

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 177**

In the Matter of:)	
Rulemaking Proceeding to Implement)	NCSEA’S REPLY
Securitization of Early Retirement of)	COMMENTS
Subcritical Coal-Fired Generating Facilities)	

NCSEA’S REPLY COMMENTS

NOW COMES the North Carolina Sustainable Energy Association (“NCSEA”), an intervenor in the above-captioned docket, and, pursuant to the North Carolina Utilities Commission’s (the “Commission”) October 14, 2021 *Order Requesting Comments and Proposed Rules* (“Order”), offers the following reply comments regarding in response to the various comments and proposed rules made by the participants in this docket.

NCSEA restates its support of the initial comments of the Sierra Club and the Natural Resources Defense Council, as noted in NCSEA’s Letter in Lieu of Initial Comments. NCSEA further supports the positions posited in several other sets of initial comments as detailed below.

I. AUTHORITY OF NCUC AND THE OPINION OF BOND COUNSEL

The Carolina Utilities Customers Association, Inc. (“CUCA”) and Apple Inc., Meta Platforms, Inc., and Google LLC (collectively, “Tech Customers”), and the Carolina Industrial Group for Fair Utility Rates II (“CIGFUR II”) and the Carolina Industrial Group for Fair Utility Rates III (“CIGFUR III”) (CIGFUR II and CIGFUR III, collectively, “CIGFUR”), each provide analysis in their respective initial comments on the authority of the Commission to enter a financing order or otherwise enable the securitization measures set forth in House Bill 951 or, as enacted, Session Law 2021-165 (herein “House Bill 951”).

House Bill 951 does not expressly lay out the guidelines for securitization of the coal assets at issue, but instead states as follows:

With respect to securitization of costs associated with early retirement of subcritical coal-fired electric generating facilities, the Commission shall develop rules to determine costs to be securitized at fifty percent (50%) of the remaining net book value of all subcritical coal-fired electric generating facilities to be retired to achieve the authorized carbon reduction goals set forth in Section 1 of this act, with any remaining non-securitized costs to be recovered through rates. *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.*¹

Notably, and as set forth in the initial comments proffered by the Tech Customers, CUCA, and CIGFUR, leaving the legislative administration of the “rules, procedures, obligations, and protections adopted for securitization” to a mere recitation of them as being “substantively identical” to the provisions set forth for the storm securitization statute may leave worrisome questions about Commission authority. This is because, as laid out by the Tech Customers, CUCA, and CIGFUR, the securitization tool requires significant authority, some of which overlaps what is typically North Carolina Uniform Commercial Code jurisdiction, and this mere recitation may not provide the necessary statutory detail to assuage concerns about Commission authority. As noted by CIGFUR

The detailed and prescriptive nature of N.C. Gen. Stat. § 62-172² is understood to largely be a function of the requisite boilerplate language necessary to authorize the Commission to create the storm securitization financial instruments, and in turn to ensure that the storm recovery bonds are marketable. Similarly, CIGFUR emphasizes that the successful securitization of coal retirement costs is wholly dependent upon ensuring at least this same degree of marketability applies to future coal retirement bonds. CIGFUR is concerned that the enabling language authorizing the Commission to utilize securitization as a tool to mitigate rate impacts of the

¹ S.L. 2021-165

² N.C. Gen. Stat. § 62-172 is the storm securitization statute and, for the purposes of these comments, is used interchangeably with “S.L. 2019-244”).

early retirement of Duke’s coal fleet may be insufficient to some bond underwriting companies inasmuch as an incorporation by reference to a different statute governing securitization of materially different costs may be insufficient, thereby potentially reducing or even eliminating ratepayer savings realized.³

The issue does not necessarily lie with the participants in this docket; there does not appear to be any intervenor who contests that the legislature intended the Commission to have the authority to enter orders which allow for the securitization of coal units. However, NCSEA agrees with the Tech Customers, CUCA, and CIGFUR that there could be a cascading effect in the investment community. Essentially, the question is whether lenders be reluctant to finance the securitization of coal units to allow them to retire early without any premiums being added to the “costs” associated with the lending? As noted by the Tech Customers, the risk of “potential investors to either declining to purchase any resulting bonds or insisting on a risk premium that siphons off any ratepayer benefit” is considerable.⁴ NCSEA, as a general matter, supports any actions ordered by the Commission that will provide certainty and confidence to lenders and financial markets.

As such, NCSEA concurs with the Tech Customers, CUCA, and CIGFUR that, lacking legislative clarity, further guidance from the Commission would be beneficial. NCSEA supports the position taken by CUCA to encourage “the Commission to engage bond counsel to issue an opinion concerning the enforceability of the interests underlying the securitization in issue and the marketability (including any impairment thereof) of any bonds issued under authority of Commission rulemaking.”⁵

³ *Initial Comments of CIGFUR II & III*, p. 3.

