

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-2, SUB 1309  
DOCKET NO. E-7, SUB 1279

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1309	)	
	)	
In the Matter of	)	
Application by Duke Energy Progress, LLC,	)	
for Approval of Residential Tariffed On-Bill	)	
Program	)	<b>THE PUBLIC STAFF'S</b>
	)	<b>COMMENTS</b>
DOCKET NO. E-7, SUB 1279	)	
	)	
In the Matter of	)	
Application by Duke Energy Carolinas, LLC,	)	
for Approval of Residential Tariffed On-Bill	)	
Program	)	

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, pursuant to the Commission’s Order Requesting Comments issued in the above-captioned dockets on November 28, 2022, and respectfully submits the following comments on the applications (Applications or, when referred to with regard to either DEC or DEP individually, Application) of Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP) (collectively, Duke or the Companies), for approval of their respective Residential Tariffed On-Bill Programs (TOB Programs or, when referred to with regard to either DEC or DEP individually, TOB Program).

## **BACKGROUND**

1. On September 30, 2022, Duke filed the Applications and requested that the TOB Programs become effective on January 1, 2023. The Applications state that the TOB Programs were filed as utility tariffs pursuant to S.L. 2021-165 (House Bill 951 or HB 951), Part III, Section Five, Item (iii), which requires the Commission to “establish an on-utility-bill repayment program related to energy efficiency investments.” The TOB Programs were also filed as a result of consultation and an agreement reached between the Companies and the Tariff On-Bill (TOB) Working Group filed on July 23, 2020, in Docket Nos. E-7, Sub 1214, and E-2, Sub 1219.

2. On November 28, 2022, the Commission issued its Order Requesting Comments from interested parties on the Companies’ TOB Programs.

3. On November 29, 2022, the North Carolina Justice Center (NC Justice Center), the North Carolina Housing Coalition (NC Housing Coalition), and the Southern Alliance for Clean Energy (SACE) jointly filed a notice of intervention, which was granted on November 30, 2022. On December 7, 2022, the North Carolina Attorney General’s Office filed a notice of intervention.

## **PROGRAM DESCRIPTION**

4. According to the Companies, the upfront costs of energy efficient improvements have long been a significant obstacle to the adoption of energy efficiency (EE) measures. Looking to other utilities’ and cooperatives’ established

on-utility-bill programs, and in consultation with the TOB Working Group, the Companies propose the tariffs (attached to each company's Application as Attachment A) to provide a mechanism for customers to install energy efficient upgrades and pay for those upgrades over time through their monthly electric bills.

5. The Companies note that the TOB Programs, as proposed, include a number of features that are designed to address these obstacles and maximize the energy savings potential. These features include:

- a. The Companies' review of a prospective customer's 12-month billing history for purposes of establishing a baseline to model energy savings and to determine the incentives and the need (if any) for an initial co-payment in instances where estimated energy savings do not exceed the customer costs;
- b. Maintenance and repair of the incentivized equipment by the Companies;
- c. The monthly repayment of the TOB Program obligation (TOB charge) as an essential part of the electric bill, with a customer's failure to pay potentially resulting in disconnection. This factor ensures that participants bear the primary expense of the upgrades and that the risk of cost shifting is minimized; and
- d. The TOB charge being tied to the meter and not the individual customer.

6. Energy efficiency measures that will be offered in the TOB Programs may include HVAC equipment, air sealing and insulation, duct replacement, heat pump water heaters, and other high efficiency equipment, products, and services as determined by the Companies on a case-by-case basis. Participants may install any number of measures at once that may be funded by the TOB Programs.

7. The Companies propose to use premises-specific modeling and all available rebates and incentives (and, if necessary, an initial co-payment from participants) to calculate a monthly TOB charge that will not exceed the customer's projected average monthly energy savings. Over time, the Companies will recover the full cost of the upgrades, including installation, and the respective company's approved rate of return.

8. The Applications state that the Companies will target customers with the highest potential to achieve energy savings because they are the most likely participants to qualify for program-related incentives and achieve adequate bill savings without an initial copayment. The Companies further state their expectation that many customers will wish to avail themselves of the convenience of on-bill payment for worry-free EE improvements to their home as the respective company will be responsible for repair and maintenance until the TOB charge is paid.

9. To participate in the TOB Programs, the Companies propose that the account holder at the participating location and the property owner, if different, must sign an Owner Participant Agreement. A residential customer's account must

be current and not be on an active installment payment before an in-home assessment can be scheduled and before the installation of any measures. Participation in the TOB Programs will not require a credit check.

