

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-7, SUB 831

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Petition by Duke Energy Carolinas, LLC, for     )  
Approval of Save-a-Watt Approach, Energy     ) ORDER ADOPTING PROGRAM  
Efficiency Rider and Portfolio of Energy     ) FLEXIBILITY GUIDELINES  
Efficiency Programs     )

BY THE COMMISSION: On February 26, 2009, in the above-captioned docket, the Commission issued an Order Resolving Certain Issues, Requesting Information on Unsettled Matters, and Allowing Proposed Rider to Become Effective Subject to Refund (February 26, 2009 Order) which, among other things, established the various types of program changes which require Commission approval prior to implementation by Duke Energy Carolinas, LLC (DEC or Company). Specifically, pursuant to Decretal Paragraph No. 8 of the February 26, 2009 Order, the following types of program changes require Commission approval prior to implementation:

- (1) Program changes or shifting of program resources that would result in program costs increasing or decreasing by more than 20% of the original program cost estimates initially approved by the Commission.
- (2) Program changes that would increase or decrease the energy and demand savings projections by more than 20%.
- (3) Any increases or decreases to participant incentives.
- (4) Program changes that would alter the target customer groups.
- (5) Program changes that may result in the reassignment of costs and benefits from one class to another.
- (6) Any combination of the first five criteria.

In Docket No. E-7, Sub 979, in the Matter of Application of DEC for Approval of Demand-Side Management (DSM) and Energy Efficiency (EE) Cost Recovery Rider Pursuant to G.S. 62-133.9 and Commission Rule R8-69 (Sub 979 Proceeding), Public Staff – North Carolina Utilities Commission (Public Staff) witness Jack L. Floyd pointed out in his prefiled testimony filed on June 8, 2011 that DEC had made changes to the participant incentives of several programs to improve participation and savings without seeking Commission approval of such changes. Witness Floyd noted that while the Company did not receive Commission approval prior to making such changes, he did not believe that many of the changes made to program incentives for the purpose of addressing lackluster participation or reducing costs should necessarily require Commission approval as first contemplated in 2008 and 2009 when the save-a-watt

mechanism was initially reviewed and investigated.<sup>1</sup> Witness Floyd recommended that the Commission require DEC to file a full accounting of all changes it has made to existing programs and a proposal for any further changes to programs, with an updated evaluation of cost-effectiveness for each program using all four applicable tests, including supporting documentation for its calculations.

Further, in the Sub 979 Proceeding, witness Floyd supported modification of the requirement established by the Commission in its February 26, 2009 Order that DEC seek Commission approval prior to making changes to its DSM/EE programs. He opined that the Company could maximize its portfolio's effectiveness if it were able to make program changes, including changes to incentives, as long as the changes have limited impact on program and portfolio cost-effectiveness. Witness Floyd proposed that the Company and the Public Staff continue discussing revisions to the program flexibility requirements and file a joint proposal in Docket No. E-7, Sub 831 within 90 days of a Commission order in the Sub 979 Proceeding. He testified that it would be appropriate for the Southern Alliance for Clean Energy (SACE) to also participate in the discussions and formulation of the proposal. DEC witness Timothy Duff asserted that working with the Public Staff to create a formal proposal would help the Company better optimize its programs and should improve the value customers realize from the Company's portfolio of DSM/EE programs.

In its Order issued on November 8, 2011, in the Sub 979 Proceeding, the Commission concluded that DEC should provide the Commission with a list of all the changes it has made to existing programs and any further proposed changes to programs, with an updated evaluation of cost-effectiveness for each program using all four applicable tests, including supporting documentation for its calculations in Docket No. E-7, Sub 831. Further, the November 8, 2011 Order required that DEC file annually with each DSM/EE cost recovery rider application a full list of changes it has made to existing programs and a proposal for any further changes to programs, including an updated evaluation of cost-effectiveness for each program using all four applicable cost-effectiveness tests.

