



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

July 24, 2023

Ms. A. Shonta Dunston, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

Re: Docket No. E-7, Sub 1281 – Application of Duke Energy Carolinas, LLC for
Approval of CPRE Cost Recovery Rider and Compliance Report

Dear Ms. Dunston:

Attached for filing on behalf of the Public Staff in the above-referenced docket is the Proposed Order of the Public Staff Approving CPRE Rider and CPRE Program Compliance Report.

By copy of this letter, I am forwarding a copy to all parties of record by electronic delivery.

Sincerely,

Electronically submitted
/s/ Robert B. Josey
Staff Attorney
robert.josey@psncuc.nc.gov

Attachment

Executive Director
(919) 733-2435

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Energy
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(919) 733-5610

CERTIFICATE OF SERVICE

I certify that a copy of the following 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 24th day of July, 2023.

Electronically submitted
/s/ Robert B. Josey
Staff Attorney

**STATE OF NORTH CAROLINA UTILITIES
COMMISSION
RALEIGH**

DOCKET NO. E-7, SUB 1281

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Energy Carolinas,)	PROPOSED ORDER OF THE
LLC, Pursuant to N.C.G.S. § 62-110.8)	PUBLIC STAFF APPROVING
and Commission Rule R8-71 for)	CPRE RIDER AND CPRE
Approval of CPRE Cost Recovery Rider)	PROGRAM COMPLIANCE
and Compliance Report)	REPORT

BEFORE: Commissioner Kimberly W. Duffley, Presiding; Chair Charlotte A. Mitchell; and Commissioners ToNola D. Brown-Bland, Daniel G. Clodfelter, Jeffrey A. Hughes, Floyd B. McKissick, Jr., and Karen M. Kemerait

APPEARANCES:

For Duke Energy Carolinas, LLC:

Ladawn Toon, Associate General Counsel, Duke Energy Corporation,
411 Fayetteville Street, Raleigh, North Carolina 27602

E. Brett Breitschwerdt and Kristin M. Athens, McGuireWoods LLP, P.O. Box 27507, Raleigh, North Carolina 27611

For Carolina Utility Customers Association, Inc:

Marcus W. Trathen and Craig D. Schauer, and Brooks Pierce, McLendon, Humphrey & Leonard, LLP, P.O. Box 1800, Raleigh, NC 27602

For the Carolina Industrial Group for Fair Utility Rates III:

Christina D. Cress and Douglas Conant, Bailey & Dixon, LLP, P.O. Box 1351, Raleigh, North Carolina 27602

For the Using and Consuming Public:

Thomas Felling and Robert Josey, Public Staff – North
Carolina Utilities Commission, 4326 Mail Service Center,
Raleigh, North Carolina 27699-4300

BY THE COMMISSION: On February 28, 2023, Duke Energy Carolinas, LLC (DEC, or the Company) filed an application pursuant to N.C. Gen. Stat. § 62-110.8 and Commission Rule R8-71 for Approval of CPRE Compliance Report and CPRE Cost Recovery Rider, along with the direct testimony and exhibits of Christy J. Walker, Rates and Regulatory Strategy Manager, and Angela M. Tabor, Renewable Compliance Manager with the Business & Compliance Department (Application).¹ The testimony of witness Tabor included the DEC Competitive Procurement of Renewable Energy (CPRE) Compliance Report for calendar year 2021 as Exhibit No. 1 (CPRE Compliance Report).

Petitions to intervene were filed by Carolina Utility Customers Association, Inc. (CUCA) on March 27, 2023; and by Carolina Industrial Group for Fair Utility Rates III (CIGFUR III) on April 10, 2023. The Commission granted CUCA's petition to intervene on March 28, 2023, and CIGFUR's petition to intervene on April 12, 2023. The intervention of the Public Staff is recognized pursuant to N.C. Gen. Stat. § 62-15(d) and Commission Rule R1-19(e).

On March 16, 2023, the Commission issued an *Order Scheduling Hearing*,

¹ The regulatory fee included in the Company's Application was the previously effective regulatory fee of 0.13%; however, pursuant to the Commission's June 30, 2022 Order Increasing Regulatory Fee Effective July 1, 2022, the regulatory fee for noncompetitive jurisdictional revenues is now 0.14%. This change in regulatory fee had no impact on the amounts presented in the Company's Application.

