The Public Staff explains that these two provisions can conflict for two reasons. First, subdivision (b)(6) provides for a return on the deferral account balance, without regard for whether that balance represents a net over-recovery or net under-recovery of DSM and EE costs, while subdivision (b)(3) provides only for interest on over-recoveries of DSM and EE costs. Second, subdivision (b)(6) provides that the return on the deferral account balance shall be accrued using the net-of-tax rate of return approved in the applicable electric public utility's most recent general rate proceeding; subdivision (b)(3), on the other hand, states only that the interest rate used to calculate interest on an over-recovery shall be one that the Commission determines to be just and reasonable, but no greater than the maximum statutory rate. Historically, the Commission has found this just and reasonable rate to be 10% per annum.

The Public Staff notes that, in Appendix A to its reply comments filed in this docket on December 17, 2007, it recommended language very similar to that ultimately approved in subdivision (b)(3), but recommended deletion of language in subdivision (b)(6) authorizing a return on the deferral account. However, in its Order Adopting Final Rules, issued February 29, 2008, the Commission included both provisions in the approved Rule, stating on page 117 of the Order that the inclusion of the applicable language in subdivision (b)(6) was appropriate "[t]o encourage electric public utilities to pursue energy efficiency resources."

The Public Staff notes further that the Commission's explicit conclusion to include both return and interest provisions in the final Rule R8-69 appears to show that it intends for both a return on the DSM and EE cost deferral account balance and interest on net over-recoveries of DSM and EE costs. As noted above, however, these provisions provide for differing accrual mechanisms, at potentially different rates, to be applied to the same net dollars, possibly in the same time period. Rule R8-69(b) does not explain how such potential conflicts may be avoided. Therefore, the Public Staff recommends that the Rule be clarified to provide that, unless a different approach is found appropriate by the Commission in a specific DSM and EE cost recovery proceeding, the deferral account return authorized in subdivision (b)(6), as applicable to any net over- or under-recovery included in a DSM and EE Experience Modification Factor (DSM/EE EMF), ceases to be accrued as of the effective date of rates including that EMF. As of that date, any net over-recovery included in the DSM/EE EMF would begin to accrue interest according to the provisions of subdivision (b)(3). The Public Staff believes that this approach will appropriately balance the two interest and return

provisions in Rule R8-69. To accomplish its recommendation, the Public Staff proposes that subdivisions (b)(3) and (b)(6) be revised as follows:

> (b)(3) Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently incurred costs to be refunded to an electric public utility's customers through operation of the DSM/EE EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate. The beginning date for measurement of such interest shall be the effective date of the DSM/EE EMF rider in each annual proceeding, unless otherwise determined by the Commission.
>
> (b)(6) Except as provided in (c)(3) of this rule, each electric public utility may implement deferral accounting for costs considered for recovery through the annual rider. At the time the Commission approves a new demand-side management or energy efficiency measure under Rule R8-68, the electric public utility may defer costs of adopting and implementing the new measure in accordance with the Commission's approval order under Rule R8-68. Subject to the Commission's review, the electric public utility may begin deferring the costs of adopting and implementing new demand-side management or energy efficiency measures six (6) months prior to the filing of its application for approval under Rule R8-68, except that the Commission may consider earlier deferral of development costs in exceptional cases, where such deferral is necessary to develop an energy efficiency measure. Deferral accounting, however, for any administrative costs, general costs, or other costs not directly related to a new demand-side management or energy efficiency measure must be approved prior to deferral. The balance in the deferral account, net of deferred income taxes, may accrue a return at the net-of-tax rate of return approved in the electric public utility's most recent general rate proceeding. The return so calculated will be adjusted in any rider calculation to reflect necessary recoveries of income taxes. This return is not subject to compounding. The accrual of such return of on any under-recovered or over-recovered balance set in an annual proceeding for recovery or refund through a DSM/EE EMF rider shall cease as of the effective date of the DSM/EE EMF rider in that proceeding, unless otherwise determined by the Commission. However, deferral accounting of costs shall not affect the Commission's authority under this rule to determine whether the deferred costs may be recovered.

No party objects to the Public Staff's proposed revisions to Rule R8-69(b)(3) and (6). The Commission finds that these modifications will properly clarify interest calculations and will, therefore, adopt them, as shown above and in Appendix A.

Issue 81: Obsolete Provision Regarding Duke

Rule R8-69(b)(7) provides that the Commission shall consider the treatment it approved in Docket No. E-7, Sub 828 of the revenues and costs related to Duke's existing DSM and EE measures when approving Duke's first annual rider. The Public Staff notes that, since this Rule was promulgated, the Commission has approved, with modifications, a settlement between the Public Staff, Duke, and the Southern Environmental Law Center with respect to the annual rider for Duke's DSM and EE programs in Docket No. E-7, Sub 831, and has approved rates for Duke in a general rate case, Docket No. E-7, Sub 909. Therefore, this Rule is no longer necessary, and it may be omitted.

No party objects to the Public Staff's proposed deletion of Rule R8-69(b)(7). The Commission finds the Public Staff's proposal to be appropriate, as the Duke matter is now moot, and will amend the Rule accordingly, as shown in Appendix A.

Issue 82: Notification Procedures Regarding Customers That Opt Out Of Utility DSM/EE Programs

PEC proposes to amend Rule R8-69(d) as follows:

(d) Special Provisions for Industrial or Large Commercial Customers

> (1) Pursuant to G.S. 62-133.9(f), any industrial customer or large commercial customer may notify its electric power supplier that: (i) it has implemented or, in accordance with stated, quantifiable goals, will implement alternative demand-side management or energy efficiency measures; and (ii) it elects not to participate in demand-side management or energy efficiency measures for which cost recovery is allowed under G.S. 62-133.9. ~~Any such customer may elect not to participate in new demand-side management and energy efficiency measures under G.S. 62-133.9(f). Any customer that elects this option and notifies its electric public utility will, after the date of notification~~, Any such customer shall be exempt from any annual rider established pursuant to this rule after the date of notification.

PEC believes that the above change will better track the wording of G.S. 62-133.9(f).

PEC also proposes two additional changes that are intended to reduce the burden of multiple notifications to the Commission each time a customer "opts out." Specifically, rather than notifying the Commission of each discrete customer opt out within 30 days of its occurrence, PEC proposes two revisions that would allow electric public utilities to notify the Commission once a year by providing a list of all customers

that have opted out. To effectuate this change, PEC suggests that Rule R8-69(d)(2) be modified as follows:

> (2) At the time the electric public utility petitions for the annual rider, it shall provide the Commission with a list of those industrial or large commercial customers that have opted out of participation in the new demand-side management or energy efficiency measures. The electric public utility shall also provide the Commission with a listing of industrial or large commercial customers that have elected to participate in new measures after having initially notified the electric public utility that it declined to participate.

In addition, PEC also proposes that Rule R8-69(d)(3) be revised as follows:

> (3) Any customer that opts out but subsequently elects to participate in a new demand-side management or energy efficiency measure or program loses the right to be exempt from payment of the rider for five years or the life of the measure or program, whichever is longer. For purposes of this subsection, "life of the measure or program" means the capitalization period approved by the Commission to allow the utility to recover all costs or those portions of the costs associated with a program or measure to the extent that those costs are intended to produce future benefits as provided in G.S. 62-133.9(d)(1). ~~Within 30 days of the customer's election, the electric public utility shall notify the Commission of an industrial or large commercial customer that elects to participate in a new measure after having initially notified the electric public utility that it declined to participate.~~

The Public Staff states that it does not object to any of PEC's proposed changes, and none of the other parties offered comments on this issue. The Commission agrees that these changes will further streamline the Rule and will, therefore, approve PEC's proposed amendments as shown above and in Appendix A.

Issue 83: Clarification Of Required Energy And Demand Metrics

Rule R8-69(f) specifies the filing requirements and procedures for an electric public utility's DSM/EE rider. PEC recommends the following changes to Rule R8-69(f)(1)(ii)d and e:

> (f) Filing Requirements and Procedure.
>
> (1) Each electric public utility shall submit to the Commission all of the following information and data in its application:
>
> . . .

(ii) For each measure for which cost recovery is requested through the DSM/EE rider:

. . .

d. total expected summer and winter peak demand reduction per appropriate capacity~~, energy, and~~ measure unit metric and in the aggregate; and

e. total expected energy reduction in the aggregate and per appropriate ~~capacity,~~ energy ~~and~~ measure unit metric.

Similarly, PEC recommends that Rule R8-69(f)(1)(iii)d and e be amended as follows:

d. total summer and winter peak demand reduction per appropriate capacity~~, energy, and~~ measure unit metric and in the aggregate, as well as any changes in estimated future amounts since last filed with the Commission;

e. total energy reduction in the aggregate and per appropriate ~~capacity,~~ energy ~~and~~ measure unit metric, as well as any changes in the estimated future amounts since last filed with the Commission.

PEC asserts that the requirement to provide energy-related metrics for a capacity-reducing measure is inappropriate. Similarly, PEC believes it is inappropriate to require capacity-related metrics for energy-saving measures.

The Public Staff agrees with PEC's suggested revisions to Rule R8-69(f)(1)(ii)d and e, and does not oppose PEC's suggested revisions to Rule R8-69(f)(1)(iii)d and e. No party opposes these revisions. The Commission finds these changes to be reasonable but believes additional modifications would make these provisions more clear. Therefore, the Commission will amend Rule R8-69(f)(1)(ii) and (iii) as follows, and as shown in Appendix A:

(ii) For each measure for which cost recovery is requested through the DSM/EE rider:

. . .

d. total expected summer and winter peak demand reduction per appropriate ~~capacity, energy, and~~ measure unit metric and in the aggregate; and

e. total expected energy reduction in the aggregate and per appropriate ~~capacity, energy and~~ measure unit metric.

. . .

(iii) For each measure for which cost recovery is requested through the DSM/EE EMF rider:

. . .

d. total summer and winter peak demand reduction in the aggregate and per appropriate ~~capacity, energy, and~~ measure unit metric ~~and in the aggregate~~, as well as any changes in estimated future amounts since last filed with the Commission;

e. total energy reduction in the aggregate and per appropriate ~~capacity, energy and~~ measure unit metric, as well as any changes in the estimated future amounts since last filed with the Commission;

Issue 84: Inadvertent Omission Of The Word "Public"

PEC proposes that Rule R8-69(f)(2) be amended to correct the omission of "public" from electric utility. No party objects to PEC's proposed correction. The Commission will make the correction, as shown in Appendix A.

Other Proposals

Issue 85: Use NC-RETS To Replace Paper Filings

NCSEA contends that NC-RETS "should be fully leveraged" by using it as much as possible in lieu of paper filings to record REPS compliance data, thereby reducing auditing and accounting burdens and minimizing the cost of compliance. The Public Staff generally agrees with NCSEA's contention. However, the Public Staff states that the specific rule changes that NCSEA proposes for this purpose are difficult to understand because they are based on proposals that PEC informally circulated among the parties, but ultimately chose not to file with the Commission. The Public Staff suggests that the Commission consider requesting the NC-RETS Stakeholder Group to investigate methods of leveraging the tracking system and asking the group to issue a report on rule changes that could most effectively accomplish this purpose.

The Commission supports the Public Staff's suggestion to solicit ideas from the NC-RETS Stakeholder Group for better leveraging the tracking system, and observes that NC-RETS just began operations July 1, 2010. The Commission believes that the Stakeholder Group will benefit from having much more time using NC-RETS, especially in the context of these rule revisions. Therefore, while the Commission is open to suggestions from the Stakeholder Group, it will decline to specifically solicit their ideas at this time.

