

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 177

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---------------------------------------|---|---------------------|
| In the Matter of |) | |
| Rulemaking Proceeding to Implement |) | INITIAL COMMENTS OF |
| Securitization of Early Retirement of |) | THE PUBLIC STAFF |
| Subcritical Coal-Fired Generating |) | |
| Facilities |) | |

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and pursuant to the Commission’s Order Requesting Comments and Proposed Rules issued October 14, 2021, respectfully submits its initial comments.

Background

On October 13, 2021, Governor Roy Cooper signed into law House Bill 951 (S.L. 2021-165). Section 5 of S.L. 2021-165 authorizes the Commission to establish rules by April 11, 2022, for the securitization of costs associated with the early retirement of subcritical coal-fired generating facilities (Coal Plant Retirement Securitization Rules).

On October 14, 2021, the Commission issued an Order stating that parties, including the Public Staff, may file comments and proposed rules on or before November 22, 2021, and may file reply comments on or before December 20, 2021.

Comments

1. Section 5 of S.L. 2021-165 prescribes the adoption of Coal Plant Retirement Securitization Rules “substantively identical to the provisions of Section 1 of S.L. 2019-244 [i.e., N.C. Gen. Stat. § 62-172 (the Storm Securitization Statute)], except with respect to the purposes for which securitization may be used under that section.” Given this mandate, the Public Staff is focusing its initial comments on general issues for the Commission to consider, rather than proposing a specific rule. The Public Staff will offer comments on rules proposed by other parties, including Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, in its reply comments.

2. Pursuant to the Commission’s Financing Orders issued in storm securitization Docket Nos. E-2, Sub 1262 and E-7, Sub 1243, the Public Staff actively participated in “Bond Advisory Team” meetings and continued to advocate for the “Best Practices” recommended by its expert witnesses in those dockets, many of which were incorporated into the Commission’s Financing Orders, such as: 1) the formation of the Bond Advisory Team comprised of representatives of the Companies, the Commission, and the Public Staff; 2) inviting all Bond Advisory Team members to join all meetings to review and comment on all aspects of the structuring, marketing, and pricing of the bonds, timely information of which is to be provided in advance to Bond Advisory Team members; 3) requiring certifications that the structuring, marketing, and pricing of the bonds in fact resulted in the lowest charge to ratepayers consistent with market conditions at the

time the bonds were priced and the terms set forth in the Commission's Financing Orders; and 4) requiring auditing by the Public Staff of ongoing financing costs associated with the bond issuances. The Public Staff believes that incorporating these and other Best Practices into the Coal Plant Retirement Securitization Rules will materially benefit ratepayers.

3. One of the key elements of any securitization statute is the existence of a non-impairment pledge (Statutory Pledge) as found in subsection (k) of the Storm Securitization Statute:^{1 2}

The State and its agencies, including the Commission, pledge and agree with bondholders, the owners of the storm recovery property, and other financing parties that the State and its agencies will not take any action listed in this subdivision.

The prohibited actions include pledges not to: alter certain provisions of the statute; take or permit actions that impair the value of storm recovery property; impair the remedies of bondholders; or, except for changes due to the formula-based adjustment mechanism, reduce the storm recovery charges to be imposed for the benefit of bondholders until the bonds are paid in full. In S.L. 2021-165, Section 5, the General Assembly incorporated the provisions of the Storm Securitization Statute by way of requiring the Commission to adopt rules consistent with the

¹ Recent filings with the SEC for the issuances under Docket Nos. E-2, Sub 1262 and E-7, Sub 1243, further describe the state pledge and indicate, among other things, an acknowledgement that "...any purchase by a bondholder of a storm recovery bond is made in reliance on the state pledge." See Form SF1, Registration Statement, Duke Energy Carolinas NC Storm Funding LLC, p. 88, and Form SF1, Registration Statement, Duke Energy Progress NC Storm Funding LLC, p. 88.

