

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 931
DOCKET NO. E-7, SUB 1032
DOCKET NO. E-100, SUB 179

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 931)
)
In the Matter of)
Application by Carolina Power & Light)
Company, d/b/a Progress Energy Carolinas,)
Inc., for Approval of Demand-Side)
Management and Energy Efficiency Cost)
Recovery Rider Pursuant to 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)

DOCKET NO. E-100, SUB 179)
)
In the Matter of)
Duke Energy Progress, LLC, and Duke Energy)
Carolinas, LLC, 2022 Biennial Integrated)
Resource Plans and Carbon Plan)

ORDER GRANTING PUBLIC
STAFF'S MOTION FOR
PROCEDURAL RELIEF AND
SCHEDULING TECHNICAL
CONFERENCE

BY THE COMMISSION: On October 20, 2020, in Docket Nos. E-2, Sub 931, and E-7, Sub 1032, the Commission issued the Order Approving Revisions to Demand-Side Management and Energy Efficiency Cost Recovery Mechanisms (Order Approving Mechanisms), which approved the current versions of the demand-side management (DSM) and energy efficiency (EE) cost recovery mechanisms of Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC (together, Duke or the Companies), (Mechanism(s)). The Commission directed the Public Staff to initiate a comprehensive review of the Mechanisms not later than May 1, 2024, unless requested to do so earlier by the Commission, DEC or DEP, or another interested party. Order Approving Mechanisms at 14.

On May 16, 2022, Duke filed its proposed Carbon Plan in Docket No. E-100, Sub 179, which included, in relevant part, a request that the Commission adopt measures that Duke stated would enable it to implement new EE and DSM programs more quickly and that would broaden the potential reach and, therefore, the energy savings of its EE and DSM programs. These proposed measures, which Duke called “enablers,” included the following: (1) updating the inputs underlying the cost benefit test in the Companies’ Mechanisms; (2) using an as-found baseline for EE measures; (3) broadening the definition of low-income customer; and (4) developing guidelines for expedited regulatory approval of DSM/EE programs (collectively, the Proposed Enablers).¹

After receiving testimony on the Proposed Enablers at the Carbon Plan expert witness hearing, the Commission stated in its Order Adopting Initial Carbon Plan and Providing Direction for Future Planning issued on December 30, 2022, in Docket No. E-100 Sub 179 (Initial Carbon Plan Order) that it was “persuaded by the Public Staff that all enablers related to the DSM/EE mechanism should be discussed within the context of a full DSM/EE mechanism review” and that it was “persuaded by the Public Staff’s assertion that ‘any modifications to individual components of the Mechanisms must take place in the context of a full, formal review of the entire Mechanisms, so that any impacts of other components of the Mechanisms can be analyzed at the same time.’” Initial Carbon Plan Order at 109-10. As a result, the Commission stated that, “[w]ith one exception, the Commission determines that it is not reasonable to make any determination on the specific enablers in this proceeding but directs Duke to initiate a review of DEC’s and DEP’s DSM/EE Mechanisms within 120 days of the issuance of this Order.” Initial Carbon Plan Order at 110. The Commission ordered that “Duke shall initiate a docket to review the DEC and DEP DSM/EE cost recovery mechanisms to consider the enablers Duke proposes.” Initial Carbon Plan Order at 134.

On April 27, 2023, Duke filed a letter initiating the Commission-directed review of the Mechanisms. In its letter, Duke stated that “this targeted review will focus upon how [the Companies’] DSM/EE cost recovery mechanisms . . . should be revised to incorporate [the Proposed Enablers].”

On May 11, 2023, the Public Staff filed a letter stating its position that the Initial Carbon Plan Order did not direct implementation of the Proposed Enablers in the Mechanisms; rather, it ordered that the Proposed Enablers should be considered in the context of a full, formal review of the Mechanisms. As such, the Public Staff stated that the parameters set forth in Duke’s letter were not in keeping with the Initial Carbon Plan Order.

On June 29, 2023, Duke hosted the first stakeholder meeting concerning the Proposed Enablers and review of the Mechanisms, in which Duke set forth the targeted changes it wished to make to the existing Mechanisms related to the Proposed Enablers.

