

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-7, SUB 1276

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Duke Energy Carolinas, LLC,)
for Adjustment of Rates and Charges)
Applicable to Electric Service in North)
Carolina and Performance-Based Regulation)

POST-HEARING BRIEF OF NC WARN

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Pursuant to N.C. Utilities Commission (the “Commission” or “NCUC”) Rule R1-25 and the ruling of Presiding Commissioner Duffley in open hearing on September 5, 2023, NC WARN, through counsel, respectfully submits this Post-Hearing Brief to the Commission on certain issues in the above-referenced docket.

INTRODUCTION

The present Post-Hearing Brief addresses two issues: (I) Duke Energy Carolinas, LLC’s (“DEC” or the “Company”) inclusion of the Clinton 100kV transmission line and the Lee & Piedmont 100kV transmission line in the multiyear rate plan, and (II) DEC’s proposed nonresidential net-energy metering rider.

Issue I: Upgrades to the Clinton and Lee-Piedmont Lines. As explained below, the Commission should deny DEC’s request that upgrades to the Clinton 100kV transmission line (“Clinton line”) and the Lee & Piedmont 100kV transmission line (“Lee-Piedmont line”) be approved under the multiyear rate plan (“MYRP”). DEC’s said request should be denied for at least the following reasons:

- In the present docket, DEC has proposed extravagant capital spending, including within the MYRP. For instance, the Company’s MYRP capital

project plan projects spend (closed to plant) of about \$208 million *a month*. In the context of this extravagant spending, the Commission should be skeptical about capital projects within the MYRP.

- According to DEC's own cost-benefit analysis, the proposed upgrades to the Clinton and Lee-Piedmont lines offer little benefit to ratepayers relative to other projects within the transmission MYRP. In fact, the program within which the Clinton and Lee-Piedmont lines are included (Capacity & Customer Planning) scored the lowest on DEC's cost-benefit of any other MYRP transmission program.

- Despite the relative lack of ratepayer benefits, the proposed Clinton and Lee-Piedmont upgrades are the two *most expensive* projects in the entire transmission MYRP.

- Notwithstanding a relative lack of ratepayer benefit and a huge price tag, DEC's proffered reasons for these upgrades to the Clinton and Lee-Piedmont lines are unconvincing. For instance, DEC claims that these upgrades are necessary to increase capacity for purposes of utility-scale solar projects in the red zone – yet, there are currently no transmission-level solar projects interconnected to either line, and furthermore, there are *no* solar or solar-paired-with-storage projects included in the Phase 1 or Phase 2 Cluster Studies which would interconnect with the Lee-Piedmont line.

- Projects included within the MYRP must be “used and useful during the rate year” at issue. N.C. Gen. Stat. § 62-133.16(c)(1)(a). DEC projects that the Clinton and Lee-Piedmont lines will not be finished until the final month of the final

year of the MYRP (namely, December 2026). Given the complex and resource intensive nature of transmission line upgrades, it is highly speculative that these upgrades will be used and useful, as projected by DEC, within the final thirty days of the three-year MYRP.

Issue II: Nonresidential NEM. In the present docket, DEC proposes a new nonresidential net energy metering (“NEM”) rider, namely Rider NSC, which would uniformly apply to all members of the diverse class of nonresidential NEM customers. This proposed NEM rider should be rejected for at least the following reasons:

- According to N.C. Gen. Stat. § 62-126.4(b), NEM rates may only be established after a Commission-led “investigation of the costs and benefits of customer-site generation.” No such “investigation” has been conducted.
- The nonresidential class includes a diverse set of customers with diverse usage profiles ranging from houses of worship to large industrial complexes. The imposition of a single one-size-fits-all rider upon all NEM customers within this diverse nonresidential class cannot possibly satisfy the requirement of N.C. Gen. Stat. § 62-126.4(b) that NEM rates be “nondiscriminatory.”
- Moreover, Rider RSC would force all nonresidential NEM customers onto a time-of-use rate structure with critical-peak-pricing. By eliminating flat-rate customers who pay the same rate for electricity at all times of the day, Rider RSC violates the mandate of N.C. Gen. Stat. § 62-126.4(b) that the “Commission shall establish net metering rates under all tariff designs.”