Issue 86: Climate Registry Members Should Be Exempted From Registering With The Commission

Dominion asserts that The Climate Registry is an organization whose members "must fulfill rigorous inventory, verification and reporting protocols which should satisfy the compliance and verification standards set forth under Rule R8-66," and that renewable energy facilities that are members of The Climate Registry should be exempted from the requirement to register with the Commission. In the Public Staff's view, registration under Rule R8-66 is not a burdensome obligation. If members of The Climate Registry are relieved of the obligation to register with the Commission, other registries are likely to request similar status. When there is a need to obtain information quickly about a particular renewable energy facility, it is very helpful to the Commission, the Public Staff, and other interested parties to have the data readily available in the Commission's files instead of having to search throughout multiple registries. The Public Staff, therefore, opposes Dominion's proposal.

The Commission believes that the registration process serves to ensure that RECs eligible for REPS compliance originate from facilities that meet the specific requirements set forth in Senate Bill 3. Therefore, while the information required by the Commission might have already been supplied to The Climate Registry, The Climate Registry is not making any determination of the facility's status as does the Commission in issuing an order accepting or denying registration. Therefore, the Commission will decline to adopt Dominion's proposal.

IT IS, THEREFORE, ORDERED as follows:

1. That parties may comment on Appendix A, the Commission's revised Rules R8-64 through 69, and the NC-RETS Interim Operating Procedures issued July 1, 2010, in Docket No. E-100, Sub 121, on or before August 20, 2010. The Commission specifically requests comments as to whether any conflicts or inconsistencies exist between the NC-RETS Interim Operating Procedures and the revised Rules R8-64 through R8-69 in Appendix A.

2. That beginning January 1, 2011, renewable energy facilities that participate in NC-RETS are only eligible for historic REC issuances for energy production going back two years.

3. That the NC-RETS Administrator shall, by February 1, 2012, provide the Commission data showing the number of accounts and the number of RECs associated with them that can be attributed to REC aggregators and brokers, and that data will be filed in Docket No. E-100, Sub 121.

ISSUED BY ORDER OF THE COMMISSION.

This the _3rd_ day of August, 2010.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

kh080310.01

Rule R8-64. APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BY QUALIFYING COGENERATOR OR SMALL POWER PRODUCER; PROGRESS REPORTS

(a) Scope of Rule.

(1) This rule applies to applications for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) filed by any person seeking the benefits of 16 U.S.C. 824a-3 or G.S. 62-156 as a qualifying cogenerator or a qualifying small power producer as defined in 16 U.S.C. 796(17) and (18) or as a small power producer as defined in G.S. 62-3(27a), except persons exempt from certification by the provisions of G.S. 62-110.1(g).

(2) For purposes of this rule, the term "person" shall include a municipality as defined in Rules R7-2(c) and R10-2(c), including a county of the State.

(3) The construction of a facility for the generation of electricity shall include not only the building of a new building, structure or generator, but also the renovation or reworking of an existing building, structure or generator in order to enable it to operate as a generating facility.

(4) This rule shall apply to any person within its scope who begins construction of an electric generating facility without first obtaining a certificate of public convenience and necessity. In such circumstances, the application shall include an explanation for the applicant's beginning of construction before the obtaining of the certificate.

(b) The Application.

(1) The application shall be accompanied by maps, plans, and specifications setting forth such details and dimensions as the Commission requires. It shall contain, among other things, the following information, either embodied in the application or attached thereto as exhibits:

(i) The full and correct name, business address, ~~and~~ business telephone number, and electronic mailing address of the facility owner~~applicant~~;

(ii) A statement of whether the facility owner is an individual, a partnership, or a corporation and, if a partnership, the name and business address of each general partner and, if a corporation, the state and date of incorporation and the name, ~~and~~ business address, business telephone number, and electronic mailing address of an individual duly authorized to act as corporate agent for the purpose of the application and, if a foreign corporation, whether domesticated in North Carolina;

(iii) The nature of the generating facility, including the type and source of its power or fuel;

(iv) The location of the generating facility set forth in terms of local highways, streets, rivers, streams, or other generally known local landmarks together with a map, such as a county road map, with the location indicated on the map;

(v) The ownership of the site and, if the owner is other than the applicant, the applicant's interest in the site;

(vi) A description of the buildings, structures and equipment comprising the generating facility and the manner of its operation;

(vii) The projected maximum dependable capacity of the facility in megawatts;

(viii) The projected cost of the facility;

(ix) The projected date on which the facility will come on line;

(x) The applicant's general plan for sale of the electricity to be generated, including the utility to which the applicant plans to sell the electricity; any provisions for wheeling of the electricity; arrangements for firm, non-firm or emergency generation; the service life of the project; ~~and~~ the projected annual sales in kilowatt-hours; and the applicant's general plan for the disposition of renewable energy certificates or other environmental attributes; and

(xi) A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the generating facility and a statement of whether each has been obtained or applied for. A copy of those that have been obtained should be filed with the application; a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained.

(2) In addition to the information required above, an applicant who desires to enter into a contract for a term of 5 years or more for the sale of electricity and who will have a projected dependable capacity of 5 megawatts or more available for such sale shall include in the application the following information and exhibits:

(i) A statement detailing the experience and expertise of the persons who will develop, design, construct and operate the project to the extent such persons are known at the time of the application;

(ii) Information specifically identifying the extent to which any regulated utility will be involved in the actual operation of the project;

(iii) A statement obtained by the applicant from the electric utility to which the applicant plans to sell the electricity to be generated setting forth an assessment of the impact of such purchased power on the utility's capacity, reserves, generation mix, capacity expansion plan, and avoided costs;

(iv) The most current available balance sheet of the applicant;

(v) The most current available income statement of the applicant;

(vi) An economic feasibility study of the project;

(vii) A statement of the actual financing arrangements entered into in connection with the project to the extent known at the time of the application;

(viii) A detailed explanation of the anticipated kilowatt and kilowatt-hour outputs, on-peak and off-peak, for each month of the year;

(ix) A detailed explanation of all energy inputs and outputs, of whatever form, for the project, including the amount of energy and the form of energy to be sold to each purchaser; and

(x) A detailed explanation of arrangements for fuel supply, including the length of time covered by the arrangements, to the extent known at the time of the application.

(3) All applications shall be signed and verified by the applicant or by an individual duly authorized to act on behalf of the applicant for the purpose of the application.

(4) Applications filed on behalf of a corporation are not subject to the provision of R1-5(d) that requires corporate pleadings to be filed by a member of the Bar of the State of North Carolina. Should a public hearing be required, the requirements of G.S. 84-4 and G.S. 84-4.1 shall be applicable.

(5) Falsification of or failure to disclose any required information in the application may be grounds for denying or revoking any certificate.

(6) The application and ~~30~~15 copies shall be filed with the Chief Clerk of the Utilities Commission.

(c) Procedure upon receipt of Application. — Upon the filing of an application appearing to meet the requirements set forth above, the Commission will process it as follows:

(1) The Commission will issue an order requiring the applicant to publish notice of the application once a week for four successive weeks in a daily newspaper of general circulation in the county where the generating facility is proposed to be constructed and requiring the applicant to mail a copy of the application and the notice, no later than the first date that such notice is published, to the electric utility to which the applicant plans to sell the electricity to be generated. The applicant shall be responsible for filing with the Commission an affidavit of publication and a signed and verified certificate of service to the effect that the application and notice have been mailed to the electric utility to which the applicant plans to sell the electricity to be generated.

(2) The Chief Clerk will deliver ~~16~~2 copies of the application and the notice to the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration for distribution by the Coordinator to State agencies having an interest in the application.

(3) If a complaint is received within 10 days after the last date of the publication of the notice, the Commission will schedule a public hearing to determine whether a certificate should be awarded and will give reasonable notice of the time and place of the hearing to the applicant and to each

complaining party and will require the applicant to publish notice of the hearing in the newspaper in which the notice of the application was published. If no complaint is received within the time specified, the Commission may, upon its own initiative, order and schedule a hearing to determine whether a certificate should be awarded and, if the Commission orders a hearing upon its own initiative, it will require notice of the hearing to be published by the applicant in the newspaper in which the notice of the application was published.

(4) If no complaint is received within the time specified and the Commission does not order a hearing upon its own initiative, the Commission will enter an order awarding the certificate.

(d) The Certificate.

(1) The certificate shall be subject to revocation if any of the other federal or state licenses, permits or exemptions required for construction and operation of the generating facility is not obtained and that fact is brought to the attention of the Commission and the Commission finds that as a result the public convenience and necessity no longer requires, or will require, construction of the facility.

(2) The certificate must be renewed by re-compliance with the requirements set forth in this Rule if the applicant does not begin construction within 5 years after issuance of the certificate.

(3) Both before the time construction is completed and after, all certificate holders must advise both the Commission and the utility involved of any plans to sell, transfer, or assign the certificate or the generating facility or of any significant changes in the information set forth in subsection (b)(1) of this Rule, and the Commission will order such proceedings as it deems appropriate to deal with such plans or changes.

(e) Reporting. — All applicants must submit annual progress reports until construction is completed.

Rule R8-65. REPORT BY PERSONS CONSTRUCTING ELECTRIC GENERATING FACILITIES EXEMPT FROM CERTIFICATION REQUIREMENT

(a) All persons exempt from certification under G.S. 62-110.1(g) shall file with the Commission a report of the proposed construction of an electric generating facility before beginning construction of the facility. The report of proposed construction shall include the information prescribed in subsection (b)(1) of Rule R8-64 and shall be signed and verified by the owner of the electric generating facility or by an individual duly authorized to act on behalf of the owner for the purpose of the filing.

(b) Reports filed on behalf of a corporation are not subject to the provision of Rule R1-5(d) that requires corporate pleadings to be filed by a member of the Bar of the State of North Carolina. Should a public hearing be required, the requirements of G.S. 84-4 and G.S. 84-4.1 shall be applicable.

(c) The owner of the electric generating facility shall provide a copy of the report of proposed construction to the electric public utility, electric membership corporation, or municipality to which the generating facility will be interconnected.

(d) The owner of the electric generating facility shall file an original and ~~30~~15 copies of the report of proposed construction with the Chief Clerk of the Utilities Commission. No filing fee is required.

(e) Upon the filing of a report of proposed construction, the Chief Clerk will assign a new docket or sub-docket number to the filing and will deliver ~~16~~2 copies of the report of proposed construction to the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration for distribution by the Coordinator to State agencies having an interest for information only.

(f) The Commission may order a hearing on the report of proposed construction upon its own motion or upon receipt of a complaint specifying the basis thereof. Otherwise, no acknowledgment of receipt of the report of proposed construction will be issued nor will any other further action be taken by the Commission.

Rule R8-66. REGISTRATION OF RENEWABLE ENERGY FACILITIES; ANNUAL REPORTING REQUIREMENTS

(a) The following terms shall be defined as provided in G.S. 62-133.8: "electric power supplier"; "renewable energy certificate"; and "renewable energy facility."

(b) The owner, including an electric power supplier, of each renewable energy facility, whether or not required to obtain a certificate of public convenience and necessity pursuant to G.S. 62-110.1, that intends for renewable energy certificates it earns to be eligible for use by an electric power supplier to comply with G.S. 62-133.8 shall register the facility with the Commission. The registration statement may be filed separately or together with an application for a certificate of public convenience and necessity, or with a report of proposed construction by a person exempt from the certification requirement.~~or by an electric power supplier with a compliance plan under Rule R8-67(b) if the facility is owned by the electric power supplier or under contract to the electric power supplier as of the effective date of this rule.~~ All relevant renewable energy facilities shall be registered prior to ~~the electric power supplier filing its REPS compliance report pursuant to Rule R8-67(c).~~their having RECs issued in the North Carolina Renewable Energy Tracking System (NC-RETS) pursuant to Rule R8-67(h). Contracts for power supplied by an agency of the federal government are exempt from the requirement to register and file annually with the Commission if the renewable energy certificates associated with the power are bundled with the power purchased by the electric power supplier.