¹ The Commission recently approved the Companies’ requested fifth enabler, tariff on-bill programs. *Order Approving Pilot Programs with Modifications*, Docket No. E-2, Sub 1307, issued August 23, 2023 and *Order Approving Residential Tariffed On-Bill Program with Modifications*, Docket Nos. E-2, Sub 1309 & E-7, Sub 1279, issued August 23, 2023.

Other stakeholders, including the Public Staff, indicated their interest in a more comprehensive review of the Mechanisms, including, but not limited to, consideration of the Proposed Enablers.

On September 7, 2023, in advance of the second planned stakeholder meeting, the Public Staff filed a Motion for Procedural Relief (Motion). In the Motion, the Public Staff expressed concern, based on discussions with Duke and other stakeholders, that Duke envisioned a time frame for stakeholder engagement and comments that did not provide sufficient time for intervenors to fully investigate, research, and analyze the Proposed Enablers, nor to conduct a full review of the Mechanisms.

The Public Staff made two requests: (1) a schedule for comments to be due on January 26, 2024 and reply comments to be due by March 29, 2024 and (2) a requirement that the comments address, at a minimum, the following list of topics:

- a. The Proposed Enablers;
- b. The appropriateness of continuing to allow the Companies to collect net lost revenues in light of HB 951 and the Carbon Plan Order;
- c. What actions, if any, justify a utility incentive, as well as whether there should be limits imposed upon utility incentives, whether there should be a required savings threshold that must be met before incentives are earned, what metrics should be utilized in awarding incentives, whether the Mechanisms should contain both incentives and penalties like Performance Incentive Mechanisms, and the efficacy of incentive mechanisms in other jurisdictions;
- d. How savings and benefits should be calculated and valued, including whether non-energy benefits should be included in particular cost-effectiveness tests, whether carbon reduction benefits should be separately accounted for, and the extent to which differential value to the system should be reflected, if at all, when quantifying anticipated costs and benefits of EE/DSM measures, among other issues;
- e. Definitional changes, including how to define “low income” customers, different program types, cost-effectiveness, and measure baselines;
- f. Whether the same cost-effectiveness measures should be applied to all programs;
- g. Financial reporting requirements;
- h. How to most effectively encourage industrial and commercial participation in EE/DSM programs, given that the right of industrial and large commercial customers to opt-out of ratepayer-funded EE/DSM

measures is codified at G.S. 62-133.9(f) and whether to change the threshold for a “large commercial customer” under Rule R8-69 that can opt-out;

- i. Current Evaluation, Measurement, and Verification practices;
- j. Cost recovery issues such as the splitting of vintage years, whether vintage years should be considered complete after a certain period of time for purposes of cost recovery, amortization, deferral, allocations, and recovery of indirect costs (e.g., administrative, marketing, and education);
- k. Composition and role of the Stakeholder Collaborative;
- l. Identify mechanism changes that would prioritize persistent, cumulative savings measures and reduce reliance on the achievement of short-lived behavioral measures; and
- m. Any other relevant issues.

Motion at 5-7.

Duke filed Duke Energy Carolinas, LLC and Duke Energy Progress, LLC’s Response in Support of Public Staff’s Motion for Procedural Relief and Request for Further Relief and a Supplemental Response In Support of Public Staff’s Motion for Procedural Relief and Request for Further Relief on September 14, 2023 and September 20, 2023, respectively (together, Duke’s Response).

In Duke’s Response, the Companies stated that they do not object to the proposed scope and filing deadlines in the Public Staff’s Motion. However, they do have concerns that the time required to address the issues identified could impede the Companies’ efforts to “aim higher than the current 1% of eligible load forecast savings” as directed by the Commission in the Initial Carbon Plan Order. Initial Carbon Plan Order at 106. Duke contends that granting the Public Staff’s Motion as filed would result in the loss of a year’s worth of the benefits of revised DSM/EE measures.