STATEMENT OF THE LAW

DEC's performance-based rate-increase application in the above-referenced docket (the "Application") is governed by N.C. Gen. Stat. § 62-133.16. Under that statute, the Commission may approve DEC's Application only if the following criteria are met:

The Commission shall approve a PBR [*i.e.*, performance-based regulation] application by an electric public utility only upon a finding that a proposed PBR would result in just and reasonable rates, is in the public interest, and is consistent with the criteria established in this section and rules adopted thereunder.

N.C. Gen. Stat. § 62-133.16(d)(1). This statute furthermore imposes the following additional requirements:

In reviewing any such PBR application under this section, the Commission shall consider whether the PBR application:

- a. Assures that no customer or class of customers is unreasonably harmed and that the rates are fair both to the electric public utility and to the customer.
- b. Reasonably assures the continuation of safe and reliable electric service.
- c. Will not unreasonably prejudice any class of electric customers and result in sudden substantial rate increases or "rate shock" to customers.

N.C. Gen. Stat. § 62-133.16(d)(1)(a)-(c).

To summarize, the Commission may approve the Application "only upon a finding" that the Application would result in (a) "just and reasonable rates" that are (b) "in the public interest," (c) assure "that no customer or class of customers is

unreasonably harmed,” and finally, (d) will “not unreasonably prejudice any class of electric customers.” *Id.*

ARGUMENT

I. The Clinton and Lee-Piedmont Transmission Lines Should Not Be Approved as Part of the MYRP.

As explained below, the Clinton and Lee-Piedmont transmission lines are both speculative and expensive, yet afford relatively little benefit to ratepayers. For these reasons, and many others, the said transmission lines should not be included within the MYRP.

A. DEC Has Proposed Extravagant Capital Spending, Including the MYRP, and These Spend Requests Should Therefore Be Reviewed with Skepticism.

It is important to place the Clinton and Lee-Piedmont lines within the context of the overall MYRP. The Public Staff’s witness Dustin R. Metz (“Mr. Metz”) did an excellent job summarizing the astronomical capital spend requests, including the MYRP, proposed by DEC. As noted by Mr. Metz, “Projects completed in the Base Case (June 2020 through April 2023) resulted in an average capital spend (closed to plant) of \$181M a month, whereas the Company’s MYRP capital project plan projects spend (closed to plant) of ~\$208M a month.” Tr. vol 12, 892.

Of course, the MYRP does not include all capital work expected to take place during the MYRP period; instead, the MYRP work by itself exceeds the average capital spend (closed to plant) per month in the Base Case during the period of June 2020 through April 2023. *Id.* When DEC’s proposed MYRP capital projects and non-MYRP capital-related work are combined, the “total [is] \$285M per month

(compared to the Base Case period \$196M actual spend, ~31% overall increase).”

Tr. vol 12, 893.

According to Mr. Metz, “It is shocking that maintaining or improving the overall reliability of the Company’s entire electric system requires nearly a \$12.2B capital project spend by the end of Rate Year 3 (December 2026). By comparison, DEC’s total rate base (system) for the test year in this case is \$25.8B.” Tr. vol 12, 905.

Given the profligacy of DEC’s capital spending, especially in the MYRP, the Commission should closely scrutinize DEC’s MYRP proposals.

B. Relative to other MYRP Transmission Projects, the Proposed Upgrades to the Clinton and Lee-Piedmont Lines Provide Little Benefit to Ratepayers.

As the Commission will be aware, the transmission portion of the Company’s MYRP includes the following categories of expenditures:

- System Intelligence,
- Hardening and Resiliency,
- Transformer and Breaker Upgrades, and
- Capacity & Customer Planning.

Tr. vol 8, 278. DEC performed a cost-benefit analysis methodology to select transmission projects for inclusion in the MYRP. Tr. vol 8, 290. Specifically, DEC used Copperleaf Product Suite “to quantify benefits associated with critical infrastructure investments.” Tr. vol 8, 290.