(1) The owner of each renewable energy facility that has not previously done so, including a facility that is located outside of the State of North Carolina, shall include in its registration statement the following information:~~information set forth in paragraphs (i) through (v) and paragraph (xi) of subsection (b)(1) of Rule R8-64, a description of the technology used to produce electricity, and the facility's projected dependable capacity in megawatts by generating unit. If the~~

~~facility is not yet completed and in operation, the owner shall also file the information prescribed in paragraph (ix) of subsection (b)(1) of Rule R8-64.~~

~~(2) The owner of each renewable energy facility required to file Form EIA-923 with the Energy Information Administration (EIA), United States Department of Energy, shall include with its registration statement a copy of Schedules 1, 5, 6 and 9 from its most recent Form EIA-923 and shall file a copy of those Schedules with the Commission each year at the same time the information is provided to the EIA. The owner of a renewable energy facility that is not required to file Form EIA-923 with the EIA shall nevertheless file the information required by Schedules 1, 5, 6 and 9 with its registration statement and by April 1st of each year thereafter.~~

(i) The full and correct name, business address, electronic mailing address, and telephone number of the facility owner;

(ii) A statement of whether the facility owner is an individual, a partnership, or a corporation and, if a partnership, the name and business address of each general partner and, if a corporation, the state and date of incorporation and the name, business telephone number, electronic mailing address, and business address, of an individual duly authorized to act as corporate agent for the purpose of the application and, if a foreign corporation, whether domesticated in North Carolina;

(iii) The nature of the renewable energy facility, including its technology, the type and source of its power or fuel(s); whether it produces electricity, useful thermal energy, or both; and the facility's projected dependable capacity in megawatts AC and/or British thermal units, as well as its maximum nameplate capacity;

(iv) The location of the facility set forth in terms of local highways, streets, rivers, streams, or other generally known local landmarks together with a map, such as a county road map, with the location indicated on the map;

(v) The ownership of the site and, if the site owner is other than the facility owner, the facility owner's interest in the site;

(vi) A complete list of all federal and state licenses, permits, and exemptions required for construction and operation of the facility, and a statement of whether each has been obtained or applied for. A copy of those that have been obtained should be filed with the application. Wind facilities with multiple turbines, where each turbine is licensed separately, may provide copies of such approvals for one turbine of each type in the facility, but shall attest that approvals for all of the turbines are available for inspection;

(vii) The date the facility began operating. If the facility is not yet operating, the owner shall provide the facility's projected in-service date;

(viii) If the facility is already operating, the owner shall provide information regarding the amount of energy produced by the facility, net of station use, for the most recent 12-month or calendar-year period. Energy

production data for a shorter time period is acceptable for facilities that have not yet operated for a full year;

(ix) The name of the entity that does (or will) read the facility's energy production meter(s) for the purpose of renewable energy certificate issuance; and

(x) Whether the facility participates in a REC tracking system, and if so, which one. If the facility does not currently participate in a REC tracking system, which tracking system the owner anticipates will be used for the purpose of REC issuance.

(~~3~~2) The owner of each renewable energy facility shall certify in its registration statement and annually thereafter that it is in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment and conservation of natural resources. If a credible showing is made that the facility is not in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment and conservation of natural resources, the Commission shall refer the matter to the appropriate environmental agency for review. Registration shall not be revoked unless and until the appropriate environmental agency concludes that the facility is out of compliance and the Commission issues an order revoking the registration.

(43) The owner of each renewable energy facility shall certify in its registration statement and annually thereafter that the facility satisfies the requirements of G.S. 62-133.8(a)(5) or (7) as a renewable energy facility or new renewable energy facility, that the facility will be operated as a renewable energy facility or new renewable energy facility, and, if the facility has been placed into service, the date when it was placed into service.

(~~5~~4) The owner of each renewable energy facility shall further certify in its registration statement and annually thereafter that any renewable energy certificates (whether or not bundled with electric power) sold to an electric power supplier to comply with G.S. 62-133.8 have not, and will not, be remarketed or otherwise resold for any other purpose, including another renewable energy portfolio standard or voluntary purchase of renewable energy certificates in North Carolina (such as NC GreenPower) or any other state or country, and that the electric power associated with the certificates will not be offered or sold with any representation that the power is bundled with renewable energy certificates. ~~The owner shall also annually report whether it sold any renewable energy certificates (whether or not bundled with electric power) during the prior year and, if so, how many and to whom.~~

(~~6~~5) The owner of each renewable energy facility shall certify in its registration statement and annually thereafter that it consents to the auditing of its books and records by the Public Staff insofar as those records relate to transactions with North Carolina electric power suppliers, and agrees to provide the Public Staff and the Commission access to its books and records, wherever they are located, and to the facility.

(~~7~~6) Each registration statement shall be signed and verified by the owner of the renewable energy facility or by an individual duly authorized to act on behalf of the owner for the purpose of the filing.

(7) Renewable energy facilities and new renewable energy facilities that have RECs issued in NC-RETS shall provide their annual certification electronically via NC-RETS. Annual certifications are due April 1 each year.

(8) Registration statements filed on behalf of a corporation are not subject to the provision of Rule R1-5(d) that requires corporate pleadings to be filed by a member of the Bar of the State of North Carolina. Should a public hearing be required, the requirements of G.S. 84-4 and G.S. 84-4.1 shall be applicable.

(9) An original and ~~30~~15 copies of the registration statement shall be filed with the Chief Clerk of the Utilities Commission. No filing fee is required to be submitted with the registration statement.

(c) Each re-seller of renewable energy certificates derived from a renewable energy facility, including a facility that is located outside of the State of North Carolina, shall ensure that the owner of the renewable energy facility registers with the Commission prior to the sale of the certificates by the re-seller to an electric power supplier to comply with G.S. 62-133.8(b), (c), (d), (e) and (f), except that the filing requirements in subsection (b) of this Rule shall apply only to information for the year(s) corresponding to the year(s) in which the certificates to be sold were earned.

(d) Upon receipt of a registration statement, the Chief Clerk will assign a new docket or sub-docket number to the filing. The Chief Clerk will deliver ~~16~~2 copies of the registration statement to the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration for distribution by the Coordinator to State agencies having an interest in the filing for information only.

(e) No later than ten (10) business days after the registration statement is filed with the Commission, the Public Staff shall, and any other interested persons may, file with the Commission and serve upon the registrant a recommendation regarding whether the registration statement is complete and identifying any deficiencies. If the Commission determines that the registration statement is not complete, the owner of the renewable energy facility will be required to file the missing information. Upon receipt of all required information, the Commission will promptly issue an order accepting the registration, denying the registration, or setting the matter for hearing.

(f) Any of the following actions may result in revocation of registration by the Commission:

(1) Falsification of or failure to disclose any required information in the registration statement or annual filing;

(2) Failure to remain in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment and conservation of natural resources;

(3) Remarketing or reselling any renewable energy certificate (whether or not bundled with electric power) after it has been sold to an electric power supplier or any other person for compliance with G.S. 62-133.8 or for any other

purpose, including another renewable energy portfolio standard or voluntary purchase of renewable energy certificates in North Carolina or any other state or country, or offering or selling the electric power associated with the certificates with any representation that the power is bundled with renewable energy certificates; ~~or~~

(4) Failure to allow the Commission or the Public Staff access to its books and records necessary to audit REPS compliance; or

(5) Failure to provide the annual certifications required by Rule R8-66(b).

(g) NC-RETS shall maintain on its website a list of all registration statement revocations.

(h) An owner of a renewable energy facility that has registered with the Commission shall notify the Commission and the tracking system that issues the facility's RECs within fifteen (15) days of any material change in status, including ownership change, fuel change, or permit issuance or revocation. An owner of a renewable energy facility shall also notify the Commission if it wants to withdraw its registration.

Rule R8-67. RENEWABLE ENERGY AND ENERGY EFFICIENCY PORTFOLIO STANDARD (REPS)

(a) Definitions.

(1) The following terms shall be defined as provided in G.S. 62-133.8: "Combined heat and power system"; "demand-side management"; "electric power supplier"; "new renewable energy facility"; "renewable energy certificate"; "renewable energy facility"; "renewable energy resource"; and "incremental costs."

(2) For purposes of determining an electric power supplier's avoided costs, "~~A~~avoided cost rates" mean an electric power supplier's most recently approved or established avoided cost rates in ~~North Carolina~~this state, as of the date the contract is executed, for purchases of electricity from qualifying facilities pursuant to ~~the provisions of~~ Section 210 of the Public Utility Regulatory Policies Act of 1978. If the Commission has approved an avoided cost rate for the electric power supplier for the year when the contract is executed, applicable to contracts of the same nature and duration as the contract between the electric power supplier and the seller, that rate shall be used as the avoided cost. Therefore, for example, for a contract by an electric public utility with a term of 15 years, the avoided cost rate applicable to ~~such a~~that contract would be the comparable, Commission-approved, 15-year, long-term, levelized rate in effect at the time the contract was executed. In all other cases, the avoided cost shall be a good faith estimate of the electric power supplier's avoided cost, levelized over the duration of the contract, determined as of the date the contract is executed.~~; provided, however, that development of such estimates of avoided cost by an electric public utility shall include~~taking into consideration ~~of~~ the avoided cost rates then

in effect as established by the Commission. In any event, when found by the Commission to be appropriate and in the public interest, a good faith estimate of an electric public utility's avoided cost, levelized over the duration of the contract, determined as of the date the contract is executed, may be used in a particular REPS cost recovery proceeding. Determinations of avoided costs, including estimates thereof, shall be subject to continuing Commission oversight and, if necessary, modification should circumstances so require.

(3) "Energy efficiency measure" means an equipment, physical, or program change that when implemented results in less use of energy to perform the same function or provide the same level of service. "Energy efficiency measure" does not include demand-side management. It includes energy produced from a combined heat and power system that uses nonrenewable resources to the extent the system:

(i) Uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility; and

(ii) Results in less energy used to perform the same function or provide the same level of service at a retail electric customer's facility.

(4) "Year-end number of customer accounts" means the number of accounts within each customer class as of December 31 for a given calendar year ~~and, unless~~determined in a manner approved ~~otherwise~~by the Commission pursuant to subsection (c)(4). ~~determined in the same manner as that information is reported to the Energy Information Administration (EIA), United States Department of Energy, for annual electric sales and revenues reporting.~~

(5) "Utility compliance aggregator" is an organization that assists an electric power supplier in demonstrating its compliance with REPS. Such demonstration may include filing REPS compliance plans or reports and participating in NC-RETS on behalf of the electric power supplier or a group of electric power suppliers.

(b) REPS compliance plan.