10. A participant may opt to make a co-payment at the beginning of the project to reduce the overall amount subject to repayment. According to the Applications, only the remaining amount due for repayment would be subject to the respective company's approved rate of return.

11. The Applications explain that, if the monthly TOB charge is temporarily suspended for any reason or the respective company serves no customer at the location for a period of time, the term of recovery may be extended for an equivalent period of time.

12. The repayment period, even if extended as described above, is not to exceed 12 years.

13. In buildings with multiple rental units, the Companies may require a property owner to maintain service for locations receiving program measures.

14. The Applications state that prepayment of unbilled charges will not be permitted.

15. Participating customers and property owners, if different, must keep the measures in place for the duration of the charge and report any failure of any measures to the respective company within five business days. If the measure cannot be repaired within five business days of notice to the respective company,

the next monthly payment will be suspended. If the billing cycle has commenced before the notification has been recorded, the customer may request a credit.

16. The Companies have stated that proper maintenance of the EE measures will ensure that the savings are ongoing over time. Participants will be obligated to continue paying the TOB charge for the duration of their repayment period as long as the equipment is in proper working order. If, during the repayment period, the respective company determines that a measure is no longer functioning as intended and that the failure was not caused by the property owner/occupant or other occupants in the residence, the company will arrange for repair of the measure and may suspend charges until repairs are complete. If the respective company determines that the property owner/occupant or other occupants in the residence caused the measure's failure – whether deliberately or negligently – that company may, in its discretion, seek to recover the costs of repairs from the customer and seek immediate recovery of all remaining costs not to exceed the full cost of the measure and applicable fees. The Applications state that costs related to ongoing maintenance and repair will be collected outside of the DSM/EE cost recovery mechanisms.

17. Concerning notice to successor customers, the Applications state that the Companies will file an "Electricity Provider Notice of Tariff on Bill" notice in the property's real estate record. The Owner Participant Agreement will also include a requirement that any successor owner or future tenant who will be an account holder at the location is provided notice of that location's enrollment in the

TOB Program. In addition, the respective company will inform a successor account holder at the time of setting up a new service at a participating property that the monthly electric bill will include the monthly TOB charge.

### **THE PUBLIC STAFF'S REVIEW**

18. The Public Staff's investigation included review of the Applications with respect to Commission Rules R8-20, R8-68, and R12-11; the submission of data requests to the Companies and review of the Companies' responses and additional documentation; and the Companies' service regulations. The Public Staff's investigation also involved a review of the EE measures that the Companies propose to offer with the option for the customer to pay through the TOB Programs.

19. As an initial matter, the Public Staff notes that the Applications were filed in response to the requirements of HB 951 that the Commission establish an on-utility-bill repayment program "related to energy efficiency investments." House Bill 951 does not specifically prescribe the manner by which the Commission must establish an on-utility-bill program relative to EE investments. Further, this provision of the statute does not only apply to Duke.

20. Since 2016, the Public Staff has participated in a number of stakeholder processes that have discussed on-utility-bill programs. Those discussions culminated with the most recent TOB Working Group. The Applications reasonably represent the consensus position of stakeholders.

21. The Companies have acknowledged in discovery that the TOB Programs are not EE programs and that the Companies are not requesting approval of the TOB Programs pursuant to Commission Rule R8-68. As such, unlike EE programs which are required to satisfy certain requirements pursuant to Commission Rule R8-68, the TOB Programs, if approved as filed, would not be required to meet the same standards. The TOB Programs would, instead, act as separate programs from the EE programs offered by the Companies, with the costs of the TOB Programs being recovered from base revenues approved pursuant to N.C.G.S § 62-133.

22. While the Applications state that eligible measures include “equipment, products, and services as determined by the Compan[ies] on a case-by-case basis,” the open-ended nature of this category appears to be intended to allow the Companies to offer the TOB Programs to encompass a wide variety of EE measures, some of which may not be specifically identified in their portfolios of Commission-approved EE programs. This may also allow bundles of EE measures that are not sufficiently cost-effective to be considered as a Commission Rule R8-68 program. However, the Companies have indicated to the Public Staff in discovery that, initially, measures eligible for the TOB Programs would only include those already approved through an R8-68-approved EE program and would be subject to the cost-effectiveness, evaluation, and other conditions of the respective EE program. The TOB Programs are being proposed in compliance with HB 951 and for the purpose of overcoming the “first cost” barrier of EE adoption, and initial approval of the TOB Programs should be limited to EE measures. Use of the TOB



Programs for anything other than EE measures would constitute a modification of the TOB Programs requiring Commission approval.