² Tr. Official Exhibits Vol. 4, pp. 362-377 (Fichera Presentation to NASUCA 2020 Annual Meeting) in Docket Nos. E-2, Sub 1262 and E-7, Sub 1243, includes slide 12 that lists "Key Elements Needed for Special State Law to Authorize Securitization to Achieve Stand-Alone AAA Credit Rating," one of which is "Require State Pledge of Non-Interference with Bondholder Rights to Property/Charge/Collateral."

statute.³ While S.L. 2021-165 is not explicit, any rule should include similar language with respect to non-impairment of coal plant retirement bonds.

4. Additionally, considering the imperative nature of the Statutory Pledge, the Public Staff believes it advisable to seek input from the investment community, and from independent bond counsel in particular, as to the sufficiency of adopting a rule pursuant to S.L. 2021-165 as it relates to the Statutory Pledge. Issuing bonds to investors in the present low-interest-rate environment is generally preferable and less costly to customers than alternative ratemaking mechanisms; therefore, the Public Staff recommends that all possible steps be taken to ensure a successful securitization process for retired coal assets.

5. The Coal Plant Retirement Securitization Rules may need to be part of, or at least take into account, the Carbon Plan mandated by Section 1 of S.L. 2021-165 and initiated by Commission Order on November 19, 2021, in Docket No. E-100, Sub 179. In the case of the Storm Securitization Statute, there was no discretion available for the Commission to exercise regarding the dates at which the various storm costs became liabilities of the utilities; those dates were essentially the dates on which the storms occurred (or, at the latest, the dates on which the costs of repairing the damages caused by the storms were incurred). However, in the case of the coal plant retirements that will be undertaken pursuant to S.L. 2021-165, Section 1, the dates at which the remaining net book value of

³ Part III. Section 5 of S.L. 2021-165 provides, in pertinent part, “Rules, procedures, obligations, and protections adopted for securitization of costs associated with retirement of subcritical coal-fired generating facilities shall be substantively identical to the provisions of Section 1 of S.L. 2019-244, except with respect to the purposes for which securitization may be used under that section.”

each retired plant will become a regulatory liability eligible for securitization (i.e., the retirement date) is discretionary at this time, i.e., to be determined in large part by the Carbon Plan.

6. Additionally, the Public Staff is uncertain at this time whether the phrase in S.L. 2021-165, Section 5, “fifty percent (50%) of the remaining net book value of all subcritical coal-fired electric generating facilities to be retired” means 50% of the remaining net book value (NBV) of each retired plant or 50% of the remaining NBV of all the plants in the aggregate. The Public Staff, however, favors the approach that produces the greatest savings for customers. The impact of these two currently unknown variables (as they might be estimated at the time of the formation of the Carbon Plan) on the timing and amount of securitization associated with each retired plant, combined with possible trends in interest rates, capital structure, required returns on equity, and the securitization bond markets (as those might also be estimated), may well affect the total estimated cost of possible alternative Carbon Plans, and thus influence the choice as to which Carbon Plan will “achieve the least cost path consistent with this section to achieve compliance with the authorized carbon reduction goals,” as required by S.L. 2021-165, Section 1(1). Thus, factors related to the amounts and timing of possible securitization may be an integral part of determining the lowest present value (least-cost) of revenue requirements achievable pursuant to S.L. 2021-165, and will need to be combined with the resolution of the question as to whether securitization is in fact more beneficial to the ratepayer in each instance than retirement without securitization. The overall resolution of the securitization matter

may well require an approach that integrates possible securitization into the overall Carbon Plan determination process.

WHEREFORE, the Public Staff prays:

1. That the Commission take these initial comments into consideration;
- and
2. For such other and further relief as the Commission may deem just and proper.

Respectfully submitted this the 22nd day of November, 2021.

PUBLIC STAFF
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Electronically submitted
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CERTIFICATE OF SERVICE

I certify that a copy of these Initial Comments has been served on all parties of record or their attorneys, or both, by United States mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 22nd day of November, 2021.

Electronically submitted
/s/ William E. H. Creech