

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

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

NCSEA’S SUPPLEMENTAL 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”) January 4, 2022 *Order Granting, in Part, Motion to Leave* (“Order”),¹ offers the following supplemental reply comments in response to the various reply comments made by the participants in this docket:

I. THE COAL SECURITIZATION RULE SHOULD BE DRAFTED TO BENEFIT RATEPAYERS AND TO REFLECT THE INTENT OF THE STATUTE

Duke takes the position that the Sierra Club and Natural Resource Defense Council (“Sierra Club/NRDC”) proposed edits to the original Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP” and together with DEC, “Duke”) proposal must be rejected because the edits are not “substantially identical” to the storm securitization rule.² Duke fails to enumerate *how* the Sierra Club/NRDC proposal differs from the storm securitization rule in the Duke Reply Comments. Regardless, parsing what

¹ The Order also references the *Response in Opposition by the Carolina Utility Customers Association*, which opposed *Duke Energy Carolinas, LLC’s and Duke Energy Progress, LLC’s Motion for Leave to File Supplemental Reply Comments* and was filed on the same day. NCSEA did not have time to file a similar reply to CUCA before the Commission issued the Order the next day, but NCSEA would like to note its agreement with CUCA and the Commission that to “allow parties to file comments until all were satisfied their best arguments were exhausted, then the commenting process would never cease.” Notwithstanding this, NCSEA appreciates the opportunity from the Commission for all commenters to file supplemental reply comments.

² *Duke Energy Carolinas, LLC and Duke Energy Progress, LLC’s Reply Comments* (“Duke Reply Comments”), pp. 13-14.

level of divergence from the storm securitization rules is permitted under a “substantially identical” standard is a waste of time and resources.

NCSEA supports the proposed edits from the Sierra Club/NRDC. These edits are explained thoroughly in the Sierra Club/NRDC Reply Comments and fulfill the intent of S.L. 2021-165 (“HB 951”). The proposed edits to Duke’s proposed rule work to maximize ratepayer benefits and to provide guidance to allow the coal securitization process to be consistent with the storm securitization process. Therefore, NCSEA disagrees with Duke’s assertion that the Sierra Club/NRDC proposal is not “substantially identical” to the storm securitization rule.

Duke has not taken a position on the issue of whether the Commission *can* issue a substantive order with the effect of providing necessary coverage for financing the securitization of subcritical coal plants.³ There is a gap in statutory guidance between the storm securitization statute and the coal securitization statute. NCSEA takes issue with Duke’s failure to address the ambiguity that the intervenors have pointed out about HB 951 and coal securitization. Duke appears to seek to wait for a legislative fix. NCSEA agrees

³ “At this time, the Companies have not fully evaluated the arguments of intervenors as enumerated above nor reached a position on the points raised as to the legal sufficiency of HB 951 to accomplish its goals. Instead, the Companies have focused on developing and proposing a Coal Retirement Securitization Rule in accordance with HB 951 and in response to the Commission’s Order Requesting Comments and Proposed Rule, under the assumptions that the Commission possesses the requisite authority to issue the Coal Retirement Securitization Rule and that HB 951 is sufficient as written[.] However, should it be determined at a future date that additional statutory modifications are required to achieve a successful securitization, the Companies are committed to dialoguing with interested parties to explore such changes.” Duke Reply Comments, pp. 5-6.

with the Carolina Utilities Customers Association, Inc. (“CUCA”),⁴ the Public Staff,⁵ the Carolina Industrial Group for Fair Utility Rates II (“CIGFUR II”), together with the Carolina Industrial Group for Fair Utility Rates III (“CIGFUR III” and collectively with CIGFUR II, “CIGFUR”)⁶, and Sierra Club/NRDC⁷ that the rulemaking process could bridge the gaps and avoid a required legislative fix or legal ambiguity. NCSEA believes this Commission action was exactly the intent of HB 951 and agrees with the other commenters that an examination of bond counsel, along with a bond advisory team, would be a worthy endeavor.

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NCSEA agrees with the Public Staff that the timing of coal plant retirement, which is tied to this coal securitization process, must be interrelated with the Carbon Plan.⁸ NCSEA agrees that the optimal resource evaluation in the Carbon Plan requires a least-cost analysis of clean energy deployment which may not reflect immediate retirement of all subcritical coal plants. In fact, there are likely going to be arguments in the Carbon Plan proceeding that certain coal plants should remain open to avoid having to build carbon-

⁴ “Key commenters are united in their concern over the Commission’s authority to effectively fulfill the requirement of HB 951 to enact coal retirement securitization rules that are ‘substantively identical to the provisions of Section 1 of S.L. 2019-244 (codified as N.C. Gen. Stat. § 62- 172, regarding securitization of storm recovery costs)[.]’ as well as the need to address these concerns now, before a securitization process begins.” *Reply Comments of Carolina Utilities Customers Association*, p. 1.