Requiring Filing of Testimony, Establishing Discovery Guidelines, and Requiring Public Notice, establishing deadlines for the submission of intervention petitions, intervenor testimony, and DEC rebuttal testimony; requiring the provision of appropriate public notice; and mandating compliance with certain discovery guidelines.

On May 3, 2023, DEC filed the supplemental testimony and exhibit of witnesses Walker and Tabor.

On May 9, 2023, the Public Staff filed the testimony of witnesses Darrus K. Cofield and Jeff Thomas.

On May 18, 2023, DEC filed the rebuttal testimony of witness Tabor and witness Matthew Holstein.

On May 23, 2023, the Public Staff filed a Motion for Substitution of Witness and Adoption of Testimony and Testimony of James S. McLawhorn.

On May 24, 2023, DEC filed a Joint Motion to Excuse Witnesses from Appearance at Hearing.

On May 25, 2023, DEC filed Affidavits of Publication.

On May 26, 2023, the Commission issued its Order Excusing Witnesses (Walker and Cofield).

On May 30, 2023, the Public Staff filed Updated Testimony of James S. McLawhorn to ensure that the record accurately reflects the public and confidential

information included in Public Staff witness McLawhorn's testimony.

On May 30, 2023, a hearing was held to take public witness testimony and to receive expert witness testimony into the record.

On June 9, 2023, DEC and the Public Staff filed Joint Late-Filed Exhibit 1.

Also on June 9, 2023, DEC filed Late-Filed Exhibits 2, 3, and 4.

On June 20, 2023, the Commission issued a *Notice of Due Date of Proposed Orders And/Or Briefs*.

On July 24 2023, DEC and the Public Staff each filed their respective proposed orders and post-hearing briefs.

FINDINGS OF FACT

1. DEC is a duly organized limited liability company existing under the laws of the State of North Carolina; is engaged in the business of developing, generating, transmitting, distributing, and selling electric power to the public in North Carolina; and is subject to the Commission's jurisdiction as a public utility. DEC is lawfully before this Commission based upon its application filed pursuant to N.C.G.S. § 62-110.8 and Commission Rule R8-71.

2. The test period for purposes of this proceeding is the 12-month period beginning on January 1, 2022, and ending on December 31, 2022 (test

period or EMF period).² The billing period for this proceeding is the 12-month period beginning on September 1, 2023, and ending on August 31, 2024.

3. In DEC's Application, supplemental testimony (including workpapers and exhibits), it sought to recover a net total of \$365,777 in CPRE Program implementation costs (system) incurred during the EMF Period, including internal company labor and associated costs, outside consulting and legal services, and \$75,767 credit reflecting Independent Administrator (IA) fees associated with Tranche 3 that were inadvertently included in DEC's 2022 CPRE Rider.

4. In DEC's Application, direct testimony, and supplemental testimony (including workpapers and exhibits), it sought to recover \$19,904,314 in system purchased power costs associated with operational Tranche 1 and 2 projects, which generated 525,629 MWh. DEC also included a \$5,397,400 system credit to ratepayers reflecting: (1) liquidated damages associated with projects that had their PPAs terminated; and (2) Change of Control fees collected from market participants (MPs) in the EMF Period.

5. DEC's North Carolina retail onetime revenue credits and over-recovery of costs for the test period, or EMF period, amount to \$7,064,326 plus 50% of the liquidated damage amount from Wilkes Solar PPA as adjusted by the Public Staff, excluding interest and the regulatory fee, as set forth in Cofield Exhibit I. These onetime revenue credits and over-recovery by customer class

² EMF is an abbreviation of Experience Modification Factor.

are \$2,086,470 for the Residential class; \$1,991,138 for the General Service/Lighting class; and \$948,278 for the Industrial class.

6. DEC's purchased or generated power costs for the test period were reasonably and prudently incurred.

7. DEC failed to properly track the expiration date of a contract term, and therefore imprudently allowed the term to expire, severely impeding, if not entirely forfeiting, the Company's ability to seek liquidated damages. DEC is responsible for refunding ratepayers 50% of the liquidated damages it had a right to seek had it not allowed the contract term to expire.