The Clinton and Lee-Piedmont lines are part of the Capacity & Customer Planning category of transmission expenditures proposed for the MYRP. The

Capacity & Customer Planning category is described by the Company as follows: “Meeting customer and compliance obligations as demand grows and renewable energy sources are added to the system.” Tr. vol 8, 278.

This Capacity & Customer Planning category scored the lowest in the cost-benefit analysis of any other transmission category. DEC-Maley Direct Examination Ex. 3 at p 1 (Official Ex. vol 9). In fact, the Capacity & Customer Planning category’s score was lower than any other category by a wide margin. Here are the cost-benefit scores, listed highest-to-lowest, with the better scores being the higher numbers:

<u>Transmission Category</u>	<u>Cost-Benefit Score</u>
Breakers	30.6
Substation H&R	28.9
System Intelligence	22.3
T Line H&R	22.3
Transformers	22.1
Capacity & Customer Planning	13.3

See DEC-Maley Direct Examination Ex. 3 at p 1 (Official Ex. vol 9).

C. The Capacity & Customer Planning Category of Proposed Transmission MYRP Expenditures Is the Most Expensive for Ratepayers—by Far.

Despite offering the least relative benefit to ratepayers, the Capacity & Customer Planning category of proposed transmission MYRP expenditures is by far the most expensive of all the transmission categories. Here is a chart which summarizes (from lowest to highest) the capital costs projected for each transmission category in the Company’s MYRP:

<u>Transmission Category</u>	<u>Projected Capital Cost</u>
System Intelligence	\$120,221,695
Substation H&R	\$199,146,668
Transformers	\$211,306,514
Breakers	\$282,448,307
T Line H&R	\$325,952,694
Capacity & Customer Planning	\$478,409,562

See DEC-Maley Direct Examination Ex. 3 at p 1 (Official Ex. vol 9).

Hence, the Capacity & Customer Planning category is projected to cost over \$150 million in excess of the next most expensive category (T Line H&R) and is therefore—by far—the most expensive category.

This extreme price tag is notwithstanding its status as the least beneficial category for ratepayers. During cross-examination, DEC’s transmission expert, Daniel J. Maley (“Maley”), admitted to these facts:

Q And, if we look again at the right-hand column, the Capacity and Customer Planning part of the multiyear rate plan performed, it had the lowest score of all the various different programs which were subject to the cost-benefit analysis, right?

A Yes, that is true.

.....

Q And the Capacity and Customer Planning component of the multiyear rate plan has a projected in-service cost of 516 thousand, 292 dollars – 292 thousand, 549 dollars, right?

A Yes, that’s correct.

.....

Q That’s the highest cost of any of these programs, true?

A That is true.

Tr. vol 8, 438 & 440.

D. The Clinton and Lee-Piedmont Lines Are the Most Expensive Projects within the Entire Transmission MYRP.

Despite being members of the category scoring the poorest on DEC's cost-benefit analysis, the Clinton and Lee-Piedmont lines are the most expensive projects within the entire transmission MYRP. Their projected costs are as follows:

- Clinton: \$90,248,797, and
- Lee-Piedmont: \$80,909,775.

See DEC-Maley Direct Examination Ex. 2 at p 2 (lines 83 & 93) (Official Ex. vol 9). During cross-examination, DEC witness Maley admitted that the Clinton and Lee-Piedmont lines are the most expensive of any other project in the transmission MYRP proposal. Tr. vol 8, 443-45.

According to undersigned counsel's review of Maley's direct exhibit summarizing MYRP project costs, the third-most-expensive projected cost has a price tag of \$51,270,663. See DEC-Maley Direct Examination Ex. 2 at p 3 (line 130) (Official Ex. vol 9). This third-most-expensive project is \$38,978,134 less than Clinton and \$29,639,112 less than Lee-Piedmont.

E. DEC's Projected Cost to Upgrade the Clinton and Lee-Piedmont Are Unnecessarily High and May Constitute "Gold-Plating."