⁵ “The Public Staff also generally agrees with the Companies’ introduction of integral “bond advisory team” and “issuance advice letter” processes, though the Public Staff has revised those provisions and included additional “best practices” (such as independent certifications) not articulated in the Companies’ proposed rules, but which were discussed in detail in the Commission’s Financing Orders in Docket Nos. E-2, Sub 1262 and E-7, Sub 1243, the Storm Securitization dockets. The Public Staff recognizes that not all aspects of coal plant retirement cost review, audit, approval, and securitization are realistically addressed in rules, and the Public Staff has not attempted to describe all steps in those processes. The Public Staff has also sought to make clear that the public utility shall not recover costs in both base rates and securitization charges for the same plant.” *Reply Comments of the Public Staff*, p. 3.

⁶ See, *Reply Comments of CIGFUR II & CIGFUR III*, pp. 1-2.

⁷ See, *Reply Comments of Sierra Club and Natural Resources Defense Council*, p. 2.

⁸ “Importantly, the Public Staff recognizes that the Carbon Plan and interrelated timing and sequencing of retirements of subcritical coal-fired generating facilities will substantially impact the securitization of coal plan retirement costs. Securitization is a key consideration for optimal resource analyses in general, and the Carbon Plan in particular.” *Reply Comments of Public Staff*, p. 3.

emitting “bridge” generation resources such as natural gas plants as the state plans to hit both the 2030 and 2050 emissions reduction targets.

NCSEA agrees with CUCA in that “The proposed rule offered by Duke Energy raises enforceability and oversight concerns[]”⁹ as it provides the utility with greater power than the storm securitization rule.¹⁰ Similarly, transparency and consistency is a concern. For instance, the issue of defining what a “subcritical coal-fired electric generating facilities” was brought by CUCA and CIGFUR in their respective reply comments, and NCSEA agrees with the underlying point: Duke should be required to disclose information about its coal fleet, including which plants Duke considers “subcritical coal-fired electric generating facilities” pursuant to the definition considered by the Commission and adopted in these rules. Such disclosure would provide necessary transparency and ability for oversight.

NCSEA also agrees with CIGFUR’s concerns about defining what “subcritical coal-fired electric generating facilities” are and that Duke is not incentivized to broadly define their coal plants as such.¹¹ A broad definition of what a “subcritical coal-fired

⁹ “HB 951 requires the Commission to enact coal retirement securitization rules that are ‘substantively identical to the provisions of [N.C. Gen. Stat. § 62-172], except with respect to the purposes for which securitization may be used under that section[.]’ The Duke Energy Rule proposes a number of deviations from the text of Section 62-172 that are unrelated to the purpose for which securitization may be used. In fact, many alterations appear designed to either give Duke Energy greater control over the securitization process or expand its ability to identify and recoup connected costs.” *Reply Comments of Carolina Utilities Customers Association*, p. 4.

¹⁰ *Id.* at 4-6.

¹¹ “CIGFUR reads Duke’s proposed securitization of coal asset early retirement rules as an attempt to “kick the can down the road” with respect to defining which coal-fired generating facilities retired or proposed to be retired early pursuant to House Bill 951 qualify as ‘subcritical.’ Duke has every reason to want to include as few facilities in its definition of “subcritical” as possible, which reduces the benefit to which ratepayers are entitled pursuant to S.L. 2021-165. In other words, CIGFUR is concerned that, by avoiding a clear and unambiguous definition regarding exactly which early retiring coal-fired plants and units qualify as “subcritical” now, on the front end of this regulatory process, Duke may attempt to avoid securitizing the remaining costs associated with certain plants or units by attempting to obfuscate which plants within its coal fleet can and should be characterized as subcritical for purposes of early retirement securitization.” *Reply Comments of CIGFUR II & III*, p. 5.

electric generating facility[y]” would allow for the most ratepayer impact via expansive securitization. NCSEA supports CIGFUR’s suggestion for the Commission to consider several sources of information and points of view when codifying the definition.¹²

II. CONCLUSION

NCSEA appreciates the opportunity to submit these supplemental reply comments and respectfully requests that the Commission consider them in adopting coal securitization rules pursuant to HB 951.

Respectfully submitted this the 12th day of January 2022.

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¹² *Id.* at 6.

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 12th day of January 2022.

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