In addition, in its November 8, 2011 Order, the Commission concluded that DEC, SACE, and the Public Staff (collectively, the Parties) should file a joint proposal regarding Commission approval of program modifications within 90 days of the issuance of such Order. The November 8, 2011 Order stated that such filing should be made in Docket No. E-7, Sub 831.

Consequently, on December 21, 2011, in Docket No. E-7, Sub 831, DEC filed with the Commission a list of all changes that the Company has made to its existing

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<sup>1</sup> The modified save-a-watt compensation mechanism was approved by the Commission in its Notice of Decision issued on December 14, 2009 in Docket No. E-7, Sub 831. Thereafter, an Order Approving Agreement and Joint Stipulation of Settlement Subject to Certain Commission-Required Modifications and Decisions on Contested Issues was issued on February 9, 2010.

DSM/EE programs as required by the Commission in its November 8, 2011 Order in the Sub 979 Proceeding.

On February 6, 2012, the Parties filed a Joint Proposal regarding Commission approval of program modifications (Flexibility Guidelines) in Docket No. E-7, Sub 831 as required by Decretal Paragraph No. 5 of the Commission's November 8, 2011 Order in the Sub 979 Proceeding. Such filing included a table which summarized the Parties' program flexibility agreement. Specifically, the table identified the following:

- (1) Program changes that should require regulatory approval by the Commission prior to implementation;
- (2) Program changes that should not require Commission approval but should require advance notice be filed with the Commission prior to making such program change; and
- (3) Program changes that simply require inclusion in a quarterly report that will notify the Commission of all program changes made without Commission approval or advance notice.

Under the proposed Flexibility Guidelines, the impact of the program change on the Total Resource Cost (TRC) test ratio, program costs, and avoided costs savings would determine whether prior Commission approval, advance notice, or no notice would be required.

In addition to reaching agreement on the Flexibility Guidelines, the Parties also agreed to the timeframes for providing the various types of notifications set forth in the revised guidelines. In particular, the Parties agreed that:

- (1) Petitions for Commission approval prior to implementation of the program change would be filed no later than 30 days prior to the proposed effective date, pursuant to Commission Rule R8-68;
- (2) All program changes which require advance notice would be filed no later than 45 days prior to the proposed effective date of the change using the Advance Notice Program Modifications Reporting Template included in the Parties' February 6, 2012 filing; and
- (3) On a quarterly basis, DEC would file with the Commission, using the agreed-upon Program Modifications Reporting Template included in the Parties' February 6, 2012 filing, a notification of all program changes that have been made without Commission approval or advance notice.

DEC explained that the Company would continue to share potential program changes with the Public Staff and the Regional Efficiency Advisory Group. Further, the Parties agreed that should any party have concerns about a proposed modification for which the Company was required to provide advance notice, such party would file comments with the Commission within 25 days of the Company's filing of the Advance Notice Program Modifications Reporting Template.

An example of the agreed-upon Advance Notice Program Modifications Reporting Template was attached to the February 6, 2012 filing. The Parties agreed that such template would include the following information:

- (1) Program name;
- (2) Description of proposed change;
- (3) Type of change;
- (4) Proposed effective date of the change;
- (5) Delta of change in cost-effectiveness test results;
- (6) New cost-effectiveness test results;
- (7) Percent of change in program costs;
- (8) Absolute change in program costs;
- (9) Percent of change in projected avoided costs;
- (10) Absolute change in projected avoided costs;
- (11) Percent of change in program impacts; and
- (12) Absolute change in program impacts.

With respect to the Program Modifications Reporting Template, the Parties agreed that this template would include the following information:

- (1) Program name;
- (2) Original offer;
- (3) Description of the change;
- (4) Type of change;
- (5) Delta of change in cost-effectiveness test results;
- (6) New cost-effectiveness test results;
- (7) Percent of change in program costs;
- (8) Absolute change in program costs;
- (9) Percent of change in projected avoided costs;
- (10) Absolute change in projected avoided costs;
- (11) Percent of change in program impacts; and
- (12) Absolute change in program impacts.

An example of the agreed-upon Program Modifications Reporting Template was attached to the February 6, 2012 filing.