Accordingly, the Companies seek two amendments to the relief requested in the Public Staff’s Motion in order to allow any changes to the Mechanisms to be implemented as soon as possible. First, Duke states that if the Commission issues an order on the proposed revisions no later than the second quarter of 2024, the Companies could make the revisions effective for Vintage 2025. Second, Duke seeks approval of a reconciliation procedure that would allow the Companies to file Vintage 2025 projections in the 2025 DSM/EE rider proceedings and then true-up those projections for actual participation, costs, and EM&V results during the 2026 annual DSM/EE cost recovery proceedings. The reconciliation would not be precedential.

Duke commits to holding “robust, meaningful, and timely” stakeholder meetings through the comment period.

In Duke’s Response, the Companies tally the support for their position. They report that the Southern Environmental Law Center supports Duke’s proposed modifications to the relief sought by the Public Staff, on the understanding that the one-time reconciliation would enable the Companies to seek enhanced incentives or improved programs that will encourage customers to adopt more DSM and EE measures. They advise that the North Carolina Sustainable Energy Association (NCSEA) is similarly supportive, and that Carolina Industrial Group for Fair Utility Rates II (CIGFUR II) and the Carolina Industrial Group for Fair Utility Rates III (CIGFUR III) (together with CIGFUR II, CIGFUR) support the request for the Commission to enter an order by the second quarter of 2024. They also report that CIGFUR supports a one-time, non-precedential reconciliation for the limited purpose of enabling implementation of changes to the EE/DSM Mechanisms for Vintage Year 2025 in furtherance of policy goals established by H.B. 951 and consistent with Commission directives, so long as such reconciliation comports with the requirements set forth in N.C.G.S. 62-110.9(2)a. and 62-133.9(f).

CIGFUR filed its own response to the Motion on September 15, 2023, CIGFUR’s Response In Support of Public Staff’s Motion for Procedural Relieve and Request for Further Relief (CIGFUR Response). The CIGFUR Response summarizes the positions that it has taken to advocate for greater DSM/EE program participation by non-residential customers and reductions in customers opting out of such programs. CIGFUR seeks a more expedited review of new or modified non-residential DSM programs than is contemplated by the Public Staff’s Motion. Additionally, CIGFUR requests that the Commission open a DSM/EE docket specific to Dominion Energy North Carolina (DENC) and to consolidate it with Docket Nos. E-2, Sub 931 and E-7, Sub 1032. Finally, CIGFUR states that the exclusion of attorneys from participating in Duke’s DSM/EE Collaborative puts interested parties at a disadvantage if they do not have a roster of non-attorney subject matter experts available to them.

CIGFUR states that DENC does not support CIGFUR’s proposal for a docket specific to DENC; instead, if the Commission determines it is appropriate to consider revisions to Rule R8-69, DENC contends a generic E-100 docket would be more appropriate. DENC also notes that there already exists a DSM/EE docket specific to it in which the mechanism is not due for review until 2026. CIGFUR reports that the Public Staff supports a generic docket open to all parties for consideration of any changes to Commission Rules and that, similarly, the Attorney General’s Office supports including DENC in any review of Commission Rules.

Finally, CIGFUR states that the Public Staff supports CIGFUR’s request for attorney participation in the DSM/EE Collaborative, as does NCSEA, and that Duke opposes this request. Except as noted, other parties to the docket either took no position on CIGFUR’s Response or did not respond.

On September 26, 2023, the Public Staff filed a response to the Duke Response, for the purpose of clarifying its position as to Duke's request for a one-time, non-precedential reconciliation procedure with respect to Vintage 2025. The Public Staff does not oppose the reconciliation procedure a priori but simply does not consider it in the public interest to agree in advance to impacts that are wholly unknown at this time. The Public Staff suggests that the reconciliation proposal is appropriate for consideration as part of a comprehensive review of the Mechanisms.

The Commission agrees that a comprehensive review of the Mechanisms was directed by the Initial Carbon Plan Order, including a review of the Proposed Enablers. The Commission notes that the issues highlighted by CIGFUR with respect to non-residential customers are consistent with the Commission's directive for Duke to "continue to explore avenues to increase load reduction by implementing new DSM/EE programs, implementing EE and load reduction programs for wholesale customers, and reducing the number of non-residential customers that have opted out of the DSM/EE program." Initial Carbon Plan Order at 133. Further, the Commission agrees that the comment schedule the parties have agreed upon is appropriate.