8. The North Carolina retail jurisdictional allocation factors related to the capacity and energy components of purchased and generated power costs incurred during the test period in this proceeding were 66.68% and 66.90%, respectively. The capacity component was based on the 2021 production plant allocator,³ and the energy component was based on test period sales. Similarly, the North Carolina retail class allocation factors related to the capacity and energy components of purchased and generated power costs incurred during the test period in this proceeding were based on the 2021 production plant and test period sales for each class, respectively. The North Carolina retail class allocation factors related to implementation charges incurred during the test period were based on a composite rate calculated as the weighted average of the capacity

³ The capacity component of purchased power and generation cost was allocated to NC Retail and among customer classes based on the final 2021 cost of service production plant allocators since the 2022 cost of service study was not available at the time of filing.

and energy components of purchased and generated power.

9. The North Carolina retail test period sales used in calculating the EMF rider component are 59,059,117 MWh. The adjusted North Carolina retail customer class MWh sales were as follows:

<u>N.C. Retail Customer Class</u>	<u>Adjusted MWh Sales</u>
Residential	22,419,810
General Service/Lighting	24,337,422
<u>Industrial</u>	<u>12,301,885</u>
Total	59,059,117

10. In DEC's direct testimony, including exhibits, it requested \$15,990,005 in billing period charges anticipated to be incurred for purchased and generated power, ongoing implementation costs, and anticipated contract fees.

11. The North Carolina retail jurisdictional allocation factors related to the capacity and energy components of purchased and generated power costs anticipated to be incurred during the billing period in this proceeding are 66.68% and 66.83%, respectively. The capacity component is based on the 2021 production plant, and the energy component is based on projected billing period sales. Similarly, the North Carolina retail class allocation factors related to the capacity and energy components of purchased and generated power costs anticipated to be incurred during the billing period in this proceeding are based on the 2021 production plant⁴ and projected billing period sales for each class, respectively. The North Carolina retail class allocation factors related to

⁴ *Id.*

implementation charges anticipated to be incurred during the billing period are based on a composite rate calculated as the weighted average of the capacity and energy components of purchased and generated power.

12. The projected billing period sales for use in this proceeding are 60,824,729 MWh on a North Carolina retail basis. The projected billing period North Carolina retail customer class MWh sales are as follows:

<u>N.C. Retail Customer Class</u>	<u>Adjusted MWh Sales</u>
Residential	23,477,265
General Service/Lighting	24,077,007
<u>Industrial</u>	<u>13,270,457</u>
Total	60,824,729

13. The appropriate EMF rider component to be credited to customers is (0.0153) cents per kWh for the Residential class, (0.0165) cents per kWh for the General Service/Lighting class, and (0.0113) cents per kWh for the Industrial class, including interest related to the overcollection (excluding the regulatory fee).

14. The appropriate North Carolina retail prospective billing period expenses, as adjusted and set forth on Walker Revised Exhibit 3, total \$15,990,005. The appropriate prospective billing period expenses for use in this proceeding are \$6,362,991 for the Residential class; \$6,274,240 for the General Service/Lighting class; and \$3,352,774 for the Industrial class.

15. The appropriate monthly prospective rider component to be charged to customers is 0.0271 cents per kWh for the Residential class; 0.0261

cents per kWh for the General Service/Lighting class; and 0.0253 cents per kWh for the Industrial class, excluding the regulatory fee.

16. The appropriate combined monthly EMF rate component and prospective rate component to be collected during the billing period is 0.0118 cents per kWh for the Residential class; 0.0096 cents per kWh for the General Service/Lighting class; and 0.014 cents per kWh for the Industrial class, excluding the regulatory fee.

17. The increase in costs DEC proposes to recover with its proposed CPRE Program Rider and EMF Rider are within the limit established in N.C.G.S. § 62-110.8.

18. The 2021 CPRE Compliance Report provides adequate information that satisfies the requirements of Commission Rule R8-71(h), and for the reporting period, DEC implemented the CPRE Program in compliance with the requirements of N.C.G.S. § 62-110.8. In accordance with Commission Rule R8-71(g), DEC shall file its annual CPRE Program Plan, together with Duke Energy Progress, LLC (DEP), with the Commission by September 1, 2023, providing an update on the final Tranche conducted as part of the 2022 Solar Procurement pursuant to House Bill 951, and the Company's compliance with N.C.G.S. § 62-110.8.

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT
NO. 1**

This finding of fact is essentially informational, procedural, and jurisdictional in nature and is uncontroverted.

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT
NO. 2**

The evidence for this finding of fact is contained in the direct and supplemental testimony and exhibits of DEC witness Walker.