As part of the MYRP, DEC proposes to reconductor 24 miles of the Lee-Piedmont line between the W.S. Lee combined cycle plant and the Shady Grove tie. Tr. vol 15, 1101. As noted, the projected cost is \$80,909,775. See DEC-Maley Direct Examination Ex. 2 at p 2 (line 93) (Official Ex. vol 9). NC WARN's panel of witnesses, William Powers and Rao Konidena (collectively, "Powers-Konidena"),

testified that this cost “equals \$3,371,241 per mile.” According to Powers-Konidena, “This reconductoring cost, on a per mile basis, is very high compared to available representative pricing.” Tr. vol 15, 1101. Powers-Konidena testified as follows:

The Midcontinent Independent System Operator (MISO) *Transmission Cost Estimation Guide for the MISO Transmission Expansion Plan (MTEP) 2023* estimates the unit cost of reconductoring a 115 kV line, per circuit, at \$0.37 million per mile. The Lee and Piedmont 100 kV lines consist of four circuits total. Therefore, $4 \times \$0.37 \text{ million/mile} \times 24 \text{ miles} = \35.5 million . This representative cost is less than one-half the \$80,909,775 budget DEC identifies for the reconductoring project.

Tr. vol 15, 1101. There is no explanation for why the Lee-Piedmont line projected cost is so disproportionate to the MISO’s MTEP for 2023.

Given the unaccountably high cost of these upgrades, the details of the Clinton and Lee-Piedmont line projects should be more closely reviewed for “gold-plating.”

F. The Upgrades to Clinton and Lee-Piedmont May Not Be Necessary.

Despite the high cost and relatively low benefit of the proposed upgrades to the Clinton and Lee-Piedmont lines, DEC’s proffered reasons for these upgrades are dubious.

During cross-examination, Maley testified that the two principal purposes behind the proposed upgrades are (a) reliability improvements and (b) connecting solar projects to the transmission lines in the red zone. Tr. vol 8, 445. One of these purposes, namely connecting solar projects in the red zone, is demonstrably deficient.

Indeed, there are *no* solar or solar-paired-with-storage projects included in the Phase 1 or Phase 2 Cluster Studies which would connect to the Lee-Piedmont line. Tr. vol 15, 1095. Moreover, DEC identified only three solar projects that would interconnect to the Clinton line in the Phase 1 Cluster Study and only one more in the Phase 2 Cluster Study. Tr. vol 15, 1095. At present, there are *zero* megawatts of transmission solar connected to the Clinton line, and similarly, there are presently *zero* megawatts of transmission solar connected to the Lee-Piedmont line. During cross-examination, Maley testified as follows:

Q Mr. Maley, would you agree with me that there are currently no transmission-level solar projects interconnected to the Clinton 100kV line?

A Subject to check, yes.

Q And would you also agree with me that there are currently no transmission level solar projects interconnected to either the Lee 100kV line or the Piedmont 100 kV line?

A That is correct.

Tr. vol 8, 449.

According to Powers-Konidena's direct testimony, the solar projects recommended for interconnection with the Clinton line in the Phase 1 and Phase 2 Cluster Studies cannot justify the line capacity expansion proposed by DEC. Tr. vol 15, 1099-1100.

G. It Is Extremely Speculative that the Clinton and Lee-Piedmont Lines Will Be Used and Useful by Rate Year 3.

In pertinent part, the General Statute setting forth the requirements for eligibility for the MYRP states as follows:

Subsequent changes in base rates in the second and third rate years of the MYRP shall be based on projected incremental Commission-authorized **capital investments that will be used and useful during the rate year**

N.C. Gen. Stat. § 62-133.16(c)(1)(a) (emphasis added). According to DEC's projection, the project completion date for the Clinton and Lee-Piedmont lines is December 2026. See DEC-Maley Direct Examination Ex. 2 at p 2 (lines 83 and 93) (Official Ex. vol 9). Hence, DEC asks the Commission to accept that the Clinton and Lee-Piedmont lines will be "used and useful" during the very final month (December) of the very final year (2026) of the three-year MYRP. There are several reasons for the Commission to be extremely skeptical these transmission lines will in fact be "used and useful" in December 2026.