The Commission declines CIGFUR's suggestion that non-residential DSM programs should be considered on a more accelerated schedule, which would be antithetical to the comprehensive review of the Mechanisms provided for in the 2022 Carbon Plan Order. Further, while it appreciates the eagerness of the parties to implement revised Mechanisms, the Commission will not commit itself to issuing an order in a particular timeframe; it does, however, take note of the parties' desire for an order to be issued by the end of the second quarter of 2024.

The Commission finds that a technical conference will assist the Commission and the parties to examine the Mechanisms thoroughly and efficiently.

With respect to opening a new docket, either one that is specific to DENC or a generic electric docket, the Commission does not see a present need to do so.

IT IS, THEREFORE, ORDERED as follows:

1. That initial comments in Docket Nos. E-2, Sub 931, and E-7, Sub 1032 be filed by January 26, 2024 and reply comments by March 29, 2024, on the following issues:

- a. The Proposed Enablers;
- b. The appropriateness of continuing to allow the Companies to collect net lost revenues in light of HB 951 and the Initial Carbon Plan Order;
- c. What actions, if any, justify a utility incentive, as well as whether there should be limits imposed upon utility incentives, whether there should be a required savings threshold that must be met before incentives are earned, what metrics should be utilized in awarding incentives, whether

the Mechanisms should contain both incentives and penalties like Performance Incentive Mechanisms, and the efficacy of incentive mechanisms in other jurisdictions;

- d. How savings and benefits should be calculated and valued, including whether non-energy benefits should be included in particular cost-effectiveness tests, whether carbon reduction benefits should be separately accounted for, and the extent to which differential value to the system should be reflected, if at all, when quantifying anticipated costs and benefits of EE/DSM measures, among other issues;
- e. Definitional changes, including how to define “low income” customers, different program types, cost effectiveness, and measure baselines;
- f. Whether the same cost-effectiveness measures should be applied to all programs;
- g. Financial reporting requirements;
- h. How to most effectively encourage industrial and commercial participation in EE/DSM programs, given that the right of industrial and large commercial customers to opt-out of ratepayer-funded EE/DSM measures is codified at N.C.G.S. § 62-133.9(f) and whether to change the threshold for a “large commercial customer” under Rule R8-69 that can opt-out;
- i. Current Evaluation, Measurement, and Verification practices;
- j. Cost recovery issues such as the splitting of vintage years, whether vintage years should be considered complete after a certain period of time for purposes of cost recovery, amortization, deferral, allocations, and recovery of indirect costs (e.g., administrative, marketing, and education);
- k. Composition and role of the DSM/EE Stakeholder Collaborative, including whether attorneys should be allowed to participate;
- l. Identify mechanism changes that would prioritize persistent, cumulative savings measures and reduce reliance on the achievement of short-lived behavioral measures;
- m. A one-time, non-precedential reconciliation procedure to allow Vintage 2025 projections to be filed in the 2025 DSM/EE rider proceedings and then trued-up to reflect actual costs and results during the 2026 annual DSM/EE cost recovery proceedings;

- n. Any other relevant issues; and
- o. Any issues directed by the Commission to be considered.

2. That a technical conference shall be held on Monday, December 18, 2023, starting at 1:00 p.m., in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina for the purpose of receiving oral presentations from the parties, with an opportunity for Commissioners to ask questions, on the following topics:

- a. The existing Mechanisms; and
- b. A summary of the work of the DSM/EE Mechanism Review stakeholder process.

3. That the parties to this proceeding shall file with the Commission a list of the individuals who will appear at the technical conference and the subjects on which they will speak, on or before December 11, 2023;

4. That the parties are expected to coordinate their presentations to reduce presentations of repetitive information; and

5. That the Commissioners shall have an opportunity to ask questions, but the parties will not be given an opportunity to question one another.

ISSUED BY ORDER OF THE COMMISSION

This the 30th day of October, 2023.

NORTH CAROLINA UTILITIES COMMISSION



Tamika D. Conyers, Deputy Clerk