Pursuant to N.C.G.S. § 62-110.8, an electric public utility shall be authorized to recover the costs of all purchases of energy, capacity, and environmental and renewable attributes from third-party renewable energy facilities and to recover the authorized revenue of any utility-owned assets that are procured through an annual rider approved by the Commission and reviewed annually. Commission Rule R8-71 prescribes that unless otherwise ordered by the Commission, the test period for each electric public utility shall be the same as its test period for purposes of Rule R8-55. The test period for purposes of Rule R8-55 is the 12 months ending December 31. Witness Walker testified that for purposes of this proceeding, DEC's proposed rider includes both an EMF rider component to adjust for the difference in DEC's costs incurred compared to revenues realized during the EMF test period, as well as a rider component to collect costs forecasted to be incurred during the prospective 12-month period over which the proposed CPRE Program rider will be in effect.

DEC's proposed test period is the 12 months beginning on January 1,

2022, and ending on December 31, 2022, and the proposed billing period for the CPRE Program rider is the 12 months beginning on September 1, 2023, and ending on August 31, 2024.

The test period and the billing period proposed by DEC were not challenged by any party. Based on the foregoing, the Commission concludes that DEC used the appropriate test period and billing period in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 – 6

The evidence for these findings of fact is contained in the direct testimony and exhibits of DEC witnesses Walker and Tabor, and the testimony and exhibits of Public Staff witnesses McLawhorn and Cofield.

On Walker Exhibit No. 1, DEC witness Walker identifies \$19,904,314 on a system basis of purchased power costs and authorized revenue for DEC-owned facilities during the EMF period. Witness Walker testified that these costs originate from facilities that had previously interconnected, three facilities that achieved commercial operation during the EMF period, and two facilities that achieved commercial operation in December 2021 not included in DEC's 2022 CPRE Rider filing, but which are included in this filing. Walker Exhibit No. 2 sets forth the per books implementation charges of \$365,777 incurred by DEC on a system basis to implement the CPRE Program during the test period.

In DEC's supplemental filing, Walker Revised Exhibit 4 stated that the Company incurred \$13,542,909 in costs during the EMF period that were

allocated to the North Carolina retail jurisdiction and \$17,001,109 in CPRE Program rider revenues collected during the EMF period, resulting in an overcollection of \$3,458,200.

Witness Walker also testified that DEC received \$5,397,400 in onetime revenues associated with contract fees collected from CPRE Program MPs in 2023. She further testified as to DEC's proposal that North Carolina retail customers be credited with their allocable share of \$3,606,126 through the proposed EMF rider component.

DEC witness Tabor testified regarding DEC's actions to implement the CPRE Program and comply with the CPRE Program requirements of N.C.G.S. § 62-110.8, as described in DEC's CPRE Compliance Report.

Public Staff witness McLawhorn discussed the system-level expenses sought to be recovered by DEC, but he did not recommend any adjustments to the system-level expenses.

Public Staff witness Cofield testified as to the procedures taken by the Public Staff to evaluate whether DEC properly determined its per books CPRE Program costs and revenues during the test period. Witness Cofield did not recommend any adjustments to the proposed EMF rider component.

The Commission concludes that the \$7,064,326 plus 50% of the liquidated damage amount from Wilkes Solar PPA as adjusted by the Public Staff North Carolina retail level overcollection and onetime revenue credits recommended by

Public Staff witness Cofield during the EMF period for the CPRE program were reasonably and prudently incurred and are appropriate to be credited back to customers by DEC.

Further, the Commission notes that DEC's CPRE implementation charges of \$365,777 include a credit of \$75,767 of Independent Administrator Fees that were erroneously included in the Company's 2022 CPRE Program rider filing associated with its Tranche 3 RFP. Pursuant to N.C.G.S. § 62-110.8(d) the CPRE Program must be administered by an independent, third-party administrator. The IA's "reasonable and prudent administrative and related expenses incurred to implement [the CPRE Program] shall be recovered from market participants through administrative fees levied upon those that participate in the competitive bidding process, as approved by the Commission." N.C.G.S. § 62-110.8(d). Commission Rule R8-71(d)(10) provides that:

The Independent Administrator's fees shall be funded through reasonable proposal fees collected by the electric public utility. The electric public utility shall be authorized to collect proposal fees up to \$10,000 per proposal to defray its costs of evaluating the proposals. In addition, the electric public utility may charge each participant an amount equal to the estimated total cost of retaining the Independent Administrator divided by the reasonably anticipated number of proposals. To the extent that insufficient funds are collected through these methods to pay of the total cost of retaining the Independent Administrator, the electric public utility shall pay the balance and subsequently charge the winning participants in the CPRE RFP Solicitation.