(1) Each year, beginning in 2008, each electric power supplier or its designated utility compliance aggregator, shall file with the Commission the electric power supplier's plan for complying with G.S. 62-133.8(b), (c), (d), (e) and (f). The plan shall cover ~~at least the current and~~the calendar year in which the plan is filed and the immediately subsequent two calendar years. At a minimum, the plan shall include the following information:

(i) a specific description of the electric power supplier's planned actions to comply with G.S. 62-133.8(b), (c), (d), (e) and (f) for each year;

(ii) a list of executed contracts to purchase renewable energy certificates (whether or not bundled with electric power), including type of renewable energy resource, expected MWh, and contract duration;

(iii) a list of planned or implemented energy efficiency measures, including a brief description of the measure and projected impacts;

(iv) the projected North Carolina retail sales and year-end number of customer accounts by customer class for each year;

(v) the current and projected avoided cost rates for each year;

(vi) the projected total and incremental costs anticipated to implement the compliance plan for each year;

(vii) a comparison of projected costs to the annual cost caps for each year;

(viii) for electric public utilities, an estimate of the amount of the REPS rider and the impact on the cost of fuel and fuel-related costs rider necessary to fully recover the projected costs; and

(ix) ~~the electric power supplier's registration information and certified statements required by Rule R8-66,~~to the extent ~~they have~~ not already ~~been~~ filed with the Commission~~,~~ the electric power supplier shall, on or before September 1 of each year, file a renewable energy facility registration statement pursuant to Rule R8-66 for any facility it owns and upon which it is relying as a source of power or RECs in its REPS compliance plan.

(2) Each electric power supplier shall file its REPS compliance plan with the Commission on or before September 1 of each year.

(3) Any electric power supplier subject to Rule R8-60 shall file its REPS compliance plan as part of its integrated resource plan filing, and the REPS compliance plan will be reviewed and approved pursuant to Rule R8-60. Approval of the REPS compliance plan as part of the integrated resource plan shall not constitute an approval of the recovery of costs associated with REPS compliance or a determination that the electric power supplier has complied with G.S. 62 133.8(b), (c), (d), (e), and (f).

(4) An REPS compliance plan filed by an electric power supplier not subject to Rule R8-60 shall be for information only.

(c) REPS compliance report.

(1) Each year, beginning in 2009, each electric power supplier or its designated utility compliance aggregator shall file with the Commission a report describing the electric power supplier's compliance with the requirements of G.S. 62-133.8(b), (c), (d), (e) and (f) during the previous calendar year. The report shall include all of the following information, including supporting documentation:~~and direct testimony and exhibits of expert witnesses:~~

(i) the sources, amounts, and costs of renewable energy certificates, by source, used to comply with G.S. 62-133.8(b), (c), (d), (e) and (f). Renewable energy certificates for energy efficiency may be based on estimates of reduced energy consumption through the implementation of energy efficiency measures, to the extent approved by the Commission;

(ii) the actual North Carolina retail sales and year-end number of customer accounts by customer class;

(iii) the current avoided cost rates and the avoided cost rates applicable to energy received pursuant to long-term power purchase agreements;

(iv) the actual total and incremental costs incurred to comply with G.S. 62-133.8(b), (c), (d), (e) and (f);

(v) a comparison of actual compliance costs to the annual cost caps;

(vi) the status of compliance with the requirements of G.S. 62-133.8(b), (c), (d), (e) and (f);

(vii) the identification of any renewable energy certificates or energy savings to be carried forward pursuant to G.S. 62-133.8(b)(2)f or (c)(2)f;

(viii) ~~For each renewable energy facility providing renewable energy certificates used by the electric power supplier to comply with G.S. 62-133.8(b), (c), (d), (e) and (f): the name, address, and owner of the renewable energy facility; and an affidavit from the owner of the renewable energy facility certifying that the energy associated with the renewable energy certificates was derived from a renewable energy resource, identifying the renewable technology used, and listing~~ the dates and amounts of all payments ~~received from the electric power supplier and all meter readings~~made for renewable energy certificates; and

(ix) for electric membership corporations and municipal electric suppliers, reduced energy consumption achieved after January 1, 2008, through the implementation of a demand-side management program.

(2) Each electric public utility shall file its annual REPS compliance report, together with direct testimony and exhibits of expert witnesses, ~~no later than 30 days prior to the time that it files~~on the same date that it files (1) its cost recovery request under Rule R8-67(e), and (2) the information required by Rule R8-55. The Commission shall consider each electric public utility's REPS compliance report at the hearing provided for in subsection (e) of this rule and shall determine whether the electric public utility has complied with G.S. 62-133.8(b), (d), (e) and (f). Public notice and deadlines for intervention and filing of additional direct and rebuttal testimony and exhibits shall be as provided for in subsection (e) of this rule.

(3) Each electric membership corporation and municipal electric supplier or their designated utility compliance aggregator shall file ~~an~~a verified REPS compliance report on or before September 1 of each year. The Commission ~~shall~~may issue an order scheduling a hearing to consider the REPS compliance report filed by each electric membership corporation or municipal electric supplier, requiring public notice, and establishing deadlines for intervention and the filing of ~~additional~~direct and rebuttal testimony and exhibits.

(4) In each electric power supplier's initial REPS compliance report, the electric power supplier shall propose a methodology for determining its cap on incremental costs incurred to comply with G.S. 62-133.8(b), (c), (d), (e) and (f)

and fund research as provided in G.S. 62-133.8(h)(1), including a determination of year-end number of customer accounts. The proposed methodology may be specific to each electric power supplier, shall be based upon a fair and reasonable allocation of costs, and shall be consistent with G.S. 62-133.8(h). The electric power supplier may propose a different methodology that meets the above requirements in a subsequent REPS compliance report filing. For electric public utilities, this methodology shall also be used for assessing the per-account charges pursuant to G.S. 62-133.8(h)(5).

(5) In any year, an electric power supplier or other interested party may petition the Commission to modify or delay the provisions of G.S. 62-133.8(b), (c), (d), (e) and (f), in whole or in part. The Commission may grant such petition upon a finding that it is in the public interest to do so. If an electric power supplier is the petitioner, it shall demonstrate that it has made a reasonable effort to meet the requirements of such provisions. Retroactive modification or delay of the provisions of G.S. 62-133.8(b), (c), (d), (e) or (f) shall not be permitted. The Commission shall allow a modification or delay only with respect to the electric power supplier or group of electric power suppliers for which a need for a modification or delay has been demonstrated.

(6) A group of electric power suppliers may aggregate their REPS obligations and compliance efforts provided that all suppliers in the group are subject to the same REPS obligations and compliance methods as stated in either G.S. 133.8(b) or (c). If such a group of electric power suppliers fails to meet its REPS obligations, the Commission shall find and conclude that each supplier in the group, individually, has failed to meet its REPS obligations.

(d) Renewable energy certificates.

(1) Renewable energy certificates (whether or not bundled with electric power) claimed by an electric power supplier to comply with G.S. 62-133.8(b), (c), (d), (e) and (f) must have been earned after January 1, 2008; must have been purchased by the electric power supplier within three years of the date they were earned; shall be retired when used for compliance; and shall not be used for any other purpose. A renewable energy certificate may be used to comply with G.S. 62-133.8(b), (c), (d), (e) and (f) in the year in which it is acquired or obtained by an electric power supplier or in any subsequent year; provided, however, that an electric public utility must use a renewable energy certificate to comply with G.S. 62-133.8(b), (d), (e) and (f) within seven years of cost recovery pursuant to subsection (e)(10) of this Rule.

(2) For any facility that uses both renewable energy resources and nonrenewable energy resources to produce energy, the facility shall earn renewable energy certificates based only upon the energy derived from renewable energy resources in proportion to the relative energy content of the fuels used.

(3) Renewable energy certificates earned by a renewable energy facility after the date the facility's registration is revoked by the Commission shall not be used to comply with G.S. 62-133.8(b), (c), (d), (e) and (f).

(4) Renewable energy certificates must be issued by, or imported into, the renewable energy certificate tracking system established in Rule R8-67(h) in order to be eligible RECs under G.S. 62-133.8(b)(2)e or G.S. 62-133.8(c)(2)d.

(e) Cost recovery.

(1) For each electric public utility, the Commission shall schedule an annual public hearing pursuant to G.S. 62-133.8(h) to review the costs incurred by the electric public utility to comply with G.S. 62-133.8(b), (d), (e) and (f). The annual rider hearing for each electric public utility will be scheduled as soon as practicable after the hearing held by the Commission for the electric public utility under Rule R8-55.

(2) The Commission shall permit each electric public utility to charge an increment or decrement as a rider to its rates to recover in a timely manner the reasonable incremental costs prudently incurred to comply with G.S. 62-133.8(b), (d), (e) and (f). The cost of an unbundled renewable energy certificate, to the extent that it is reasonable and prudently incurred, is an incremental cost and has no avoided cost component.

(3) 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.

(4) Rates set pursuant to this section shall be recovered during a fixed cost recovery period that shall coincide, to the extent practical, with the recovery period for the cost of fuel and fuel-related cost rider established pursuant to Rule R8-55.

(5) The incremental costs will be further modified through the use of an REPS experience modification factor (REPS EMF) rider. The REPS EMF rider will reflect the difference between reasonable and prudently incurred incremental costs and the revenues that were actually realized during the test period under the REPS rider then in effect. Upon request of the electric public utility, the Commission shall also incorporate in this determination the experienced over-recovery or under-recovery of the incremental costs up to thirty (30) days prior to the date of the hearing, provided that the reasonableness and prudence of these costs shall be subject to review in the utility's next annual REPS cost recovery hearing.

(6) The REPS EMF rider will remain in effect for a fixed 12-month period following establishment and will carry through as a rider to rates established in any intervening general rate case proceedings.

(7) Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently incurred incremental costs to be refunded to a utility's customers through operation of the REPS EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.

(8) Each electric public utility shall follow deferred accounting with respect to the difference between actual reasonable and prudently-incurred incremental costs and related revenues realized under rates in effect.

(9) The incremental costs to be recovered by an electric public utility in any ~~calendar year~~cost recovery period from its North Carolina retail customers to comply with G.S. 62-133.8(b), (d), (e), and (f) shall not exceed the per-account charges set forth in G.S. 62-133.8(h)(4) applied to the electric public utility's year-end number of customer accounts determined as of December 31 of the previous calendar year. These annual charges ~~may~~shall be collected through fixed monthly charges~~, energy-based amounts per kilowatt-hour, or by a combination of both~~. Each electric public utility shall ensure that the incremental costs recovered under the REPS rider and REPS EMF rider during the cost recovery period, inclusive of gross receipts tax and the regulatory fee, from any given customer account do not exceed the applicable per-account charges set forth in G.S. 62-133.8(h)(4).

(10) Incurred costs may be recovered by an electric public utility in any year after a renewable energy certificate is acquired or obtained until the renewable energy certificate is used to comply with G.S. 62-133.8(b), (d), (e) and (f) as long as the electric public utility's total annual incremental costs recovered from customers~~incurred~~ in that year do not exceed the per-account annual charges provided in G.S. 62-133.8(h)(4). Incremental costs that exceed the per-account annual charges provided in G.S. 62-133.8(h)(4) in the year in which a renewable energy certificate is used to comply with G.S. 62-133.8(b), (d), (e), and (f) may not be recovered. A renewable energy certificate must be used for compliance and retired within seven years of the year in which the electric public utility recovers the related costs from customers. An electric public utility shall refund to customers with interest the costs for renewable energy certificates that are not used for compliance within seven years.

(11) Each electric public utility, at a minimum, shall submit to the Commission for purposes of investigation and hearing the information required for the REPS compliance report for the 12-month test period established in subsection (3) normalized, as appropriate, consistent with Rule R8-55, accompanied by supporting workpapers and direct testimony and exhibits of expert witnesses, and any change in rates proposed by the electric public utility at the same time that it files the information required by Rule R8-55.

(12) The electric public utility shall publish a notice of the annual hearing for two (2) successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least 30 days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-133.8(h) and setting forth the time and place of the hearing.

(13) Persons having an interest in said hearing may file a petition to intervene setting forth such interest at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed in the discretion of the Commission for good cause shown.