In addition to the measurements required with respect to program changes as discussed hereinabove, the Parties also agreed that forward-looking TRC test and other cost-effectiveness test results would be provided by DEC for review in each annual DSM/EE cost recovery rider proceeding. Further, the Parties also agreed that in any case where a program experiences a number of separate changes or modifications that have effectively changed the baseline for a program by 15%, one or more of the Parties may request that the baseline TRC and other test results be reset for purposes of applying the agreed-upon Flexibility Guidelines. Furthermore, whenever a change in a program goes into effect as a result of Commission approval or is allowed to go into

effect after advance notice, the baseline TRC and other test results will be reset for purposes of applying the agreed-upon Flexibility Guidelines.

With regard to all program changes, the Parties agreed that neither Commission approval, the filing of advance notice, nor the inclusion of the changes in the quarterly Program Modifications Report precludes any party from taking issue with or the Commission from disallowing or amending a program change in a DSM/EE cost recovery rider proceeding, DSM/EE program approval proceeding, general rate case proceeding, or a similar proceeding.

In Docket No. E-7, Sub 1001, in the Matter of Application of DEC for Approval of DSM/EE Cost Recovery Rider pursuant to G.S. 62-133.9 and Commission Rule R8-69 (Sub 1001 Proceeding), DEC provided a listing of all changes that the Company has made to its existing DSM/EE programs as required by the Commission in its November 8, 2011 Order in the Sub 979 Proceeding. Such listing was provided on Duff Exhibit 8, attached to the prefiled testimony of DEC witness Duff filed on March 23, 2012.

In response to questions from the Commission during the evidentiary hearing held on June 19, 2012, in the Sub 1001 Proceeding, DEC witness Duff testified that the Company has obtained experience working with some of the complexities of having a very static portfolio of DSM/EE programs which it did not have at the time the original program modifications guidelines were established. Based upon such experience, the Company believes additional flexibility, within established guidelines is needed, with regard to program changes in order to respond to changing market conditions, standards, and technology as such changes occur; to enhance its program offerings to maximize opportunities for customers to increase energy efficiency; and to make the Company's programs as cost-effective as possible. Witness Duff opined that the proposed Flexibility Guidelines should provide sufficient transparency for the Commission and other parties regarding changes to the Company's established DSM/EE programs.

Under cross-examination by the Commission during the evidentiary hearing held on June 19, 2012, for the Sub 1001 Proceeding, witness Floyd stated that he believed that all of the items included on Duff Exhibit 8 complied with the agreed-upon Flexibility Guidelines. Further, witness Floyd testified that in the last two to three years since DEC's DSM/EE programs have actually been implemented, the Public Staff has realized that a certain level of flexibility is needed by the Company and that the original Commission-approved guidelines may be too confining in some respects. Witness Floyd explained that the Parties developed and reached consensus regarding the Flexibility Guidelines filed on February 6, 2012. Witness Floyd opined that such guidelines should provide DEC the flexibility needed to make its DSM/EE programs as attractive and energy efficient as possible.

**WHEREUPON**, the Commission reaches the following

## **CONCLUSIONS**

After careful consideration of the Parties' proposal and the responses to questions posed by the Commission in open hearing at the June 19, 2012 hearing in the Sub 1001 Proceeding, the Commission finds and concludes that the Flexibility Guidelines should be approved and adoption of such revised guidelines should supersede the guidelines previously established in Decretal Paragraph No. 8 of the February 26, 2009 Order issued in Docket No. E-7, Sub 831.

In making its decision, the Commission observes that, according to the Flexibility Guidelines, any change to a program that is not explicitly allowed by the existing Commission-approved tariff language requires prior Commission approval before implementation by DEC. Further, the Flexibility Guidelines state that "[t]ariffs shall include information pertaining to the availability of, eligibility for, and applicability of the program, identification of specific measures offered, general description of each measure, maximum incentives offered ('up to \$\_\_ per customer, measure unit, etc.'), and method(s) of measure delivery." Accordingly, the Commission recognizes that the Flexibility Guidelines, as approved herein, should provide DEC with a range of flexibility regarding program modifications within parameters approved by the Commission.