Based on the foregoing, the Commission concludes that the Company's purchase power and implementation costs and credits were reasonably and prudently incurred.

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT
NO. 7**

The evidence for this finding of fact is contained in the direct and supplemental testimonies and exhibits of DEC witnesses Walker, the direct, supplemental and rebuttal testimonies of DEC witness Tabor, the rebuttal testimony of DEC witness Holstein, and the testimony of Public Staff witnesses McLawhorn and Cofield.

DEC witness Walker testified that one reason DEC filed supplemental testimony was to update the credits to customers in the billing period by including an amount of liquidated damages the Company collected outside the EMF period. Witness Walker stated after discussions with the Public Staff, the Company agreed to include the collection of these liquidated damages in this CPRE Rider for immediate benefit to customers.

Public Staff witness McLawhorn testified that the Public Staff appreciates that DEC was able to collect these liquidated damages but stated it made a further adjustment to the credits to include 50% of the liquidated damages contained in the PPA DEC executed with Wilkes Solar.

Witness McLawhorn stated that on August 23, 2022, DEC issued a letter to the 75 MW Wilkes Solar facility, which was selected as a winning bid in Tranche 2, notifying it of contract default and liquidated damages. However, Wilkes Solar disputed this default, stating that DEC caused unreasonable delays in completing required interconnection studies, which allegedly delayed the project's

interconnection by at least two years, resulting in the project no longer being economically viable. Tr., 24-25.

DEC attempted informal resolution with Wilkes Solar but was unsuccessful. It then attempted to pursue enforcement of its liquidated damages obligation under the PPA. However, the performance assurance provided by Wilkes Solar was in the form of a parent company guaranty, which expired on December 31, 2021, and was no longer enforceable at the time of Wilkes' PPA termination and default. Due to the dispute over termination default and the unenforceable guaranty, DEC concluded that the cost of litigation was unduly risky, would face substantial challenges, and, even if DEC prevailed, recovery of the funds was not guaranteed. Thus, DEC decided not to pursue liquidated damages from Wilkes Solar. Tr., 25-26.

Witness McLawhorn admitted that the guaranty contemplated in the PPA was an acceptable form of assurance, but that DEC acted imprudently on two occasions. First, the period of the parent guaranty was much shorter than the interconnection timeline. Witness McLawhorn stated that he reviewed a number of signed and executed PPAs and the Wilkes Solar PPA was the only one that actually had a date inserted into the termination date. Tr., 37. Witness McLawhorn explained that the 14-month guaranty was a very short time frame for a CPRE project and that DEC witness Cathcart stated in his supplemental testimony filed in the Company's 2021 CPRE proceeding that DEC did not expect that any of the Tranche 2 projects would achieve commercial operation in less than 24 months from the time that the interconnection agreement was signed. Tr., 38-39. Witness

McLawn further described the contracting and interconnection process, stating that there was just a little over 14 months from the signing of the PPA until guaranty expiration, and about 20 months from PPA signing until the Interconnection Agreement was to be signed; therefore, such a short period of time should have been a red flag to DEC. Tr., 39.

The second act of imprudence was failing to track the expiration of the guaranty. According to witness McLawn, the expiration of the guaranty appeared to be the result of an oversight by DEC. Its credit department entered the guaranty into its tracking system but did not enter an expiration date. Thus, the tracking system did not automatically flag that the guaranty was expiring and needed to be renewed. Mr. McLawn testified that DEC stated that it has audited all CPRE facilities and confirmed that they are properly recorded in their credit tracking system, but has not implemented any process changes, as it views the Wilkes Solar incident as isolated and states that the existing process has historically performed well. Tr., at 26-27.

It was witness McLawn's understanding that had DEC properly tracked the expiration date and notified the parent company DESRI or Wilkes in advance, the Company would have had the opportunity to extend the date and that would have satisfied this requirement. Tr., at 47.

Witness McLawn testified that the Public Staff is disappointed that a number of winning CPRE bids have withdrawn because the bids were selected based on them being below avoided costs and, therefore, would provide a direct

savings to customers. He noted that there is no such requirement for bids to be below avoided costs in the procurements to meet the Carbon Plan, and as a result the bids are likely to be higher than avoided cost. Tr.44.