(14) The Public Staff and other intervenors shall file direct testimony and exhibits of expert witnesses at least 15 days prior to the hearing date. If a petition to intervene is filed less than 15 days prior to the hearing date, it shall be

accompanied by any direct testimony and exhibits of expert witnesses the intervenor intends to offer at the hearing.

(15) The electric public utility may file rebuttal testimony and exhibits of expert witnesses no later than 5 days prior to the hearing date.

(16) The burden of proof as to whether the costs were reasonable and prudently incurred shall be on the electric public utility.

(f) Contracts with owners of renewable energy facilities.

(1) The terms of any contract entered into between an electric power supplier and a new solar electric facility or new metered solar thermal energy facility shall be of sufficient length to stimulate development of solar energy.

(2) Each electric power supplier shall include appropriate language in all agreements for the purchase of renewable energy certificates (whether or not bundled with electric power) prohibiting the seller from remarketing the renewable energy certificates being purchased by the electric power supplier.

(g) Metering of renewable energy facilities.

(1) Except as provided below, for the purpose of receiving renewable energy certificate~~s~~ issuance in NC-RETS, the electric power generated by a renewable energy facility shall be measured by an electric meter supplied by and read by an electric power supplier. Facilities whose renewable energy certificates are issued in a tracking system other than NC-RETS shall be subject to the requirements of the applicable state commission and/or tracking system.

(2) The electric power generated by an inverter-based solar photovoltaic (PV) system with a nameplate capacity of 10 kW or less may be estimated using generally accepted analytical tools.

(3) The electric power generated by a renewable energy facility ~~with a nameplate capacity of 1 MW or less~~ interconnected on the customer's side of~~behind~~ the utility meter at a customer's location may be measured ~~accurately~~ by (1) an ANSI-certified electric meter not provided by an electric power supplier~~.~~ provided that the owner of the meter complies with the meter testing requirements of Rule R8-13, or (2) another industry-accepted, auditable and accurate metering, controls, and verification system. The data provided by ~~this~~such meter or system may be read and self-reported by the owner of the renewable energy facility, subject to audit by the Public Staff. ~~The owner of the meter shall comply with the meter testing requirements of Rule R8-13.~~

(4) Thermal energy produced by a combined heat and power system or solar thermal energy facility shall be the thermal energy recovered and used for useful purposes other than electric power production. The useful thermal energy may be measured by meter, or if that is not practicable, by other industry-accepted means that show what measurable amount of useful thermal energy the system or facility is designed and operated to produce and use. Renewable energy certificates shall be earned based on one ~~megawatt-hour~~certificate for every 3,412,000 British thermal units (Btu) of useful thermal energy produced. Btu meters shall be located so as to measure the actual thermal energy consumed by the load served by the facility. Thermal

energy output that is used as station power or to process the facility's fuel is not eligible for RECs. Thermal energy production, whether based on engineering estimates or Btu metering, shall explicitly address thermal energy flows as well as heat energy transfers.

~~(5) Except in those cases where the electric meter is supplied by and read by an electric power supplier, electric generation or thermal energy production data is subject to audit by the Commission, the Public Staff, or an electric power supplier.~~

(h) North Carolina Renewable Energy Certificate Tracking System (NC-RETS)

(1) Definitions

(i) "Balancing area operator" means an electric power supplier that has the responsibility to act as the balancing authority for a portion of the regional transmission grid, including maintaining the load-to-generation balance, accounting for energy delivered into and exported out of the area, and supporting interconnection frequency in real time.

(ii) "Multi-fuel facility" means a renewable energy facility that produces energy using more than one fuel type, potentially relying on a fuel that does not qualify for REC issuance in North Carolina.

(iii) "Participant" means a person or organization that opens an account in NC-RETS.

(iv) "Qualifying thermal energy output" is the useful thermal energy: (1) that is made available to an industrial or commercial process (net of any heat contained in condensate return and/or makeup water); (2) that is used in a heating application (e.g., space heating, domestic hot water heating); or (3) that is used in a space cooling application (i.e., thermal energy used by an absorption chiller).

(2) A renewable energy certificate (REC) tracking system, to be known as NC-RETS, is established by the Commission. NC-RETS shall issue, track, transfer and retire RECs. It shall calculate each electric power supplier's REPS obligation and report each electric power supplier's REPS accomplishments, consistent with the compliance report filed under R8-67(c). NC-RETS shall be administered by a third-party vendor selected by the Commission. Only RECs issued by or imported into NC-RETS are qualifying RECs under G.S. 62-133.8.

(3) Each electric power supplier shall be a participant in NC-RETS and shall provide data to NC-RETS to calculate its REPS obligation and to demonstrate its compliance with G.S. 62-133.8. An electric power supplier may select a utility compliance aggregator to participate in NC-RETS on its behalf and file REPS compliance plans and compliance reports, but the supplier shall nonetheless remain responsible for its own compliance. For reporting purposes, an electric power supplier or its utility compliance aggregator may aggregate the supplier's compliance obligations and accomplishments with those of other suppliers that are subject to the same obligations under G.S. 62-133.8.

(4) Each renewable energy facility or new renewable energy facility registered by the Commission under Rule R8-66 shall participate in NC-RETS or another REC tracking system, but by no means shall a facility's meter data for the same time period be used for simultaneous REC issuance in two such systems. Beginning January 1, 2011, renewable energy facilities registered in NC-RETS may only enter historic energy production data for REC issuance that goes back up to two years from the current date. Facilities that produce energy using one or more renewable energy resource(s) and another resource that does not qualify toward REPS compliance under G.S. 62-133.8 shall calculate on a monthly basis and provide to NC-RETS the percentage of energy output attributable to each fuel source. NC-RETS will issue RECs only for energy emanating from sources that qualify under G.S. 62-133.8.

(5) Each balancing area operator shall provide monthly electric generation production data to NC-RETS for renewable and new renewable energy facilities that are interconnected to the operator's electric transmission system. Such balancing area operator shall retain documentation verifying the production data for audit by the Public Staff.

(6) Each electric power supplier that has registered renewable energy facilities or new renewable energy facilities interconnected with its electric distribution system and that reads the electric generation production meters for those facilities shall provide monthly the facilities' energy output to NC-RETS, and shall retain for audit for 10 years that energy output data. Municipalities and electric membership corporations may elect to have the facilities' production data reported to NC-RETS and retained for audit by a utility compliance aggregator.

(7) A renewable energy facility or new renewable energy facility that produces thermal energy that qualifies for RECs shall report the facility's qualifying thermal energy output to NC-RETS at least every 12 months. A renewable energy facility or new renewable energy facility that reports its data pursuant to Rule R8-67(g)(3) shall report its energy output to NC-RETS at least every 12 months.

(8) The owner of an inverter-based solar photovoltaic system with a nameplate capacity of 10 kW or less may estimate its energy output using generally accepted analytical tools pursuant to Rule R8-67(g)(2). Such an owner, or its agent, of this kind of facility shall report the facility's energy output to NC-RETS at least every 12 months.

(9) All energy output and fuel data for multi-fuel facilities, including underlying documentation, calculations, and estimates, shall be retained for audit for at least ten years immediately following the provision of the output data to NC-RETS or another tracking system, as appropriate.

(10) Each electric power supplier that complies with G.S. 62-133.8 by implementing energy efficiency or demand-side management programs shall use NC-RETS to report the estimated and verified energy savings of those programs. Municipal power suppliers and electric membership corporations may elect to have their estimated and verified energy savings from their energy efficiency and demand-side management programs reported to NC-RETS by a utility

compliance aggregator, and to have their reported savings consolidated with the reported savings from other municipal power suppliers or electric membership corporations if and as necessary to permit aggregate reporting through their utility compliance aggregators. Records regarding which electric power supplier achieved the energy efficiency and demand-side management, the programs that were used, and the year in which it was achieved, shall be retained for audit.

(11) 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 May 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. NC-RETS shall update its billings beginning each June based on retail sales data for the previous calendar year. Such NC-RETS charges shall be deemed to be costs that are reasonable, prudent, incremental, and eligible for recovery through each electric public utility's annual rider established pursuant to G.S. 62-133.8(h).

(12) Each account holder in NC-RETS shall pay the NC-RETS administrator for service according to the following fee schedule:

(i) $0.01 for each REC export to an account residing in a different REC tracking system.

(ii) $0.01 for each REC retired for reasons other than compliance with G.S. 62-133.8.

(13) The Commission shall adopt NC-RETS Operating Procedures. The Commission shall establish an NC-RETS Stakeholder Group that shall meet from time to time and which may recommend changes to the NC-RETS Operating Procedures and NC-RETS.

(14) All data retention requirements of this Rule R8-67(h) may be accomplished via retention of electronic documents.

Rule R8-68. INCENTIVE PROGRAMS FOR ELECTRIC PUBLIC UTILITIES AND ELECTRIC MEMBERSHIP CORPORATIONS, INCLUDING ENERGY EFFICIENCY AND DEMAND-SIDE MANAGEMENT PROGRAMS

(a) Purpose. — The purpose of this rule is to establish guidelines for the application of G.S. 62-140(c) and G.S. 62-133.9 to electric public utilities and electric membership corporations that are consistent with the directives of those statutes and consistent with the public policy of this State as set forth in G.S. 62-2.

(b) Definitions.

(1) Unless listed below, the definitions of all terms used in this rule shall be as set forth in Rule R8-67(a), or if not defined therein, then as set forth in G.S. 62-3, G.S. 62-133.8(a) and G.S. 62-133.9(a).

(2) "Consideration" means anything of economic value paid, given, or offered to any person by an electric public utility or electric membership corporation (regardless of the source of the "consideration") including, but not limited to: payments to manufacturers, builders, equipment dealers, contractors including HVAC contractors, electricians, plumbers, engineers, architects, and/or homeowners or owners of multiple housing units or commercial establishments; cash rebates or discounts on equipment/appliance sales, leases, or service installation; equipment/ appliances sold below fair market value or below their cost to the electric public utility or electric membership corporation; low interest loans, defined as loans at an interest rate lower than that available to the person to whom the proceeds of the loan are made available; studies on energy usage; model homes; and payment of trade show or advertising costs. Excepted from the definition of "consideration" are favors and promotional activities that are de minimis and nominal in value and that are not directed at influencing fuel choice decisions for specific applications or locations.

(3) "Costs" include, but are not limited to, all capital costs (including cost of capital and depreciation expenses), administrative costs, implementation costs, participation incentives, and operating costs. "Costs" does not include utility incentives.

(4) "Electric public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for producing, transporting, distributing, or furnishing electric service to or for the public for consumption. For purposes of this rule, "electric public utility" does not include electric membership corporations.

(5) "Net lost revenues" means the revenue losses, net of marginal costs avoided at the time of the lost kilowatt-hour sale(s), or in the case of purchased power, in the applicable billing period, incurred by the electric public utility as the result of a new demand-side management or energy efficiency measure. Net lost revenues shall also be net of any increases in revenues resulting from any activity by the electric public utility that causes a customer to increase demand or energy consumption, whether or not that activity has been approved pursuant to this Rule R8-68.

(6) "New demand-side management or energy efficiency measure" means a demand-side management or energy efficiency measure that is adopted and implemented on or after January 1, 2007, including subsequent changes and modifications to any such measure. Cost recovery for "new demand-side management measures" and "new energy efficiency measures" is subject to G.S. 62-133.9.

(7) "Participation incentive" means any consideration associated with a new demand-side management or energy efficiency measure.

(8) "Program" or "measure" means any electric public utility action or planned action that involves the offering of consideration.

(9) "Utility incentives" means incentives as described in G.S. 62-133.9(d)(2)a-c.

(c) Filing for Approval.

(1) Application of Rule.

(i) Prior to an electric public utility or electric membership corporation implementing any measure or program, the purpose or effect of which is to directly or indirectly alter or influence the decision to use the electric public utility's or electric membership corporation's service for a particular end use or to directly or indirectly encourage the installation of equipment that uses the electric public utility's or electric membership corporation's service, or any new or modified demand-side management or energy efficiency measure, the electric public utility or the electric membership corporation shall obtain Commission approval, regardless of whether the measure or program is offered at the expense of the shareholders, ratepayers, or third-party.

(ii) This requirement shall also apply to measures and programs that are administered, promoted, or funded by the electric public utility's or electric membership corporation's subsidiaries, affiliates, or unregulated divisions or businesses if the electric public utility or electric membership corporation has control over the entity offering or is involved in the measure or program and an intent or effect of the measure or program is to adopt, secure, or increase the use of the electric public utility's public utility services.

(iii) Any application for approval by an electric public utility or electric membership corporation of a measure or program under this rule shall be made in a unique sub-docket of the electric public utility's or electric membership corporation's docket number.

(2) Filing Requirements. — Each application for the approval shall include:

~~(i) Cover Page. — The electric public utility or electric membership corporation shall attach to the front of an application a cover sheet generally describing (a) the measure or program, (b) the consideration to be offered, (c) the anticipated total cost of the measure or program, (d) the source and amount of funding proposed to be used, (e) the proposed classes of persons to whom it will be offered, and (f) the duration of the proposed measure or program.~~

~~(ii) Description. — The electric public utility or electric membership corporation shall describe each measure or program, including its duration, purpose, estimated number of participants, and the impact of each measure or program is expected to have on the electric public utility or electric membership corporation, its customer body as a whole, and it's participating North Carolina customers.~~

(i) Cover Page. – The electric public utility or electric membership corporation shall attach to the front of an application a cover sheet generally describing:

a. the measure or program;

b. the consideration to be offered;

c. the anticipated total cost of the measure or program;

d. the source and amount of funding to be used; and

e. the proposed classes of persons to whom it will be offered.

(ii) Description. – The electric public utility or electric membership corporation shall provide a description of each measure and program, and include the following:

a. the program or measure's objective;

b. the duration of the program or measure;

c. the targeted sector and eligibility requirements;

d. examples of all communication materials to be used with the measure or program and the related cost for each program year;

e. the estimated number of participants;

f. the impact that each measure or program is expected to have on the electric public utility or electric membership corporation, its customer body as a whole, and its participating North Carolina customers; and

g. any other information the electric public utility or electric membership corporation believes is relevant to the application, including information on competition known by the electric public utility or the electric membership corporation.

(iii) Additionally, an electric public utility shall include or describe:

a. the measure's proposed marketing plan, including a description of market barriers and how the electric public utility intends to address them;

b. the total market potential and estimated market growth throughout the life of the measure;

c. the estimated summer and winter peak demand reduction by unit metric and in the aggregate by year;

d. the estimated energy reduction per appropriate unit metric and in the aggregate by year;

e. the estimated lost energy sales per appropriate unit metric and in the aggregate by year;

f. the estimated load shape impacts; and

g. a description of how the measure's impacts will be evaluated, measured, and verified.

~~(iii)~~(iv) Costs and Benefits. — The electric public utility or electric membership corporation shall provide the following information on the costs and benefits of each proposed measure or program: (a) the estimated total and per unit cost and benefit of the measure or program to the electric public utility or electric membership corporation, reported by type of benefit and expenditure (e.g., capital cost expenditures; administrative costs; operating costs; participation incentives, such as rebates and direct payments; ~~advertising~~ and communications costs, and the costs of measurement and verification) and the planned accounting treatment for those costs and benefits; (b) the type, the maximum and minimum amount of participation incentives to be made to any party, and the reason for any participation incentives and other consideration and to whom they will be offered, including schedules listing participation incentives and other consideration to be offered; and (c) service limitations or conditions planned to be imposed on customers who do not participate in the measure. With respect to communications costs, the electric public utility or electric membership corporation shall provide detailed cost information on communications materials related to each proposed measure or program. Such costs shall be included in the Commission's consideration of the total cost of the measure or program and whether the total cost of the measure or program is reasonable in light of the benefits.

~~(iv)~~(v) Cost-Effectiveness Evaluation. — The electric public utility or electric membership corporation shall provide the economic justification for each proposed measure or program, including the results of all cost-effectiveness tests. Cost-effectiveness evaluations performed by the electric public utility or electric membership corporation should be based on direct or quantifiable costs and benefits and should include, at a minimum, an analysis of the Total Resource Cost Test, the Participant Test, the Utility Cost Test, and the Ratepayer Impact Measure Test. In addition, an electric public utility shall describe the methodology used to produce the impact estimates as well as, if appropriate, methodologies considered and rejected in the interim leading to the final model specification.

~~(v) Communications. — The electric public utility or electric membership corporation shall provide detailed cost information on the amount it anticipates will be spent on communications materials related to each proposed measure or program. Such costs shall be included in the Commission's consideration of the total cost of the measure or program~~

~~and whether the total cost of the measure or program is reasonable in light of the benefits. To the extent available, the electric public utility or electric membership corporation shall include examples of all communication materials to be used in conjunction with the measure or program.~~

(vi) Commission Guidelines Regarding Incentive Programs. — The electric public utility or electric membership corporation shall provide the information necessary to comply with the Commission's Revised Guidelines for Resolution of Issues Regarding Incentive Programs, issued by Commission Order on March 27, 1996, in Docket No. M-100, Sub 124, set out as an Appendix to Chapter 8 of these rules.

(vii) Integrated Resource Plan. — When seeking approval of a new demand-side management or new energy efficiency measure, the electric public utility or electric membership corporation shall explain in detail how the measure is consistent with the electric public utility's or electric membership corporation's integrated resource plan filings pursuant to Rule R8-60.

(viii) Other. — Any other information the electric public utility or electric membership corporation believes relevant to the application, including information on competition known by the electric public utility or the electric membership corporation.

(3) Additional Filing Requirements. — In addition to the information listed in subsection (c)(2), an electric public utility filing for approval of a new or modified demand-side management or energy efficiency measure shall provide the following:

~~(i) Description. – The electric public utility shall describe:~~

~~a. the measure's objective;~~

~~b. total market potential;~~

~~c. the proposed marketing plan;~~

~~d. the targeted sector;~~

~~e. the estimated market growth throughout the life of the measure;~~

~~f. estimated summer and winter peak demand reduction by unit metric and in the aggregate by year;~~

~~g. estimated energy reduction per appropriate unit metric and in the aggregate by year;~~

~~h. estimated lost energy sales per appropriate unit metric and in the aggregate by year;~~

~~i. estimated load shape impacts;~~

~~j. a description of the market barriers to the proposed measure or program and how the electric public utility intends to address them;~~

~~k. a description of how the measure's impacts will be evaluated, measured, and verified; and~~

~~l. a description of the methodology used to produce the impact estimates, as well as, if appropriate, methodologies considered and rejected in the interim leading to final model specification.~~

~~(ii)~~(i) Costs and Benefits. – The electric public utility shall describe:

a. any costs incurred or expected to be incurred in adopting and implementing a measure or program to be considered for recovery through the annual rider under G.S. 62-133.9;

b. estimated total costs to be avoided by the measure by appropriate capacity, energy and measure unit metric and in the aggregate by year;

c. estimated participation incentives by appropriate capacity, energy, and measure unit metric and in the aggregate by year;

d. how the electric public utility proposes to allocate the costs and benefits of the measure among the customer classes and jurisdictions it serves; ~~and~~

e. the capitalization period to allow the utility to recover all costs or those portions of the costs associated with a new program or measure to the extent that those costs are intended to produce future benefits as provided in G.S. 62-133.9(d)(1).

f. The electric public utility shall also include the estimated and known costs of measurement and verification activities pursuant to the Measurement and Verification Reporting Plan described in paragraph ~~(iii)~~(ii).

~~(iii)~~(ii) Measurement and Verification Reporting Plan for New Demand-Side Management and Energy Efficiency Measures. — The electric public utility shall be responsible for the measurement and verification of energy and peak demand savings and may use the services of an independent third party for such purposes. The costs of implementing the measurement and verification process may be considered as operating costs for purposes of Commission Rule R8-69. In addition, t~~T~~he electric public utility shall:

a. describe the industry-accepted methods to be used to evaluate, measure, verify, and validate the energy and peak demand savings estimated in ~~paragraph (i)~~ (2)(iii)c above ~~and~~;

b. ~~shall~~ provide a schedule for reporting the savings to the Commission~~. The electric public utility shall be responsible for the measurement and verification of~~

~~energy and peak demand savings and may use the services of an independent third party for such purposes. If the electric public utility plans to utilize an independent third party for purposes of measurement and verification, an identification of the third party and all of the costs of that third party should be included. The costs of implementing the measurement and verification process may be considered as operating costs.~~;

c. describe the methodologies used to produce the impact estimates, as well as, if appropriate, the methodologies it considered and rejected in the interim leading to final model specification; and

d. identify any third party and include all of the costs of that third party, if the electric public utility plans to utilize an independent third party for purposes of measurement and verification.

~~(iv)~~(iii) Cost recovery mechanism. — The electric public utility shall describe the proposed method of cost recovery from its customers.

~~(v)~~(iv) Tariffs or rates. — The electric public utility shall provide proposed tariffs or modifications to existing tariffs that will be required to implement each measure or program.

~~(vi)~~(v) Utility Incentives. — When seeking approval of new demand-side management and energy efficiency measures, the electric public utility shall indicate whether it will seek to recover any utility incentives, including, if appropriate, net lost revenues, in addition to its costs. If the electric public utility proposes recovery of utility incentives related to the proposed new demand-side management or energy efficiency measure, it shall describe the utility incentives it desires to recover and describe how its measurement and verification reporting plan will demonstrate the results achieved by the proposed measure. If the electric public utility proposes recovery of net lost revenues, it shall describe estimated net lost revenues by appropriate capacity, energy and measure unit metric and in the aggregate by year. If the electric public utility seeks recovery of utility incentives, including net lost revenues, apart from its recovery of its costs under G.S. 62-133.9, it shall file estimates of the utility incentives and the net lost revenues associated with the proposed measure for each year of the proposed recovery. If the electric public utility seeks only the recovery of net lost revenues apart from its recovery of combined costs and utility incentives, it shall file estimates of net lost revenues for each year of the proposed recovery period.

(d) Procedure.

(1) Automatic Tariff Suspension. – If an electric public utility files a proposed tariff or tariff amendment in connection with an application for approval of a measure or program, the tariff filing shall be automatically suspended

pursuant to G.S. 62-134 pending investigation, review, and decision by the Commission.

~~(1)~~(2) Service and Response. – The electric public utility or electric membership corporation filing for approval of a measure or program shall serve a copy of its filing on the Public Staff; the Attorney General; the natural gas utilities, electric public utilities, and electric membership corporations operating in the filing electric public utility's or electric membership corporation's certified territory; and any other party that has notified the electric public utility or electric membership corporation in writing that it wishes to be served with copies of all filings. If a party consents, the electric public utility or electric membership corporation may serve it with electronic copies of all filings. Those served, and others learning of the application, shall have thirty (30) days from the date of the filing in which to petition for intervention pursuant to R1-19, ~~or~~ file a protest pursuant to Rule R1-6, or file comments on the proposed measure or program. In comments, any party may recommend approval or disapproval of the measure or program or identify any issue relative to the program application that it believes requires further investigation. The filing electric public utility or electric membership corporation shall have the opportunity to respond to the petitions, protests, or comments within ten (10) days of their filing. If any party raises an issue of material fact, the Commission shall set the matter for hearing. The Commission may determine the scope of this hearing.