First, DEC has not offered testimony explaining how it will complete these expensive, massive projects so quickly. In fact, to undersigned counsel's knowledge, the only testimony offered by Maley concerning DEC's ability to complete the Clinton and Lee-Piedmont lines by December 2026 is as follows:

Q Will the transmission MYRP projects discussed above be used and useful in providing service to the public in the rate years in which they are include?

A Yes.

Tr. vol 8, 297. Maley failed to elaborate further. This breezy, non-explicative testimony should be given no weight.

Second, Maley's testimony actually *emphasized* the difficulty with implementing the projects in the Capacity & Customer Planning category, which would include the Clinton and Lee-Piedmont lines:

These MYRP projects involve transmission line rebuilds, which **are traditionally complex, long duration, and resource intensive**; for these reasons they tend to be more expensive than the other MYRP projects. As a result of this, the net present value ratio is lower compared to other MYRP projects.

Tr. vol 8, 292 (emphasis added). Given Maley’s testimony that the Clinton and Lee-Piedmont line upgrades will likely be “complex, long duration and resource intensive,” *id.*, the Commission should be deeply skeptical about DEC’s optimistic argument that these lines will be “used and useful” in December 2026—*i.e.*, the very final month of eligibility for the MYRP.

Third, the Public Staff’s witness Metz identified numerous reasons why DEC is unlikely to complete its proposed list of MYRP projects. The panoply of reasons identified by Metz will not be re-stated here; however, the following testimony by Metz is especially important for the Commission’s consideration:

Lastly, the degree of uncertainty must be considered when reviewing the Company’s MYRP. When unforeseen events alter the timelines of projects due to unanticipated equipment failures, require the Company to replace entire programs to meet changing NERC standards, or respond to events like the substation attacks in Moore County, the MYRP proposed today will likely be very different from the one implemented over the next three years. Many projects in January’s MYRP have already been altered or replaced since the initial filing and many more have been added.

Tr. vol 12, 902.

II. DEC’s Proposed Nonresidential NEM Rider, Namely Rider NSC, Should Be Rejected.

There are three principal defects with DEC’s proposed Rider NSC: (a) the statutorily mandated “investigation of the costs and benefits of customer-sited

generation” has not been conducted, (b) the Rider NSC would apply to a wide swath of nonresidential customers ranging from houses of worship to large industrial complexes and therefore likely discriminates against some members of the nonresidential class, and (c) the Rider NSC requires that all NEM customers use a time-of-use rate structure (“TOU”), therefore eliminating non-TOU NEM customers in violation of the statutory mandate that “the Commission Shall establish net metering rates under all tariff designs.”

A. The Statutorily Mandated “Investigation” Has Not Been Conducted.

House Bill 589 prohibits the establishment of new NEM tariffs until after a Commission-led cost-benefit analysis has been conducted regarding customer-sited generation. The applicable statute states:

§ 62-126.4. Commission to establish net metering rates.

....

(b) **The rates shall be nondiscriminatory and established only after an investigation of the costs and benefits of customer-sited generation.** The Commission shall establish net metering rates under all tariff designs that ensure that the net metering retail customer pays its full fixed cost of service. . . .

N.C. Gen. Stat. § 62-126.4(b). The key language is that “an investigation of the costs and benefits of customer-sited generation” shall be conducted.

DEC’s Rider NSC fails to satisfy this statutory requirement. For instance, DEC’s witness Jonathan L. Byrd (“Byrd”) testified that the Rider NSC proposal is based upon the following:

Q What changes is the Company proposing to make to net energy metering for non-residential customers?

A The Company is proposing changes to Net Energy Metering (“NEM”) as a result of the new TOU periods and the new three-part demand charge structure described above.

Tr. vol 11, 17. Notably, Byrd’s above testimony does not state that an evaluation of the costs and benefits of nonresidential NEM was part of DEC’s calculus.