23. The TOB Programs will be required to demonstrate that the installed measures will produce energy savings for the participant, as well as bill savings that would help offset the added cost resulting from the TOB charge. This is accomplished by the premises-specific modeling to estimate energy savings. The Public Staff has reviewed the confidential sample calculations provided in discovery which illustrate how the premises modeling will assess and calculate the energy savings and potential bill savings. The Public Staff focused on the development of the energy savings that would be the foundation for the bill savings and the TOB charge.

24. A participant's energy savings would be calculated by determining the difference between the energy consumed by the premises before and after the installation of the new EE measures. This is referred to as an "as-found" baseline. The as-found baseline in this instance is used only for determining eligibility for the TOB Programs and the amount of the TOB charge associated with participating in a TOB Program. The as-found baseline is not a method by which savings will be determined for purposes of the current EE Mechanism.

25. The Companies provided six scenarios with a mix of EE measures which appear to be reasonable approximations of the TOB Programs' potential to provide bill savings over the life of the TOB Programs after factoring in necessary co-payments.

26. The calculations will also be used to determine whether a participant will be required to make a co-payment in instances where estimated energy savings do not exceed the customer costs. The co-payments are intended to ensure some level of cost-effectiveness with regard to the customer's bill (in this instance, when the reduction in the electricity bill is greater than the TOB charge) and assurance that the participant will see bill savings. The Companies stated in discovery that, for any collection of eligible measures demonstrating a benefit-cost ratio (ratio of projected energy savings to total project cost) not equal to or greater than 1.1, a co-payment equal to an amount to produce a benefit-cost ratio of 1.1 would be required. Stated differently, if the modeling demonstrates that a participant's selection of eligible measures funded through the TOB Programs cannot produce at least \$1.10 in energy savings benefits for every \$1 of TOB charge to the participant, the Companies would require a co-payment that would produce a ratio of savings to costs equal to or greater than 1.1. The Companies have indicated this condition is needed to reduce the risks of increases in the average bill, participants going into arrears, disconnection for non-payment, and increased bad debt expense.

27. The TOB charge is calculated individually for each customer and is comprised of the total costs of the EE measures installed, minus the measure incentives received through the Companies' EE portfolios and other rebates that may be available outside the EE portfolios, minus any required or optional upfront co-payment. The TOB charge would be divided into incremental payments based on bill savings resulting from the average energy savings realized by the EE

measures. However, the TOB charge would be structured to be no more than the average bill savings.

28. Any failure of current or future customers to pay the full TOB Program obligation could result in disconnection of service consistent with Commission Rules R12-11. If service were to be disconnected for nonpayment, the TOB Program obligation would remain with the meter and the customer would have to satisfy the TOB Program obligation along with any other regulated charges for utility service before service would resume.

29. The time over which a participant would be assessed the TOB charge is a function of the EE measure's cost, the amount of any co-payment, and the average bill savings. In no case would the term of the TOB Program obligation be longer than 12 years.

30. The Public Staff also learned through discovery that participants would be required to enter into a written contract specifying the rights and obligations of the Companies and participants. The Companies provided a draft Revert to Owner agreement, a sample Notice of TOB and a separate notice of cancellation, and draft Terms and Conditions that would apply to the TOB Programs. However, the Companies indicated that more formal codification of these documents, including the disclosure of the obligations to future customers at the same premises, would be developed following Commission approval.

31. The draft Revert to Owner agreement provides that service will be automatically transferred to the account of the landlord or owner of a rented premises where a resident of an enrolled property requests disconnection of service.

32. One notable provision of the draft Terms and Conditions prohibits any landlord or premises owner from increasing the rent of any tenant-occupied premises based in whole or in part on the EE measure upgrades. The draft Revert to Owner agreement contains no such provision. The Public Staff questions how the Companies could legally prevent landlords and premises owners from increasing rent. In addition, the draft Terms and Conditions do not address how the Companies would withdraw or terminate the TOB Program agreements in the event that landlords or premises owners were to raise rents based on the EE measure upgrades.

33. The Companies have divided the TOB Programs' costs into two categories: participant and administrative. Participant costs are primarily the costs of the EE measures net of any rebates and incentives paid by participants over the life of the TOB Programs' obligation and recovered by the participant through the TOB charge. Administrative costs include all other costs related to the operation, repair, and maintenance of measures funded through the TOB Programs, customer support, application processing, and other administrative costs, and would be recovered from residential customers through base rates consistent with the allocation of these costs in the Companies' cost of service studies.

