STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 931
DOCKET NO. E-7, SUB 1032

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 931 In the Matter of Application of Duke Energy Progress, LLC, for Approval of Demand-Side Management and Energy Efficiency Cost Recovery Rider Pursuant to N.C.G.S. § 62-133.9 and Commission Rule R8-69 DOCKET NO. E-7, SUB 1032 In the Matter of Application of Duke Energy Carolinas, LLC, for Approval of New Cost Recovery Mechanism and Portfolio of Demand-Side Management and Energy Efficiency Programs	)	**COMMENTS OF THE PUBLIC STAFF**

NOW COMES THE PUBLIC STAFF - North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and respectfully submits comments on the additional recommendations filed by the Southern Alliance for Clean Energy, Sierra Club, Natural Resources Defense Council, South Carolina Coastal Conservation League, and North Carolina Sustainable Energy Association (collectively "Joint Commenters") on January 15, 2020, regarding issues involving demand-side management and energy efficiency (DSM/EE).

1. On 16 February 2020, the Commission issued an order in these dockets requesting initial and reply comments from the parties addressing the revisions to the DSM/EE cost recovery mechanisms (Mechanisms) proposed jointly by Duke Energy

Progress, LLC (DEP), Duke Energy Carolinas, LLC (DEC), the Joint Commenters, the Attorney General's Office, and the Public Staff in a filing made on January 15, 2020. The Commission also requested comments on additional recommendations filed by the Joint Commenters and any other issues deemed relevant.

2. The Public Staff strongly endorses the proposed revisions to DEP and DEC's DSM/EE Mechanisms set out in the January 15, 2020 filing. As the revisions were designed to incentivize the utilities to achieve the most net savings from DSM/EE, while also placing greater emphasis on reaching low income customers who could most benefit from additional opportunities to reduce the costs of their electric utility service, the Public Staff believes the revisions are in the public interest and should be approved.

3. In the Joint Commenters' Reply Comments filed on January 15, 2020, the Joint Commenters raise four issues for the Commission's consideration. As an initial point, the Public Staff points out that each of these issues would affect all of the investor-owned utilities, i.e., also Dominion Energy North Carolina, which is not a party to this proceeding. If the Commission were to consider any of the four issues raised by the Joint Commenters, they should properly be considered in a generic docket rather than these dockets that only apply to DEP and DEC.

4. The first issue is a request for the Commission to consider changing the discount rate used in cost-effectiveness testing of DSM/EE measures and programs from the utility's Weighted Average Cost of Capital (WACC) to a lower discount rate. The Joint Commenters contend that use of the utility's WACC is biased toward the utility, reflects a shorter rate of time preference than that of customers, and does not reflect the cost of

capital for DSM/EE; they suggest that the Commission use the framework from the National Standards Practice Manual[1] (NSPM) to determine an appropriate discount rate in order that the resources are appropriately valued in accordance with policy goals.

The NSPM recommends that jurisdictions follow these six steps in determining the appropriate discount rate:

> Step A: Articulate the jurisdiction's applicable policy goals.
>
> Step B: Consider the relevance of a utility's weighted average cost of capital (WACC).
>
> Step C: Consider the relevance of the average customer discount rate.
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> Step D: Consider the relevance of a societal discount rate.
>
> Step E: Consider an alternative discount rate different from the utility, customer, and societal perspective.
>
> Step F: Consider using a low-risk discount rate for EE cost-effectiveness.

Determination of North Carolina's policy goals as required by Step A would be an immense undertaking far beyond the confines of DSM/EE. These policy goals would affect not only DSM/EE, but almost every aspect of resource planning. As such, the Public Staff believes that it is not appropriate to consider policy changes in regard to the limited issue of discount rates.