The Commission understands that under the Flexibility Guidelines program changes that are not consistent with the language of the tariff or changes that result in the erosion of the forward-looking program-level TRC test ratio, causing it to fall below 1.05<sup>2</sup> will require approval by the Commission prior to implementation. Further, the advance notice and the quarterly reporting requirements provisions set forth in the Flexibility Guidelines should provide the Commission and other parties with sufficient transparency regarding DEC's proposed changes to its existing DSM/EE programs as well as all program changes implemented by DEC which do not require prior Commission approval.

The Commission is of the opinion that the Flexibility Guidelines, as agreed to by the Parties and approved herein, should provide DEC with an appropriate and reasonable level of flexibility to make changes to its approved DSM/EE programs that would allow the Company to, among other things, respond to changing market conditions, standards, and technology as such changes occur; enhance its program offerings to maximize opportunities for customers to increase energy efficiency; and make the Company's programs as cost-effective as possible. Further, the Commission concludes that the Flexibility Guidelines should provide DEC with the opportunity to optimize its programs and improve the value customers realize from the Company's portfolio of approved DSM/EE programs.

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<sup>2</sup> Pursuant to the Flexibility Guidelines, if inadequate market information exists to develop a reasonable estimate of the TRC test ratio, the Utility Cost Test (UCT) ratio may be used instead, with the TRC test ratio being provided as soon as a reasonable estimate thereof can be determined.

Furthermore, with regard to all such program changes which may occur in accordance with the Flexibility Guidelines adopted herein, the Commission finds and concludes that neither Commission approval, the filing of advance notice, nor the inclusion of the changes in the quarterly Program Modifications Report shall preclude any party from taking issue with or the Commission from disallowing or amending a program change in a DSM/EE cost recovery rider proceeding, DSM/EE program approval proceeding, general rate case proceeding, or a similar proceeding.

IT IS, THEREFORE, ORDERED as follows:

1. That the agreed-upon Flexibility Guidelines filed on February 6, 2012, shall be, and hereby are, approved for use by DEC with regard to modifications to its Commission-approved DSM/EE programs. Such revised guidelines shall supersede the guidelines previously established in Decretal Paragraph No. 8 of the February 26, 2009 Order in Docket No. E-7, Sub 831.

2. That DEC shall file its petition for Commission approval prior to implementation of the program change no later than 30 days prior to the proposed effective date, pursuant to Commission Rule R8-68.

3. That DEC shall file all program changes which require advance notice no later than 45 days prior to the proposed effective date of the change using the Advance Notice Program Modifications Reporting Template agreed to by the Parties. Should any party have a concern about the proposed program modification, it shall file comments with the Commission within 25 days of the Company's filing of the Advance Notice Program Modifications Reporting Template.

4. That on a quarterly basis, DEC shall file with the Commission, using the Program Modifications Reporting Template agreed to by the Parties, a notification of all program changes that have been made without Commission preapproval or advance notice.

5. That DEC shall provide forward-looking TRC test and other cost-effectiveness test results for review in each annual DSM/EE cost recovery rider proceeding.

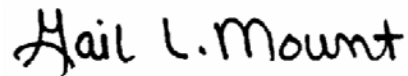
6. That whenever a change in a program goes into effect as a result of Commission approval or is allowed to go into effect after advance notice, the baseline TRC and other test results shall be reset for purposes of applying the Commission-approved Flexibility Guidelines.

7. That with regard to all such program changes which may occur in accordance with the Flexibility Guidelines adopted herein, neither Commission approval, the filing of advance notice, nor the inclusion of the changes in the quarterly Program Modifications Report shall preclude any party from taking issue with or the Commission from disallowing or amending a program change in a DSM/EE cost recovery rider proceeding, DSM/EE program approval proceeding, general rate case proceeding, or a similar proceeding.

ISSUED BY ORDER OF THE COMMISSION.

This the 16<sup>th</sup> day of July, 2012.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Gail L. Mount". The signature is written in a cursive, slightly stylized font.

Gail L. Mount, Chief Clerk

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