Finally, witness McLawhorn stated that the Public Staff is not making a judgment as to whom was at fault for the PPA termination, which would determine whether Wilkes Solar is responsible for paying liquidated damages. However, the failure to input an expiration date in the tracking system made recovering liquidated damages from Wilkes Solar more difficult, if not impossible, even if DEC were not found to be the defaulting party. The Public Staff is not recommending that DEC pursue liquidated damages at this point when the guaranty has expired, and due to the risk that litigation costs might exceed the liquidated damage revenue. However, the Public Staff does not believe that DEC ratepayers should bear the full cost of DEC's error. Tr., 28.

In their rebuttal testimony, DEC witnesses Tabor and Holstein state that witness [McLawhorn] has not identified any specific actions or failures by DEC that demonstrate unreasonable or imprudent business practices or lack of reasonable management oversight and decision-making based upon the facts known at the time the DESRI Guaranty was submitted to DEC. Tr.,140. The DEC witnesses also stated that it was not unreasonable for DEC to rely upon Wilkes Solar to meet its contractual obligations to maintain Performance Assurance; however, they did admit that an error occurred. Tr., 140-41. Finally, the DEC witnesses stated that no direct costs accrued to customers as a result of the termination of the PPA. *Id.*

The Commission finds and concludes that it was imprudent for DEC to execute a PPA with a parent guaranty that was significantly shorter than the expected commercial operation date of the facility. The 14-month term was at least 10 months shorter than the estimated timeline stated by the Company's own witness in the Company's 2021 CPRE proceeding. While this act alone did not cause the Company to lose its right to pursue liquidated damages under the contract, it made it even more important for the Company to ensure that if the facility did not reach commercial operation within the contemplated term, that the Company reach out to the facility to determine if it intended to breach the PPA or renew the term.

The Commission also concludes that DEC acted imprudently in failing to track and renew the parent guaranty included in the PPA with Wilkes Solar, foreclosing its ability to seek the liquidated damages contemplated by the contract. Due to this imprudence, DEC was unable to even pursue the liquidated damages for the ratepayers. The Commission concludes that there does not need to be a determination of who was at fault for the breach of the PPA because DEC was unable to properly pursue litigation that would lead to the possible collection of the liquidated damages due to the lack of a parent guaranty. Because there is no way of knowing whether DEC would have succeeded in its pursuit of the liquidated damages and because the Commission does not believe such a determination is necessary, the Commission finds that failing to properly preserve its claim for the liquidated damages from Wilkes or DESRI does have a monetary impact on ratepayers. This is because those funds were contemplated in order to

cover replacement power costs, and now DEC or DEP will have to procure that capacity and energy through the solar procurements pursuant to the Carbon Plan which does not have the avoided cost cap, making it likely that the energy and capacity will be procured at a higher per MWh price than Wilkes' bid into the CPRE Program.

Accordingly, the Commission finds and concludes that DEC should credit ratepayers with 50% of the liquidated damages contained in the PPA because of its unreasonable and imprudent actions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding of fact is contained in the testimony and exhibits of DEC witness Walker.

In Walker Revised Exhibit 4, DEC witness Walker provided DEC's North Carolina retail jurisdictional allocation factors, including 66.68% for capacity-related costs and 66.90% for energy-related costs. The CPRE Program implementation charges allocation factor, which is a composite allocation factor based on the weighted average of capacity and energy purchases for purchased power costs, is 66.81%. Witness Walker stated that DEC used the production plant allocator from the 2021 cost of service study in determining North Carolina retail's share of actual costs by customer class because the 2022 cost of service study was not yet available.

No other party presented evidence on the appropriateness of the North

Carolina retail jurisdictional allocation factors.

The Commission concludes that the 66.68% allocation factor for capacity-related costs and the 66.90% allocation factor for energy-related costs are appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence supporting this finding of fact is contained in the testimony and exhibits of DEC witness Walker.

Walker Workpaper No. 4, provides DEC's North Carolina test period retail sales of 22,419,810 MWh for the Residential class, 24,337,422 MWh for the General Service/Lighting class, and 12,301,885 MWh for the Industrial class. No other party presented evidence on the appropriateness of test period North Carolina retail sales.

The Commission concludes that the test period North Carolina retail MWh sales proposed by DEC for purposes of calculating the EMF billing factors are appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10-11

The evidence supporting these findings of fact is contained in the testimony and exhibits of DEC witness Walker and Public Staff witness McLawhorn.