Least cost planning using the utility's WACC places DSM and EE programs on a level playing field with supply-side resources. DEC witness Farmer noted the appropriateness of using the utility's weighted average cost as the discount rate, just as

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[1] National Efficiency Screening Project, National Standard Practice Manual for Assessing Cost-Effectiveness of Energy Efficiency Resources (May 2017), available at https://nationalefficiencyscreening.org/national-standard-practice-manual/. The Public Staff notes that the California Practices Manual has generally been used in North Carolina DSM/EE proceedings.

the Company is compensated for generation plant.[2] Step C of the NSPM suggests incorporation of customer discount rates in evaluating program cost-effectiveness with a focus on the time preference of customers. This number would be very difficult to quantify on a class level, and likely impossible on an individual customer basis.

Furthermore, the use of customer-based discount rates would tend to alter the balance of demand-side resources and supply-side resources in utility planning. Use of a different WACC for DSM/EE would skew the evaluation of DSM and EE as supply-side resources in the Integrated Resource Planning process. Other resources would be evaluated using the utility's WACC, while the costs of DSM/EE would appear to be lower using the lower WACC. The Public Staff believe the same concerns exist with a societal-based discount rate and possible alternative discount rates.

Next, the NSPM argues that jurisdictions should consider using a low-risk discount rate for EE; such with the inflation-adjusted or yields on treasury bonds. The Public Staff acknowledges that the cost of most EE programs are expensed as opposed to capitalized; however, this aspect does not justify the use of a low-risk discount rate over the WACC. DSM/EE programs are not entirely without risk to the Company, as actual program participation rates and energy savings may widely vary from initial projections.

Further, calculation of capital structure and return on equity (ROE) to determine the WACC are generally two of the most contentious issues in general rate cases. However, there are recognized models (*i.e.*, Discounted Cash Flow model, Risk Premium

[2] The recommended discount rate is addressed in the testimony of DEC witness Stephen M. Farmer filed in Docket No. E-7, Sub 831, on April 4, 2008, pp. 13-16.

model, and Capital Asset Pricing Model) used to calculate ROEs, as well as many publications from which to obtain comparative statistics for other utilities. There is little, if any guidance on how to calculate a separate WACC for DSM/EE that is directed to the customers' time and risk preferences. The NSPM cited by the Joint Parties lays out several alternatives to using the utility's WACC, such as using the utility's cost of debt, the real rate on long-term government debt, the real interest rate on 10-year Treasury Bonds, or a societal cost of capital (*see* Table 19. Discount Rate Options for Cost-Effectiveness Analyses at 75), but then cautions:

> The typical values presented in Table 19 are provided for illustrative purposes only; other values outside these ranges are also possible. Other points to consider include: that these values can change over time according to changing economic conditions; that there are multiple options for determining a low-risk discount rate; and that different utility customers will have different time preferences, which can be determined in multiple ways. It is also worth noting that the value to use for the societal discount rate is National Standard Practice Manual Page 76 subject to much debate. Further discussion on the range of values for discount rates is beyond the scope of this manual.

Both choosing the appropriate benchmark for a DSM/EE WACC and determining the appropriate value would likely be contentious issues. The Public Staff believes it is most appropriate to use the Commission-approved utility WACC in the Utility Cost Test (UCT) to ensure that demand-side resources are compared to supply-side resources on a level playing field.

Additionally, using a lower WACC would likely result under both the current and proposed Mechanisms in higher incentive payments to the utility as cost-effectiveness of the programs would increase. This increase in cost-effectiveness would not be due to more participation or energy savings and could result in an unintended windfall to the utility and higher customer rates. If the Commission were to adopt a lower DSM/EE WACC, it should also consider whether it is appropriate to reduce the Portfolio Performance Incentive to offset this impact.

In conclusion, the Public Staff does not support the use of a discount rate other than the WACC. The NSPM advocates for a regulatory perspective for determining a discount rate that includes the full scope of issues for which regulators and other relevant decision-makers are responsible. The Public Staff believes that this approach may have merit in the future; however, at this time, the utility WACC is the appropriate rate to incorporate in evaluating cost-effectiveness for utility sponsored DSM/EE programs.