⁴ *Initial Comments of the Tech Customers*, p. 7.

⁵ *Initial Comments of CUCA*, p. 4.

The Public Staff - North Carolina Commission (“Public Staff”) also requests bond counsel review in its initial comments:

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.⁶

The “Statutory Pledge” referred to here is a “non-impairment pledge,” like the pledge requirement in the Storm Securitization statute, which prohibits the Commission (or any state agency) from taking certain actions which may materially affect the secured assets.⁷ This pledge not to impair the underlying assets provides confidence in the lending process and allows minimal risk to be foisted upon ratepayers during the bond issuance to securitize the coal plant retirements. NCSEA also specifically supports the creation of the “Bond Advisory Team” as proposed by the Public Staff.

NCSEA agrees with the Public Staff, as it does with CUCA, CIGFUR, and the Tech Customers, that all measures necessary, including requesting advisory opinions and/or bond counsel oversight or analysis of bond committee type entities, such as that suggested by the Public Staff, are essential. These oversight-type activities by bond counsel will provide the necessary security to reduce risk for ratepayers and receive the intended benefit as set forth in statute.

⁶ *Initial Comments of the Public Staff*, p. 4.

⁷ *Id.* at 3.

II. OTHER CONSIDERATIONS

NCSEA agrees with the specific comments of the Public Staff and, also, generally with the concept behind Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC’s (“DEP”) (DEC and DEP, collectively, “Duke”) proposed rule insofar as it builds off the securitization statute. The Public Staff specifically calls out lessons learned during the storm securitization docket as steps to utilize when enabling a coal plant retirement securitization tool. NCSEA believes these lessons learned are invaluable and agrees with that concept.

NCSEA further agrees with the Public Staff that the coal retirement tool needs to be coordinated with the Carbon Plan.⁸ Specifically, the timing of knowing when a coal plant becomes a “liability” on the books for the utility will require considering the plans made in the Carbon Plan Docket, and NCSEA supports such a comprehensive approach. Finally, the Public Staff present the question of

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.⁹

NCSEA agrees with the position of the Public Staff that it favors the position which will enable the most ratepayer savings. Assumedly this would mean that between the two above-raised possibilities, the one that produces the greater monetary value is what should be allowed to be securitized. NCSEA believes that the next decade will cause considerable change in the energy paradigm in the state and seriously considers the concerns of ratepayer advocates as North Carolina enters the energy transition to a cleaner generation portfolio.

⁸ *Id.* at 4-5.

⁹ *Id.* at 5.

NCSEA believes that clean energy is the best and most cost-effective pathway for ratepayers in the state and securitizing a larger portion of the costs associated with uneconomic coal plant retirement is an essential part of keeping that clean energy transition cost effective. Furthermore, the statute is not proscriptive on this point, but it is, overall, proscriptive about the energy transition and the carbon emissions removal mandate being “least cost” for the benefit of the ratepayers. Therefore, NCSEA believes the intent of the securitization statute is to utilize the highest cost possibility – whether that is achieved by valuing projects in aggregate or individually – for the purposes of coal plant retirement securitization.

III. EXPANSION OF SECURITIZATION

The last topic that NCSEA wants to specifically support is a position made by the Tech Customers. In their Initial Comments, the Tech Customers note that “[t]he utility of securitization for utility cost financing can be maximized by allowing for the inclusion of Environmental, Social and Governance (“ESG”) criteria.”¹⁰ The Tech Customers go on to detail the possibility of expanding the use of securitization to allow for the bonds secured by Duke properties to be “green bonds” which are very attractive in today’s bond markets.¹¹

NCSEA is intrigued by the possibilities of “green bonds” and the potential expansion of securitization in a way that may lower interest rates and increase the value for ratepayers. Accordingly, NCSEA supports the Tech Customers suggestion on this matter.

¹⁰ *Initial Comments of the Tech Customers*, p. 7.

¹¹ *Id.* at 8.

IV. CONCLUSION

For all the reasons set forth, NCSEA requests the Commission take into consideration its recommendations contemplated herein.

Respectfully submitted this the 20th day of December 2021.

/s/ Peter H. Ledford

Peter H. Ledford
General Counsel for NCSEA
N.C. State Bar No. 42999
4800 Six Forks Road, Suite 300
Raleigh, NC 27609
919-832-7601 Ext. 107
peter@energync.org

Benjamin W. Smith
Regulatory Counsel for NCSEA
N.C. State Bar No. 48344
4800 Six Forks Road
Suite 300
Raleigh, NC 27609
(919) 832-7601 Ext. 111
ben@energync.org

CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing document by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission with the party's consent.

This the 20th day of December 2021.

/s/ Benjamin W. Smith
Benjamin W. Smith
Regulatory Counsel for NCSEA
N.C. State Bar No. 48344
4800 Six Forks Road
Suite 300
Raleigh, NC 27609
(919) 832-7601 Ext. 111
ben@energync.org