Indeed, both the legislative intent and plain language of N.C. Gen. Stat. § 62-126.4(b) require that the Commission lead an independent cost-benefit analysis into customer-sited generation. The chief author of House Bill 589, Rep. John Szoka (R-Cumberland), was interviewed and characterized as follows in an article appearing in *Energy News Network*:

Szoka is adamant the Commission will conduct the cost-benefit study.

“It’s not up to the utility to determine whether net metering is good or bad,” he said. “We know what that answer will be. We’re not putting the fox in charge of the hen house here. That is not the intent.”

See Elizabeth Ouzts, *Energy News Network*, “Energy Bill could see North Carolina join national fight over net metering,” July 17, 2017, <https://energynews.us/2017/07/17/energy-bill-could-see-north-carolina-join-national-fight-over-net-metering/> (accessed on October 6, 2023) (emphasis added).

In fact, nearly every aspect of this statute requires that the **Commission**, not the Companies, take lead on the establishment of new NEM tariffs. For instance, the title of the statute is, “**Commission** to establish net metering rates.” N.C. Gen. Stat. § 62-126.4. Subsection (a) of the statute states that “**Commission** approval”

is required. *Id.* § 62-126.4(a). Subsection (b) states that “[t]he **Commission** shall establish net metering rates.” *Id.* § 62-126.4(b) In other words, the Commission is the prime mover regarding the establishment of new NEM tariffs, and the Commission should therefore lead the mandatory cost-benefit analysis.

The words “investigate” and “investigation” are used repeatedly throughout the Public Utilities Act (the “Act”), and in each instance, it is clear that the investigating authority is a third party such as the Commission or the Public Staff. For instance, the Act provides that “[t]he Commission shall from time to time visit the places of business and investigate the books and papers of all public utilities,” N.C. Gen. Stat. § 62-34(a), and furthermore, the Act empowers the Commission to “investigate and examine the condition and management of public utilities,” N.C. Gen. Stat. § 62-37(a).

An important principle of construction is that, in general, statutory provisions “must be construed consistently with other provisions of the” same statutory act. *Jackson v. Charlotte Mecklenburg Hosp. Auth.*, 238 N.C. App. 351, 358, 768 S.E.2d 23, 28 (2014) (“Further, N.C. Gen. Stat. § 132-1.3 must be construed consistently with other provisions of the Public Records Act.” (quoting *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 188, 594 S.E.2d 1, 20 (2004) (holding that “this Court does not read segments of a statute in isolation”; “[r]ather, we construe statutes *in pari materia*, giving effect, if possible, to every provision”))). Consistent with the remainder of the Act, the word “investigation” in House Bill 589 must be interpreted as requiring that the Commission conduct the investigation.

During cross-examination, Byrd argued that this requirement of an “investigation” was met when DEC studied TOU windows and during DEC’s rate-design study stakeholder event. Tr. vol 11, 18. However, neither meets the requirement of a Commission-led process, and therefore, neither can satisfy the statutorily mandated “investigation.” Further, during cross-examination, Byrd acknowledged that there has been no actual study of the costs and benefits of nonresidential NEM to support the Rider NSC:

Q Well, let me ask it like this. Is there in the docket – anywhere in this docket – a study by a subject matter expert which looks at the costs and benefits of nonresidential net energy metering? That’s my question.

A I’m testifying today as a subject matter expert on rate design. And I’m responding that what we did in the comprehensive rate design study was inclusive of net metering, batteries, a host of other things we looked at the request of stakeholders.

Q Have you signed a study analyzing that data?

A I don’t recall signing the document. But I was heavily involved in the road map and happy to answer any questions about the road map or the proposals we have in this case.

Tr. vol 11, 25-26. The above-quoted back-and-forth makes clear that DEC has performed no formal study of the costs and benefits of nonresidential NEM.

B. The Rider NSC Applies to All Nonresidential NEM Customers Irrespective of Their Usage Profile, and therefore, the Rider NSC Likely Discriminates Against Many Members of the Nonresidential Class.

During cross-examination, Byrd acknowledged that the class of nonresidential customers is “not homogenous.” Tr. vol 11, 27. In other words,

according to Byrd, the nonresidential class of customers includes “a variety of usage profiles, load factors, and so forth.” Tr. vol 11, 27. For instance, the nonresidential class of customers includes Small General Service, Large General Service, houses of worship, large industrial facilities, and many others. Tr. vol 11, 28-30.

In short, according to Byrd, there is a “wide variety within the nonresidential classes.” Tr. vol 11, 29. In addition to a wide variety of customers, Byrd furthermore testified that these various nonresidential customers will have very different usage profiles:

Q So on the one hand within the nonresidential class of customers, you could have a house of worship, right? Do you agree with that?

A That would be – yes. Those are in our nonresidential class rates, yes.

Q And on the other hand, you could have a large industrial facility right?

A I’m – we have industrial customers on our tariffs, correct.

Q Okay. And these two examples would have very different energy usage profiles. Would you agree with that?

A I would say generally true, yes.

Tr. vol 11, 30-31.

However, DEC proposes that all of these very different customers with very different usage profiles should be shoehorned into the same Rider NSC. As noted above, there has not been a genuine study of the costs and benefits of nonresidential NEM, Tr. vol 11, 25-26, and therefore, DEC has failed to study

whether these very different customers with very different usage profiles also cause different costs and benefits from NEM.

This lack of study by DEC could result in discrimination upon some nonresidential NEM customers. For example, given their very different usage profiles, it is possible – or perhaps likely – that houses of worship and large industrial complexes engaged in NEM impose very different costs and benefits upon DEC. Hence it is possible that houses of worship engaged in NEM are paying more than their cost-of-service and are cross-subsidizing large industrial customers engaged in NEM. This situation would be acutely unfair and has not been studied by the Company – yet, the Company would impose the same Rider NSC upon both of these customers.

Accordingly, DEC has not proved that Rider NSC would establish rates that are “nondiscriminatory,” as required by N.C. Gen. § 62-126.4.

C. The Proposed Rider NSC Would Eliminate the Non-TOU Class of Customers.

During cross-examination, Byrd acknowledged that many nonresidential NEM customers presently do not rely upon a TOU structure. Tr. vol 11, 34. Byrd also acknowledged that, if the Rider NSC is approved, this non-TOU class of nonresidential NEM customers would be eliminated (after a sunset period):

Q In other words – I didn’t say that artfully. But if the new tariff is approved, as requested by the Company, if you’re gonna be on net energy metering and you’re a nonresidential customer, you have to be under a time-of-use arrangement, right?

A The proposed Rider NSC requires that customers are served under a time-of-use rate.

.....

Q Once the grandfathering expires in 2033, that class of customers is gonna be wiped off the board. They're not gonna exist anymore, right?

A They would be able to be transitioned to receiving net metering benefits under Rider NSC.

Q Which requires time of use?

A That's correct.

Tr. vol 11, 34-35.

This one-size-fits-all approach to nonresidential NEM, which imposes TOU rates on all customers and eliminates the currently existing class of flat-rate nonresidential NEM customers, is inconsistent with the General Statutes. House Bill 589 explicitly requires that the "Commission shall establish net metering rates **under all tariff designs.**" N.C. Gen. Stat. § 62-126.4 ("The Commission shall establish net metering rates under all tariff designs that ensure that the net metering retail customer pays its full fixed cost of service."). Since nonresidential customers are now served under a flat-rate rider, the Companies are statutorily mandated to provide a NEM option for that rider. The Companies' effort to eliminate an entire class of customers – namely, flat-rate nonresidential NEM customers – violates this mandate of House Bill 589.

[Signature follows on next page]

This the 11th day of October, 2023.

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Attorney for NC WARN

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon all counsel of record in the above-referenced docket by email transmission, or by hand delivery, or by depositing a copy of the same in the United States Mail, postage prepaid.

This the 11th day of October, 2023.

LEWIS & ROBERTS, PLLC

/s/ Matthew D. Quinn

Matthew D. Quinn