~~(2)~~(3) Notice and Schedule. — If the application is set for hearing, the Commission shall require notice, as it considers appropriate, and shall establish a procedural schedule for prefiled testimony and rebuttal testimony after a discovery period of at least 45 days. Where possible, the hearing shall be held within ninety (90) days from the application filing date.

(e) Scope of Review. — In determining whether to approve in whole or in part a new measure or program or changes to an existing measure or program, the Commission may consider any information it determines to be relevant, including any of the following issues:

(1) Whether the proposed measure or program is in the public interest and benefits the electric public utility's or electric membership corporation's overall customer body;

(2) Whether the proposed measure or program unreasonably discriminates among persons receiving or applying for the same kind and degree of service;

(3) Evidence of consideration or compensation paid by any competitor, regulated or unregulated, of the electric public utility or electric membership corporation to secure the installation or adoption of the use of such competitor's services;

(4) Whether the proposed measure or program promotes unfair or destructive competition or is inconsistent with the public policy of this State as set forth in G.S. 62-2 and G.S. 62-140; and

(5) The impact of the proposed measure or program on peak loads and load factors of the filing electric public utility or electric membership corporation, and whether it encourages energy efficiency.

(f) Cost Recovery for New Measures. – Approval of a program or measure under Commission Rule R8-68 does not constitute approval of rate recovery of the costs of the program or measure. With respect to new demand-side management and energy efficiency measures, ~~Except for those costs found by the Commission to be unreasonable or imprudently incurred,~~ the costs of those new~~demand-side management or energy efficiency~~ measures, approved by application of this rule, that are found to be reasonable and prudently incurred shall be recovered through the annual rider described in G.S. 62-133.9 and Rule R8-69. The Commission may ~~also~~ consider in the annual rider proceeding whether to approve ~~any~~ the inclusion of any utility incentive pursuant to G.S. 62-133.9(d)(2)a.-c. in the annual rider.

Rule R8-69. COST RECOVERY FOR DEMAND-SIDE MANAGEMENT AND ENERGY EFFICIENCY MEASURES OF ELECTRIC PUBLIC UTILITIES

(a) Definitions.

(1) Unless listed below, the definitions of all terms used in this rule shall be as set forth in Rules R8-67 and R8-68, or if not defined therein, then as set forth in G.S. 62-133.8(a) and G.S. 62-133.9(a).

(2) "DSM/EE rider" means 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.

(3) "Large commercial customer" means any commercial customer that has an annual energy usage of not less than 1,000,000 kilowatt-hours (kWh), measured in the same manner as the electric public utility that serves the commercial customer measures energy for billing purposes.

(4) "Rate period" means the period during which the DSM/EE rider established under this rule will be in effect. For each electric public utility, this period will be the same as the period during which the rider established under Rule R8-55 is in effect.

(5) "Test period" shall be the same for each public utility as its test period for purposes of Rule R8-55, unless otherwise ordered by the Commission.

(b) Recovery of Costs.

(1) Each year the Commission shall conduct a proceeding for each electric public utility to establish an annual DSM/EE rider. The DSM/EE rider shall consist of a reasonable and appropriate estimate of the expenses expected to be incurred by the electric public utility, during the rate period, for the purpose of adopting and implementing new demand-side management and energy efficiency measures previously approved pursuant to Rule R8-68. The expenses

will be further modified through the use of a DSM/EE experience modification factor (DSM/EE EMF) rider. The DSM/EE EMF rider will reflect the difference between the reasonable expenses prudently incurred by the electric public utility during the test period for that purpose and the revenues that were actually realized during the test period under the DSM/EE rider then in effect. Those expenses approved for recovery shall be allocated to the North Carolina retail jurisdiction consistent with the system benefits provided by the new demand-side management and energy efficiency measures and shall be assigned to customer classes in accordance with G.S. 62-133.9(e) and (f).

(2) Upon the request of the electric public utility, the Commission shall also incorporate the experienced over-recovery or under-recovery of costs up to thirty (30) days prior to the date of the hearing in its determination of the DSM/EE EMF rider, provided that the reasonableness and prudence of these costs shall be subject to review in the utility's next annual DSM/EE rider hearing.

(3) Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently incurred costs to be refunded to an electric public utility's customers through operation of the DSM/EE EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate. The beginning date for measurement of such interest shall be the effective date of the DSM/EE EMF rider in each annual proceeding, unless otherwise determined by the Commission.

(4) The burden of proof as to whether the costs were reasonably and prudently incurred shall be on the electric public utility.

(5) Any costs incurred for adopting and implementing measures that do not constitute new demand-side management or energy efficiency measures are ineligible for recovery through the annual rider established in G.S. 62-133.9.

(6) Except as provided in (c)(3) of this rule, each electric public utility may implement deferral accounting for costs considered for recovery through the annual rider. At the time the Commission approves a new demand-side management or energy efficiency measure under Rule R8-68, the electric public utility may defer costs of adopting and implementing the new measure in accordance with the Commission's approval order under Rule R8-68. Subject to the Commission's review, the electric public utility may begin deferring the costs of adopting and implementing new demand-side management or energy efficiency measures six (6) months prior to the filing of its application for approval under Rule R8-68, except that the Commission may consider earlier deferral of development costs in exceptional cases, where such deferral is necessary to develop an energy efficiency measure. Deferral accounting, however, for any administrative costs, general costs, or other costs not directly related to a new demand-side management or energy efficiency measure must be approved prior to deferral. The balance in the deferral account, net of deferred income taxes, may accrue a return at the net-of-tax rate of return approved in the electric public utility's most recent general rate proceeding. The return so calculated will be adjusted in any rider calculation to reflect necessary recoveries of income taxes. This return is not subject to compounding. The accrual of such return of on any

under-recovered or over-recovered balance set in an annual proceeding for recovery or refund through a DSM/EE EMF rider shall cease as of the effective date of the DSM/EE EMF rider in that proceeding, unless otherwise determined by the Commission. However, deferral accounting of costs shall not affect the Commission's authority under this rule to determine whether the deferred costs may be recovered.

~~(7) In approving the first annual rider pursuant to G.S. 62-133.9 for Duke Energy Carolinas, LLC, the Commission shall consider the treatment it approved in Docket No. E-7, Sub 828, of the revenues and costs related to Duke Energy Carolinas' existing demand-side management and energy efficiency measures or programs.~~

(c) Utility Incentives.

(1) With respect to a new demand-side management or energy efficiency measure previously approved under Rule R8-68, the electric public utility may, in its annual filing, apply for recovery of any utility incentives, including, if appropriate, net lost revenues, identified in its application for approval of the measure. The Commission shall determine the appropriate ratemaking treatment for any such utility incentives.

(2) When requesting inclusion of a utility incentive in the annual rider, the electric public utility bears the burden of proving its calculations of those utility incentives and the justification for including them in the annual rider, either through its measurement and verification reporting plan or through other relevant evidence.

(3) An electric public utility shall not be permitted to implement deferral accounting or the accrual of a return for utility incentives unless the Commission approves an annual rider that provides for recovery of an integrated amount of costs and utility incentives. In that instance, the Commission shall determine the extent to which deferral accounting and the accrual of a return will be allowed.

(d) Special Provisions for Industrial or Large Commercial Customers.

(1) Pursuant to G.S. 62-133.9(f), any industrial customer or large commercial customer may notify its electric power supplier that: (i) it has implemented or, in accordance with stated, quantifiable goals, will implement alternative demand-side management or energy efficiency measures; and (ii) it elects not to participate in demand-side management or energy efficiency measures for which cost recovery is allowed under G.S. 62-133.9. ~~Any such customer may elect not to participate in new demand-side management and energy efficiency measures under G.S. 62-133.9(f). Any customer that elects this option and notifies its electric public utility will, after the date of notification,~~ Any such customer shall be exempt from any annual rider established pursuant to this rule after the date of notification.

(2) At the time the electric public utility petitions for the annual rider, it shall provide the Commission with a list of those industrial or large commercial customers that have opted out of participation in the new demand-side management or energy efficiency measures. The electric public utility shall also

provide the Commission with a listing of industrial or large commercial customers that have elected to participate in new measures after having initially notified the electric public utility that it declined to participate.

(3) Any customer that opts out but subsequently elects to participate in a new demand-side management or energy efficiency measure or program loses the right to be exempt from payment of the rider for five years or the life of the measure or program, whichever is longer. For purposes of this subsection, "life of the measure or program" means the capitalization period approved by the Commission to allow the utility to recover all costs or those portions of the costs associated with a program or measure to the extent that those costs are intended to produce future benefits as provided in G.S. 62-133.9(d)(1). ~~Within 30 days of the customer's election, the electric public utility shall notify the Commission of an industrial or large commercial customer that elects to participate in a new measure after having initially notified the electric public utility that it declined to participate.~~

(e) Annual Proceeding.

(1) For each electric public utility, the Commission shall schedule an annual rider hearing pursuant to G.S. 62-133.9(d) to review the costs incurred by the electric public utility in the adoption and implementation of new demand-side management and energy efficiency measures during the test period, the revenues realized during the test period through the operation of the annual rider, and the costs expected to be incurred during the rate period and shall establish annual DSM/EE and DSM/EE EMF riders to allow the electric public utility to recover all costs found by the Commission to be recoverable. The Commission may also approve, if appropriate, the recovery of utility incentives, including net lost revenues, pursuant to G.S. 62-133.9(d)(2) in the rider.

(2) The annual rider hearing for each electric public utility will be scheduled as soon as practicable after the hearing held by the Commission for the electric public utility under Rule R8-55. Each electric public utility shall file its application for recovery of costs and appropriate utility incentives at the same time that it files the information required by Rule R8-55.

(3) The DSM/EE EMF rider will remain in effect for a fixed 12-month period following establishment and will continue as a rider to rates established in any intervening general rate case proceeding.

(f) Filing Requirements and Procedure.

(1) Each electric public utility shall submit to the Commission all of the following information and data in its application:

(i) Projected North Carolina retail monthly kWh sales for the rate period.

(ii) For each measure for which cost recovery is requested through the DSM/EE rider:

a. total expenses expected to be incurred during the rate period in the aggregate and broken down by type of expenditure,

per appropriate capacity, energy and measure unit metric and the proposed jurisdictional allocation factors;

b. total costs that the utility does not expect to incur during the rate period as a direct result of the measure in the aggregate and broken down by type of cost, per appropriate capacity, energy and measure unit metric, and the proposed jurisdictional allocation factors, as well as any changes in the estimated future amounts since last filed with the Commission;

c. a description of the measurement and verification activities to be conducted during the rate period, including their estimated costs;

d. total expected summer and winter peak demand reduction per appropriate ~~capacity, energy, and~~ measure unit metric and in the aggregate;

e. total expected energy reduction in the aggregate and per appropriate ~~capacity, energy and~~ measure unit metric.

(iii) For each measure for which cost recovery is requested through the DSM/EE EMF rider:

a. total expenses for the test period in the aggregate and broken down by type of expenditure, per appropriate capacity, energy and measure unit metric and the proposed jurisdictional allocation factors;

b. total costs that the utility did not incur for the test period as a direct result of the measure in the aggregate and broken down by type of cost, per appropriate capacity, energy and measure unit metric, and the proposed jurisdictional allocation factors, as well as any changes in the estimated future amounts since last filed with the Commission;

c. a description of, the results of, and the costs of all measurement and verification activities conducted in the test period;

d. total summer and winter peak demand reduction in the aggregate and per appropriate ~~capacity, energy, and~~ measure unit metric ~~in the aggregate~~, as well as any changes in estimated future amounts since last filed with the Commission;

e. total energy reduction in the aggregate and per appropriate ~~capacity, energy and~~ measure unit metric, as well as any changes in the estimated future amounts since last filed with the Commission;

f. a discussion of the findings and the results of the program or measure;

g. evaluations of event-based programs including the date, weather conditions, event trigger, number of customers notified and number of customers enrolled; and

h. a comparison of impact estimates presented in the measure application from the previous year, those used in reporting for previous measure years, and an explanation of significant differences in the impacts reported and those previously found or used.