34. A third category of costs that are indirectly related to the TOB Programs are associated with the EE measures installed and funded by the TOB Programs, but are not directly part of the TOB Program costs. The implementation and administrative costs of EE measures and associated incentives are recovered by the Companies through their approved EE cost recovery mechanisms approved in Docket Nos. E-2, Sub 931, and E-7, Sub 1032. The Public Staff does not consider any part of these EE measure costs to be directly part of the TOB Programs, as the TOB Programs are a mechanism to provide customers with an option to pay, over time, the remaining costs associated with installing EE measures offered through the respective company's DSM/EE rider.

35. The Public Staff notes that DEP's general rate case filed in Docket No. E-2, Sub 1300, contains a request to defer the costs of DEP's TOB Program. The Public Staff anticipates a similar request when DEC files its general rate case in January 2023 in Docket No. E-7, Sub 1276. DEP witnesses Bradley Harris and LaWanda Jiggetts discuss the treatment of TOB Program costs in the Sub 1300 case. According to their testimony, approximately \$2 million is expected to be spent for the DEP TOB Program's administrative, IT, billing, and customer support services over the next three years. The Public Staff does not address these cost estimates in this docket; the reasonableness of these costs and the appropriateness of any deferral of those costs will be addressed in the Companies' general rate case dockets.

36. Another consideration is the potential for the Companies to use the TOB Programs to exaggerate earnings. The Companies have proposed to use their weighted average cost of capital in calculating the TOB charge for each participant. This interest rate should not be considered as similar to the Portfolio Performance Incentive, which the Companies will earn as a result of the energy savings from the EE measures installed pursuant to the EE portfolios and EE cost recovery mechanisms.

37. When TOB participants fail to meet their obligations under the terms and conditions of the TOB Programs, so that the participant payments do not cover the Companies' TOB Program participant costs, these costs would likely be treated as uncollectable and could be requested for recovery by the Companies through their respective base rates consistent with other uncollectable revenues.

38. With regard to the potential for participants to prepay their obligation, the Companies indicated that, although prepayment of any of the TOB Programs' obligation would not be allowed, participants could pay the obligation in full if the customer terminates utility service and provides notice of the desire to terminate the agreement. The Companies stated that allowing prepayment would undermine the coordination associated with the timing of payments and costs and would increase administrative costs and complexity. The Companies further stated that there was no real benefit to prepaying as there would be no reduction in total cost or impact on a customer's credit since this debt is assigned to the electric account tied to the premises and not to the individual customer.

39. The Public Staff learned that, concerning the longevity of equipment installations, the Companies have sought to protect the EE measures funded by the TOB Programs by providing warranties on the equipment.

40. The Companies indicated to the Public Staff that customers could participate in both a TOB Program and the Companies' Prepaid Advantage Programs;<sup>1</sup> however, the Companies are still assessing the technical and operational impacts of a customer participating in both programs.

41. The Public Staff reviewed how the TOB Program obligations would be tied to the meter serving the premises, as opposed to being tied to the customer executing the TOB Program agreement. The TOB Programs seem to create a line of succession between consumers/customers enrolled in a TOB Program and future consumers/customers receiving utility service at the same premises and through the same meter, obligating the future consumer/customer receiving service at the premises to continue paying the TOB charge until the full TOB Program obligation is paid back. This is a fundamentally different approach for determining who is responsible for utility service, which has always required customers to be responsible for the cost they incur for utility service. By linking the responsibility for payment of the TOB charge to the meter, future customers who own or occupy the premises served by the meter will also incur the obligation to pay the TOB charge. The Companies' proposal seems to extend the definition of

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<sup>1</sup> DEC's Prepaid Advantage Program was approved March 31, 2021, in Docket No. E-7, Sub 1213. DEP has proposed an identical Prepaid Advantage Program in Docket No. E-2, Sub 1290. That application is pending before the Commission.

a consumer or customer to a piece of equipment or location, which challenges the fundamental understanding of utility service.

42. The Public Staff has reviewed the Commission Rules to determine potential impact of this concept on utility service. Commission Rules R6-2(b), R7-2(b), R8-2, and R8-9(f) use the terms “customer” or “consumer” to define the entity receiving utility service, but not the meter or the point of delivery. The most relevant definition of “consumer” is found in Commission Rule R8-2 (defining “consumer” as “any person, firm, corporation, municipality, or other political subdivision of the State supplied by any such utility”) and follows the concept that utility service is provided to real persons or legally constituted entities or governments. The Public Staff did not identify any statutory definition that would assist in our review of the propriety of tying utility service to a meter rather than a consumer/customer.

43. The Public Staff has identified nothing that explicitly prohibits an electric utility from using the meter as the cornerstone for service.