Walker Exhibit No. 2 and Walker Exhibit No. 3 present DEC's projected

North Carolina retail allocated CPRE costs of \$15,990,005 in the billing period, as well as the allocation of the system costs to the North Carolina retail jurisdiction and the North Carolina retail customer classes. DEC used the 2021 production plant jurisdictional allocation factor of 66.68% for purchased and generated capacity costs, the projected billing period sales jurisdictional allocation factor of 66.83% for purchased and generated energy costs, and a composite allocation factor for its allocation of CPRE implementation costs.

Public Staff witness McLawhorn discussed the CPRE costs estimated for the billing period but did not recommend any adjustments. No other party presented evidence on the appropriateness of DEC's proposed billing period charges anticipated to be incurred or the allocation of these costs.

The Commission concludes that DEC's North Carolina retail allocated charges of \$15,990,005 anticipated to be incurred during the billing period for purchased and generated capacity and energy, ongoing implementation costs, and anticipated contract fees are appropriate for use in this proceeding. The Commission further concludes that the use of 66.68% for the capacity component and 66.83% for the energy component to allocate system-level CPRE purchased and generated power costs to the North Carolina retail jurisdiction is appropriate for use in this proceeding, and that the use of peak demand and energy sales, respectively, to allocate North Carolina retail jurisdictional capacity and energy costs to the customer classes is appropriate for use in this proceeding. Further, the Commission concludes that the use of a composite rate for the allocation of North Carolina retail implementation costs to the North Carolina retail customer

classes is appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence supporting this finding of fact is contained in the testimony and exhibits of DEC witness Walker.

In Workpaper No. 3, DEC witness Walker provided DEC's projected billing period sales of 23,477,265 MWh for the Residential class, 24,077,007 MWh for the General Service/Lighting class, and 13,270,457 MWh for the Industrial class. Witness Walker further testified that the rate per customer class for purchased and generated power is determined by dividing the sum of the billing period costs allocated to the class by the forecast billing period MWh sales for the customer class. Similarly, the rate per customer class for implementation costs is determined by dividing the sum of the billing period costs allocated to the class, using a composite rate determined in the purchased and generated power calculation, above, by the forecast billing period MWh sales for the customer class.

The Public Staff witnesses did not propose any adjustments to the projected billing period sales amounts used in this proceeding. No other party presented evidence on the appropriateness of the projected billing period North Carolina retail sales.

The Commission concludes that DEC's projected billing period sales for North Carolina retail customer classes are as follows: 23,477,265 MWh for the

Residential class, 24,077,007 MWh for the General Service/Lighting class, and 13,270,457 MWh for the Industrial class.

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT
NOS. 13-16**

The evidence supporting these findings of fact appears in DEC's Application, in the testimony and exhibits of DEC witness Walker, in the testimony and exhibits of Public Staff witnesses McLawhorn, and Cofield.

Walker Revised Exhibit 4 calculates for North Carolina retail customers a total over-recovery of \$3,458,200 in CPRE Program costs for the EMF period and onetime revenue credits of \$3,606,126, resulting in a total credit of \$7,064,326 before interest. The total credit of \$7,064,326 plus 50% of the liquidated damage amount from Wilkes Solar PPA as adjusted by the Public Staff and as shown in Cofield Exhibit 1. The North Carolina retail customer share of CPRE Program costs for the prospective billing period, as shown through witness Walker Revised Exhibit 3, amounts to a total of \$15,990,005.

In her supplemental testimony, DEC witness Walker presented the components of the proposed Total CPRE Rate as follows, excluding the regulatory fee:

DEC's Rider Request Filed on March 1, 2022 (cents per kWh)			
Customer Class	EMF Rate Component	Prospective Rate Component	Total CPRE Rate
Residential	(0.0128)	0.0271	0.0143
General Service/Lighting	(0.0141)	0.0261	0.0120
Industrial	(0.0093)	0.0253	0.00160

The Public Staff stated that with its 50% of the liquidated damages amount included in the EMF Rate Component, the witness McLawhorn recommended the following Total CPRE Rate as follows, excluding the regulatory fee:

Public Staff's Recommendation (cents per kWh)			
Customer Class	EMF Rate Component	Prospective Rate Component	Total CPRE Rate
Residential	(0.0153)	0.0271	0.0118
General Service/Lighting	(0.0165)	0.0261	0.0096
Industrial	(0.0113)	0.0253	0.014

Based on the foregoing and for the reasons set forth in Evidence and Conclusions for Findings of Fact No. 7, the Commission finds that the Public Staff's recommended Total CPRE Rates are just and reasonable for the purposes of this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence supporting this finding of fact is contained in the direct and supplemental testimony and exhibits of DEC witness Walker and the testimony of Public Staff witness McLawhorn.