5. The Joint Commenters also ask the Commission to review whether a reporting requirement is necessary for customers who opt out of DSM or EE. The Public Staff agrees with the Joint Commenters that the number of opted out customers has had a significant impact on the non-residential DSM/EE programs and riders. However, the Public Staff is aware of many industrial and commercial customers that have opted out and have implemented EE measures at their own expense. While the Joint Commenters point out that these customers benefit from lower system costs due to the DSM/EE programs in which they do not participate, other system customers benefit from the reductions in load attributable to the industrial customer's self-paid DSM/EE measures.

The Public Staff does not support a reporting requirement. The law requires the industrial customer to notify its utility of its choice to opt out, a one-time notification, not continual reporting. *See* N.C. Gen. Stat. § 62-133.9(f). Further, a number of these customers have indicated that they consider the measures they have implemented and the energy savings they have reaped to be trade secrets. The Public Staff does not support making it more onerous to opt out as a way to reduce opt outs, but rather encourages the utilities and the Collaborative to work to develop cost-effective programs and measures that would reduce opt-outs.

Finally, the Commission has generally addressed this issue previously in its February 29, 2008, *Order Adopting Final Rules*, in Docket No. E-100, Sub 113, where it said:

> The Commission concludes that Rule R8-69 should not be revised to include either Duke's proposal to require a "substantially equivalent" test in order for customers to opt out of DSM and EE programs or ED, SACE and SELC's proposal that customers desiring to opt out be required to provide detailed descriptions of measures evaluated and measures implemented or planned together with quantified results and projections of the impact of the measures. Senate Bill 3, in general, and G.S. 62-133.8(f), in particular, do not contain any requirement that DSM or EE programs implemented by the customer or DSM or EE programs proposed to be implemented by the customer must be substantially equivalent to the programs or measures being supplied by the electric power supplier. Nor does Senate Bill 3 require customers desiring to opt out to provide detailed descriptions of measures evaluated and measures implemented or planned together with quantified results and projections of the impact of the measures. All that is required of a program used as the basis for a customer's decision to opt out is that: (1) the program have been implemented in the past or (2) that it be proposed to be implemented in the future in accordance with stated, quantified goals.

It does not appear to the Public Staff that circumstances have changed since issuance of this 2008 Order necessitating relitigation of this matter.

6. The Joint Commenters also ask the Commission to investigate decoupling. The Public Staff notes that investigations of this sort have generally been initiated upon request of the General Assembly. Decoupling mechanisms for gas, water, and electric

utilities have resulted from legislation action and implemented by the Commission. Further, the recovery of net lost revenues, a type of decoupling, is allowed by statute and has been part of the DSM/EE rider proceedings since their initiation. While the Joint Commenters contend that the current method used for recovery of net lost revenues may be "extremely complex", "cumbersome, and difficult to administer", the Public Staff has been able to navigate the methodology. Further, the Public Staff notes that the utilities, who are most affected by decoupling, have not sought any other type of lost recovery adjustment mechanism.

7. Finally, the Joint Commenters request that the Commission initiate an investigation into whether an overall DSM/EE program portfolio performance target, in the form of an energy efficiency resource standard (EERS) should be adopted. The Public Staff disagrees with the contention that a portfolio performance target adopted for one utility would be the same as an EERS. Certainly, the Commission can adopt performance targets for utilities, and indeed one has been included in the proposed Mechanisms for DEC and DEP. However, the Public Staff would consider an EERS to be a mandate more like the Renewable Energy and Energy Efficiency Portfolio Standard (REPS), Session Law 2007-397 and believes any statewide EERS should come from the General Assembly as well.

Respectfully submitted this the 17th day of February, 2020.

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CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing Comments on all parties of record in accordance with Commission Rule R1-39, by United States mail, postage prepaid, first class; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 17th day of January, 2020.

Electronically submitted
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