### **THE PUBLIC STAFF’S CONCLUSIONS AND RECOMMENDATIONS**

44. The Public Staff generally supports the proposed TOB Programs and anticipates that, if approved, the TOB Programs will assist participants with paying the large upfront costs of adopting EE measures over time. The Companies have sought to design the TOB Programs to produce energy savings that translate into bill savings to offset the increase in the bill from the TOB charge, thus allowing



participants to avoid paying upfront for EE measures directly out of pocket or having to secure financing.

45. A central concern for the Public Staff is ensuring that the EE program costs are clearly separated from the costs and administration of a TOB program. The Companies have made reasonable efforts to distinguish EE measure energy savings, costs, and cost-effectiveness that are consistent with the requirements of their EE cost recovery mechanisms. TOB Program costs not recovered from the TOB Program participants are separately recovered through base revenues consistent with other payment programs available to customers. The fact that the Companies have not proposed that the TOB Programs be considered EE programs in the context of N.C.G.S. § 62-133.8 satisfies the Public Staff that the separation of costs between the EE measures and the TOB Programs are appropriate. Thus, the Companies should continue offering EE measures in the same manner as they currently offer such measures through their approved EE programs. Although there are no energy savings directly attributable to the TOB Programs, the TOB Programs provide value by making participation in EE programs more accessible to consumers through the provision of additional options that address the first-cost barriers.

46. The Public Staff has also focused on the manner in which customers, landlords, and the Companies would provide notice to future customers who move into a residential dwelling that is encumbered by a TOB charge. In order to protect present and future customers at a participating premises, disclosure of the TOB

Program obligation is critical to ensuring all customers are appropriately informed. With respect to the legal instruments that will be used to enroll customers, convey notice to future customers, and enroll them, the Public Staff recommends that TOB Program application forms, the form of notice to future customers, the terms and conditions, and any other similar documents applicable to electric service that is subject to the TOB Programs be filed for Commission approval 60 days in advance of implementation of the TOB Programs, and that the parties have an opportunity to review and comment on the contents of each form and instrument.

47. While the Public Staff does not object to the use of the weighted average cost of capital in calculating the TOB charge, the Commission should require annual reporting on the TOB Program expenses and revenues, including the overall TOB Program earnings.

48. In comments filed in response to the Multi-Family New Construction TOB program filed by DEP in Docket No. E-2, Sub 1307, the Attorney General's Office expressed a similar concern about the inability of consumers to prepay the program charge in that TOB program to avoid finance charges. The Public Staff concurs and recommends that prepayment of TOB Program obligations be allowed. While there may be no direct benefit to the participant from doing so, the reasoning a participant might choose to prepay the full TOB Program obligation is not material to the administration of the TOB Programs. The participant should have this option.

49. The Public Staff further suggests that any approval of the TOB Programs address the definition of “consumer” and establish that any deviation from use of that term as set forth in Commission Rule R8-2 be limited to the TOB Programs.

50. The Public Staff recommends that the Companies file an annual report detailing the activities of the TOB Programs that includes, at a minimum, the following items:

- a. A list of properties participating in the TOB Programs;
- b. Total costs of the TOB Programs broken down by category (net participant costs for the EE measures, administrative related to TOB Program delivery, and any other cost of the TOB Programs not specific to the EE measure or EE program incentives);
- c. Actual revenues/receipts from the TOB charges;
- d. The aggregate amount of co-payments paid;
- e. Any over- or under-recovery of overall TOB Program costs to date, and projections for the next three years of any over-or under-recovery;
- f. The number of participants in arrears and amount of arrearage, particularly for any arrearage resulting from the TOB Program itself;

- g. Any occurrences and complaints related to the non-payment or default of participants or disconnections for non-payment;
- h. Any prepayments made and the reasons customers prepaid the TOB charge;
- i. Any termination of TOB Program agreements occurring before the TOB Program obligation has been fully satisfied, and the reason for termination;
- j. The number and type of EE measures requiring repair, the reasons for repair, and the costs of the repairs;
- k. Any repairs where the costs of the repairs are sought to be recovered from the participants due to deliberate or negligent behavior of a premises owner or occupant, the amounts charged to these customers, and the amounts recovered; and
- l. Any evidence that prospective buyers or renters were reluctant to purchase or rent a dwelling that is tied to a TOB Program obligation.

Respectfully submitted, this the 6th day of January, 2023.

PUBLIC STAFF  
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**CERTIFICATE OF SERVICE**

I certify that a copy of these Comments has been served on all parties of record or their attorneys, or both, in accordance with Commission Rule R1-39, 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 6th day January, 2023.

Electronically submitted  
/s/ Anne Keyworth  
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