(iv) For each measure for which recovery of utility incentives is requested, a detailed explanation of the method proposed for calculating those utility incentives, the actual calculation of the proposed utility incentives, and the proposed method of providing for their recovery and true-up through the annual rider. If recovery of net lost revenues is requested, the total net lost kWh sales and net lost revenues per appropriate capacity, energy, and program unit metric and in the aggregate for the test period, and the proposed jurisdictional allocation factors, as well as any changes in estimated future amounts since last filed with the Commission.

(v) Actual revenues produced by the DSM/EE rider and the DSM/EE EMF rider established by the Commission during the test period and for all available months immediately preceding the rate period.

(vi) The requested DSM/EE rider and DSM/EE EMF rider and the basis for their determination.

(vii) Projected North Carolina retail monthly kWh sales for the rate period for all industrial and large commercial accounts, in the aggregate, that are not assessed the rider charges as provided in this rule.

(viii) All workpapers supporting the calculations and adjustments described above.

(2) Each electric public utility shall file the information required under this rule, accompanied by workpapers and direct testimony and exhibits of expert witnesses supporting the information filed in this proceeding, and any change in rates proposed by the electric public utility, by the date specified in subdivision (e)(2) of this rule. An electric public utility may request a rider lower than that to which its filed information suggests that it is entitled.

(3) The electric public utility shall publish a notice of the annual hearing for two (2) successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least thirty (30) days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-133.9(d) and setting forth the time and the place of the hearing.

(4) Persons having an interest in any hearing may file a petition to intervene at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed in the discretion of the Commission for good cause shown.

(5) The Public Staff and other intervenors shall file direct testimony and exhibits of expert witnesses at least 15 days prior to the hearing date. If a petition to intervene is filed less than 15 days prior to the hearing date, it shall be accompanied by any direct testimony and exhibits of expert witnesses the intervenor intends to offer at the hearing.

(6) The electric public utility may file rebuttal testimony and exhibits of expert witnesses no later than 5 days prior to the hearing date.

CHAPTER 8.
APPENDIX.

REVISED GUIDELINES FOR RESOLUTION OF ISSUES REGARDING INCENTIVE[19] PROGRAMS

(1) To obtain Commission approval of a residential or commercial program involving incentives per Rule R1-38 [now Rule R6-95 or R8-68], the sponsoring utility must demonstrate that the program is cost effective for its ratepayers.

(a) Maximum incentive payments to any party must be capable of being determined from an examination of the applicable program.

(b) Existing approved programs are grandfathered. However, utilities shall file a listing of existing approved programs subject to these guidelines, including applicable tariff sheets, and amount and type of incentives involved in each program or procedure for calculating such incentives in each program, all within 60 days after approval of these guidelines.

(c) Utilities shall file a description of any new program or of a change in an existing program, including applicable tariff sheets, and amount and type of incentives involved in each program or procedure for calculating such incentives in each program, all at least 30 days prior to changing or introducing the program.

(d) The matter of the relative efficiency of electricity versus natural gas under various scenarios (space heating alone, space heating plus A/C, etc.) cannot now be resolved. A better approach at this time would be to determine the acceptability of incentive programs herein based on the energy efficiency of electricity alone or of natural gas alone, as applicable.

(e) The criteria for determining whether or not to approve an electric program pursuant to G.S. 62-140(c) should not include consideration of the impact of an electric program on the sales of natural gas, or vice versa.

(f) Approval of a program pursuant to Commission Rule R1-38 [now Rule R6-95 or R8-68] does not constitute approval of rate recovery of the costs of the program. The appropriateness of rate recovery shall be evaluated in general rate cases or similar proceedings.

[19] All incentives referenced in these Revised Guidelines are participation incentives as now defined in Rule R8-68(b)(7).

(2) If a program involves an incentive per Rule R1-38 [now Rule R6-95 or R8-68] and the incentive affects the decision to install or adopt natural gas service or electric service in the residential or commercial market, there shall be a rebuttable presumption that the program is promotional in nature.

(a) If the presumption that a program is promotional is not successfully rebutted, the cost of the incentive may not be recoverable from the ratepayers unless the Commission finds good cause to do so.

(b) If the presumption that a program is promotional is successfully rebutted, the cost of the incentive may be recoverable from the ratepayers. The cost shall not be disallowed in a future proceeding on the grounds that the program is primarily designed to compete with other energy suppliers. The amount of any recovery shall not exceed the difference between the cost of installing equipment and/or constructing a dwelling to current state/federal energy efficiency standards and the more stringent energy efficiency requirements of the program, to the extent found just and reasonable by the Commission.

(c) The presumption that a program is promotional may generally be rebutted at the time it is filed for approval by demonstrating that the incentive will encourage construction of dwellings and installation of appliances that are more energy efficient than required by state and/or federal building codes and appliance standards, subject to Commission approval.

(3) If a program involves an incentive paid to a third party builder (residential or commercial), the builder shall be advised by the sponsoring utility that the builder may receive the incentive on a per structure basis without having to agree to: (1) a minimum number or percentage of all-gas or all-electric structures to be built in a given subdivision development or in total; or (2) the type of any given structure (gas or electric) to be built in a given subdivision development.

(a) Electric and gas utilities may continue to promote and pay incentives for all-electric and all-gas structures respectively, provided such programs are approved by the Commission.

(b) A builder shall be advised by the sponsoring utility of the availability of natural gas or electric alternatives, as appropriate.

(c) A builder receiving incentives shall not be required to advertise that the builder is exclusively an all-gas or all-electric builder for either a particular subdivision or in general.

(4) The promotional literature for any program offering energy-efficiency mortgage discounts shall explain that the structures financed under the program need not be all-electric or all-gas.

(5) Duke’s proposed Food Service Program shall be modified to include a definition of qualifying equipment and of conventional equipment, and is subject to approval in accordance with guideline number 1 above.

(a) The nature or amount of incentive contained in each program encouraging the installation of commercial appliances (electric or gas) that use the sponsoring utility’s energy product, such as Duke’s Food Service Program,

shall be unaffected by the availability or use of alternate fuels in the applicable customer's facility.

(b) Commercial clients (builders, customers, etc.) who are offered incentives for installation of appliances shall be advised by the sponsoring utility of the availability of natural gas or electric alternatives, as appropriate.

(6) Rates, rate design issues, and terms and conditions of service approved by the Commission are not subject to these guidelines.

(7) Pending applications involving incentive programs are subject to these guidelines.

Application to Register a Renewable Energy Facility or New Renewable Energy Facility Pursuant to Rule R8-66

Facility name:	
Full and correct name of the owner of the facility:	
Business address:	
Electronic mailing address:	
Telephone number:	
Owner's agent for purposes of this application, if applicable:	
Agent's business address:	
Agent's electronic mailing address:	
Agent's telephone number:	
The owner is:	☐ Individual ☐ Partnership ☐ Corporation (including LLC)
If a corporation, state and date of incorporation.	State _____ Date _____
If a corporation that is incorporated outside of North Carolina, is it domesticated in North Carolina?	☐ Yes ☐ No

If a partnership, the name and business address of each general partner. (Add additional sheets if necessary.)	
Nature of the renewable energy facility:	
1. Technology, including the source of its power or fuel(s).	
2. Whether it produces electricity, useful thermal energy, or both.	
3. Nameplate capacity in kW/MW (AC) or maximum Btu per hour for thermal facilities.	
The location of the facility set forth in terms of local highways, streets, rivers, streams, or other generally known local landmarks. Attach a map, such as a county road map, with the location indicated on the map.	
Site ownership:	
1. Is the site owner other than the facility owner? If yes, who is the site owner?	
2. What is the facility owner's interest in the site?	

List the approvals that are required to build and/or operate this facility, and attach copies of those that have been obtained. Wind facilities with multiple turbines, where each turbine is licensed separately, may provide copies of approvals for one such turbine of each type located at the facility but shall add an attestation that approvals for all of the turbines are available for inspection.

1. Federal permits and licenses:	
2. State permits and licenses:	
3. Exemptions required for construction and operation of the facility:	
4. Statement of whether each has been obtained or applied for (attach copy of those that have been obtained with this application):	
If the facility has been placed into service, on what date did the facility begin operating?	
If the facility is not yet operating, on what date is the facility projected to be placed into service?	

If the facility is already operating, what is the amount of energy produced by the facility, net of station use, for the most recent 12-month or calendar-year period? Energy production data for a shorter time period is acceptable for facilities that have not yet operated for a full year.	
What entity does (or will) read the facility's energy production meter(s) for the purpose of issuing renewable energy certificates?	
Does the facility participate in a REC tracking system and if so, which one? If not, which tracking system will the facility participate in for the purpose of REC issuance?	
If this facility has already been the subject of a proceeding or submittal before the Commission, such as a Report of Proposed Construction or a Certificate of Public Convenience and Necessity, please provide the Commission Docket Number, if available.	

The owner of the renewable energy facility shall provide the following attestations, signed and notarized:

1. ☐ Yes ☐ No I certify that the facility is in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment and conservation of natural resources.

2. ☐ Yes ☐ No I certify that the facility satisfies the requirements of G.S. 62-133.8(a)(5) or (7) as a:
_____ renewable energy facility, or
_____ new renewable energy facility,
and that the facility will be operated as a:
_____ renewable energy facility, or
_____ new renewable energy facility.

3. ☐ Yes ☐ No I certify that 1) my organization is not simultaneously under contract with NC GreenPower to sell our RECs emanating from the same electricity production being tracked in NC-RETS; and 2) any renewable energy certificates (whether or not bundled with electric power) sold to an electric power supplier to comply with G.S. 62-133.8 have not, and will not, be remarketed or otherwise resold for any other purpose, including another renewable energy portfolio standard or voluntary purchase of renewable energy certificates in North Carolina (such as NC GreenPower) or any other state or country, and that the electric power associated with the certificates will not be offered or sold with any representation that the power is bundled with renewable energy certificates.

4. ☐ Yes ☐ No I certify that I consent to the auditing of my organization's books and records by the Public Staff insofar as those records relate to transactions with North Carolina electric power suppliers, and agree to provide the Public Staff and the Commission access to our books and records, wherever they are located, and to the facility.

5. ☐ Yes ☐ No I certify that I am the owner of the renewable energy facility or am duly authorized to act on behalf of the owner for the purpose of this filing.

_____ _____
(Signature) (Title)

_____ _____
(Name - Printed or Typed) (Date)

VERIFICATION

STATE OF _____ COUNTY OF _____

_____, personally appeared before me this day and, being first duly sworn, says that the facts stated in the foregoing application and any exhibits, documents, and statements thereto attached are true as he or she believes.

WITNESS my hand and notarial seal, this _____ day of _____, 20____.

My Commission Expires: _____

_____
Signature of Notary Public

_____
Name of Notary Public – Typed or Printed

The name of the person who completes and signs the application must be typed or printed by the notary in the space provided in the verification. The notary's name must be typed or printed below the notary's seal. This original verification must be affixed to the original application, and a copy of this verification must be affixed to each of the 15 copies that are also submitted to the Commission.