DEC witness Walker testified that N.C.G.S. § 62-110.8(g) and Commission Rule R8-71 limits the annual increase in CPRE Program-related costs recoverable by an electric public utility to 1% of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year. Witness Walker testified that the increase in aggregate costs DEC seeks to recover in this proceeding is less than the statutory maximum.

Public Staff witness McLawhorn similarly concluded that the costs DEC seeks to recover are less than 1% of DEC's total North Carolina retail jurisdictional gross revenues for 2021.

For the reasons stated herein, the Commission concludes that the costs DEC seeks to recover in this proceeding are not in excess of the cost cap established by N.C.G.S. § 62-110.8(g).

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT
NO. 18**

The evidence supporting this finding of fact is contained in the direct, supplemental, and rebuttal testimony and exhibits of DEC witness Tabor, including the CPRE Compliance Report, and the testimony and exhibits of Public Staff witness McLawhorn.

The direct testimony of DEC witness Tabor and the 2021 CPRE Compliance Report, which accompanied her direct testimony as Tabor Exhibit 1, detail DEC's actions to implement the CPRE Program requirements of N.C.G.S. § 62-110.8 in collaboration with the IA. In her direct testimony, DEC witness Tabor testified that the Company had procured an additional 155 MW of new CPRE Program capacity through the Tranche 3 solicitation. Witness Tabor also testified that the Company is currently seeking to procure 441 MW of unawarded CPRE Program MW through the 2022 Solar Procurement, to fulfill the remaining capacity requirements of N.C.G.S. § 62-110.8. She further noted that the Commission has determined that regardless of whether DEC and DEP procure the 441 MW shortfall in the 2022 Solar Procurement, the CPRE Program will be closed out. Tr., at 115.

In his testimony, Public Staff witness McLawhorn testified to the status of the facilities seeking to interconnect in the CPRE Program, stating that the program has experienced significant project delays, withdrawals, and terminations in recent years. Witness McLawhorn provided the following table as a status update for the program:

Overview of DEC CPRE Project Status.

DEC	Selected	Terminated	Active	Terminated %	In Service	In Service %
Tranche 1:	435	40	395	9%	270	62%
Tranche 2:	589	310	279	53%	50	8%
Tranche 3:	155	0	155	0%	0	0%
Total	1,179	350	829	30%	320	27%

Public Staff witness McLawhorn did, however, testify that the 2022 CPRE Compliance Report provides adequate information that satisfies the requirements of Commission Rule R8-71(h). Tr., at 22-23.

In light of the testimony received, the Commission concludes that the 2022 CPRE Compliance Report provides adequate information that satisfies the requirements of Commission Rule R8 71(h), and for the reporting period, DEC implemented the CPRE Program in compliance with the requirements of N.C.G.S. § 62-110.8.

IT IS, THEREFORE, ORDERED, as follows:

1. That DEC's request to establish a prospective rate component as described herein is approved and that this rider shall remain in effect for a 12-month period beginning on September 1, 2023, and expiring on August 31, 2024;
2. That DEC's request to establish an EMF rate component as described herein, subject to the inclusion of 50% of the liquidated damages for Wilkes Solar, is approved and that this rider shall remain in effect for a 12-month period beginning on September 1, 2023, and expiring on August 31, 2024;

3. That DEC shall file the appropriate rate schedules and riders with the Commission not later than ten days after the date of this Order so as to implement the provisions of this Order as soon as practicable, and that such rate schedules and riders shall reflect the updated regulatory fee;

4. That DEC shall work with the Public Staff to prepare a notice to customers of the rate changes ordered by the Commission in this docket, and DEC shall file such notice for Commission approval as soon as practicable, but not later than ten days after the Commission issues orders in all three dockets;

5. That DEC's 2022 CPRE Compliance Report is hereby approved;
and,

6. DEC shall continue to furnish to the Public Staff copies of all IA invoices upon receipt.

ISSUED BY ORDER OF THE COMMISSION.

This the ___ day of _____, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk