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October 21, 2021

**VIA ELECTRONIC FILING**

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


**RE: Proposed Order of Duke Energy Progress, LLC  
Docket No. E-2, Sub 1276**

Dear Ms. Dunston:

Enclosed for filing with the Commission is the Proposed Order of Duke Energy Progress, LLC (the "Company") in the referenced matter. Certain information contained in the Proposed Order is commercially sensitive. For that reason, it is being filed under seal pursuant to N.C. Gen. Stat. §132-1.2. Parties to the docket may contact the Company to obtain a copy pursuant to an appropriate confidentiality agreement. An electronic copy is being emailed to [briefs@ncuc.net](mailto:briefs@ncuc.net).

If you have any questions, please do not hesitate to contact me.

Sincerely,



Robert W. Kaylor, P.A.

Enclosure

cc: Parties of Record

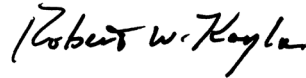
OFFICIAL COPY

Oct 21 2021

**CERTIFICATE OF SERVICE**

I certify that a copy of the Proposed Order of Duke Energy Progress, LLC, in Docket No. E-2, Sub 1276, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid to the parties of record.

This the 21<sup>st</sup> day of October, 2021.



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STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. E-2, SUB 1276

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

Application of Duke Energy Progress, LLC for Approval of Renewable Energy and Energy Efficiency Portfolio Standard (REPS) Compliance Report and Cost Recovery Rider Pursuant to North Carolina General Statute § 62-133.8 and Commission Rule R8-67	)	<b>PROPOSED ORDER OF DUKE ENERGY PROGRESS, LLC</b>
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BY THE COMMISSION: On June 15, 2021, Duke Energy Progress, LLC (DEP or the Company) filed its 2020 REPS Compliance Report and application seeking an adjustment to its North Carolina retail rates and charges pursuant to N.C. Gen. Stat. (N.C.G.S.) § 62-133.8(h) and Commission Rule R8-67, which require the Commission to conduct an annual proceeding for the purpose of determining whether a rider should be established to permit the recovery of the incremental costs incurred to comply with the requirements of the Renewable Energy and Energy Efficiency Portfolio Standard (REPS), N.C.G.S. §§ 62-133.8(b), (d), (e), and (f), and to true up any under-recovery or over-recovery of compliance costs. DEP’s application was accompanied by the testimony and exhibits of Megan W. Jennings, Renewable Compliance Manager, and Veronica I. Williams, Rates and Regulatory Strategy Manager. In its application and pre-filed testimony, DEP sought approval of its

proposed REPS Rider, which incorporated the Company's proposed adjustments to its North Carolina retail rates.

On July 7, 2021, the Commission issued an *Order Scheduling Hearing, Requiring Filing of Testimony, Establishing Discovery Guidelines, and Requiring Public Notice*, in which the Commission set this matter for hearing; established deadlines for the submission of intervention petitions, intervenor testimony, and DEP rebuttal testimony; required the provision of appropriate public notice; and mandated compliance with certain discovery guidelines.

The North Carolina Sustainable Energy Association, the Carolina Industrial Group for Fair Utility Rates II, and the Carolina Utility Customers Association, Inc. filed separate petitions to intervene in this docket, and the interventions were allowed by the Commission. The intervention and participation by the Public Staff are recognized pursuant to N.C.G.S. § 62-15(d) and Commission Rule R1-19(e).

On August 31, 2021, the Commission issued an *Order Changing Expert Witness Hearings to be Remotely Held and Setting Procedures*. All parties subsequently filed their consents to a remote hearing.

On August 31, 2021, the Public Staff filed the affidavit of Jay B. Lucas, Manager, Electric Section – Operations and Planning in the Energy Division and the joint testimony of Charles A. Akpom, Staff Accountant in the Accounting Division, and Michelle M. Boswell, Accounting Manager, Electric Section in the Accounting Division.

On September 9, 2021, DEP filed the rebuttal testimony of witness Jennings.

On September 14, 2021, DEP and the Public Staff filed a joint motion to

excuse all witnesses from the evidentiary hearing. On September 15, 2021, the Commission issued an Order granting the joint motion, cancelling the expert witness hearing, receiving into evidence all pre-filed testimony, affidavits, and exhibits from the DEP and Public Staff witnesses, and directing that proposed orders be filed by October 21, 2021.

On September 20, 2021, DEP filed the required affidavits of publication for the public notice in accordance with the Commission's July 7, 2021 Order.

The expert witness hearing having been cancelled by Order of the Commission, the public portion of the hearing was called to Order as scheduled on September 21, 2021. Hearing Examiner Erin Duffy asked if any public witnesses were present who desired to be heard. Having determined that no witnesses were in the room that desired to be heard, Hearing Examiner Duffy adjourned the hearing.

On October 21, 2021, DEP and the Public Staff filed proposed orders.

Based upon the foregoing, including the testimony, exhibits, and affidavit of the parties' witnesses, the records in the North Carolina Renewable Energy Tracking System (NC-RETS), and the entire record in this proceeding, the Commission makes the following:

#### **FINDINGS OF FACT**

1. DEP 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 jurisdiction of the North Carolina Utilities Commission as a public utility. DEP is lawfully before this Commission based upon its application filed pursuant to N.C.G.S. § 62-133.8 and Commission Rule R8-67.

2. For calendar year 2020, the Company must generally supply an amount of at least 10% of its previous year's North Carolina retail electric sales by a combination of renewable energy and energy reductions due to the implementation of energy efficiency measures. Also in 2020, energy in the amount of at least 0.20% of the previous year's total electric power sold by DEP to its North Carolina retail customers must be supplied by solar energy resources.

3. Beginning in 2012, N.C.G.S. §§ 62-133.8(e) and (f) require DEP and other North Carolina electric power suppliers, in the aggregate, to procure a certain portion of their renewable energy requirements from electricity generated from swine and poultry waste, with the poultry waste requirement being based on each electric power supplier's respective pro-rata share derived from the ratio of its North Carolina retail sales as compared to total statewide North Carolina retail sales. In its December 16, 2019 *Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief*, and its February 13, 2020 *Errata Order* (2019 Delay Orders), issued in Docket No. E-100, Sub 113, the Commission delayed the scheduled increase in the swine waste set-aside requirement and set the obligation for calendar year 2020 at 0.07% of prior year North Carolina retail sales for DEP, Duke Energy Carolinas, LLC (DEC) and Dominion Energy North Carolina. In addition, the 2019 Delay Orders modified the 2020 statewide poultry waste set-aside requirement to 700,000 MWh.

4. DEP complied with the 2020 solar set-aside requirement by submitting for retirement 75,877 renewable energy certificates (RECs) procured or generated from solar electric facilities and metered solar thermal energy facilities.

DEP also complied with the 2020 poultry waste set-aside requirement by submitting for retirement 195,649 poultry waste RECs. The Company complied with the 2020 swine waste set-aside requirement by submitting for retirement 26,557 swine waste RECs. Finally, DEP submitted for retirement 3,495,740 general requirement RECs, representing the Company's total 2020 compliance requirement of 3,793,823 RECs minus the set-aside requirements detailed above.

5. DEP met its total 2020 REPS obligations, except for those from which it has been relieved under the Commission's Orders issued in Docket No. E-100, Sub 113.

6. The Company is positioned to comply with its poultry waste set-aside requirement for compliance year 2021. Compliance beyond 2021 is dependent on the performance of current poultry waste-to-energy contracts, including one that was previously generating poultry RECs for DEP, but is currently offline for repairs and modifications and is not expected to generate RECs again until 2023.

7. The Company is positioned to comply with its swine waste set-aside requirement for compliance year 2021. DEP's ability to comply beyond 2021 is uncertain, as the swine waste obligation increases and current contracts have not been able to deliver expected production, and new contracts have not come online nor delivered expected production in the timeframes originally planned.

8. DEP's REC inventory available for future use properly includes RECs generated from net metering customers receiving electric service under schedules other than time-of-use schedules with demand rates (NMNTD customers).

9. For purposes of DEP's annual rider pursuant to N.C.G.S. § 62-133.8(h), the test period for this proceeding is the 12-month period beginning April 1, 2020 and ending March 31, 2021 (Test Period). The billing period for this proceeding is the 12-month period beginning December 1, 2021 and ending November 30, 2022 (Billing Period).

10. DEP's Solar Rebate Program costs are recoverable under N.C.G.S. § 62-133.8(h)(1)(d), and will be approved for this proceeding. The research activities funded by DEP during the Test Period are recoverable under N.C.G.S. § 62-133.8(h)(1)(b) and are within the statute's \$1 million annual limit.

11. DEP's other incremental REPS compliance costs are recoverable under N.C.G.S. § 62-133.8(h)(1)(a), and will be approved for this proceeding.

12. N.C.G.S. § 62-133.8(h) authorizes electric power suppliers to recover the "incremental costs" of compliance with the REPS requirement through an annual REPS rider. The "incremental costs," as defined in N.C.G.S. § 62-133.8(h)(1), include the reasonable and prudent costs of compliance with REPS "that are in excess of the electric supplier's avoided costs other than those costs recovered pursuant to N.C.G.S. § 62-133.9." The term "avoided costs" includes both avoided energy costs and avoided capacity costs.

13. Under Commission Rule R8-67(e)(2), the total costs reasonably and prudently incurred during the Test Period to purchase unbundled RECs constitute incremental costs. The projected costs to purchase such RECs during the Billing Period constitute forecasted incremental costs.



14. DEP appropriately calculated its avoided costs and incremental REPS compliance costs for the Test Period and Billing Period. For purposes of establishing the REPS experience modification factor (EMF) rider in this proceeding, the Company's incremental REPS compliance costs for the Test Period were \$46,460,124, and these costs were reasonably and prudently incurred. The Company's total incremental REPS costs estimated to be incurred for the Billing Period are \$36,775,221, and are reasonable and appropriate.

15. DEP's method of allocating incremental REPS costs to each customer class for purposes of calculating REPS EMF riders and REPS riders for the Test Period and the Billing Period are reasonable and appropriate.

16. DEP's Test Period REPS expense under-collections by customer class were \$3,282,789 for residential, \$1,061,397 for general service, and \$11,723 for industrial. In addition, the Company credited to customers amounts received from REC suppliers during the Test Period related to contract amendments, penalties, and other conditions of the supply agreements. Contract-related receipts credited to each customer class are \$(34,965) for residential, \$(31,113) for general service, and \$(1,822) for industrial. Including credits for contract-related receipts, the net Test Period costs by customer class are \$3,247,824 for residential, \$1,030,284 for general service, and \$9,901 for industrial. All amounts exclude the North Carolina regulatory fee (regulatory fee).

17. The Company proposes monthly REPS EMF riders, excluding the regulatory fee, to be charged to customer accounts during the upcoming Billing

Period of \$0.21 for residential accounts, \$0.42 for general service accounts, and \$0.47 for industrial accounts.

18. DEP's North Carolina prospective Billing Period costs for use in this proceeding are \$18,530,054, \$17,206,214, and \$1,038,953, for the residential, general service, and industrial classes, respectively, excluding the regulatory fee.

19. The appropriate prospective monthly REPS riders per customer account, excluding the regulatory fee, to be collected during the Billing Period are \$1.20 for residential accounts, \$6.97 for general service accounts, and \$48.91 for industrial accounts.

20. The combined REPS and REPS EMF rider charges per customer account proposed by DEP, excluding the regulatory fee, to be collected each month during the Billing Period are \$1.41 for residential accounts, \$7.39 for general service accounts, and \$49.38 for industrial accounts. Including the regulatory fee, the combined monthly REPS and REPS EMF rider charges per customer account to be collected during the Billing Period are \$1.41 for residential accounts, \$7.40 for general service accounts, and \$49.44 for industrial accounts.

21. DEP's REPS incremental cost rider, including the regulatory fee, to be charged to each customer account for the twelve-month Billing Period is within the annual cost cap established for each class in N.C.G.S. § 62-133.8(h)(4).

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-3**

The evidence supporting these findings of fact appears in DEP's 2020 REPS Compliance Report, in the direct testimony and exhibits of DEP witness Jennings, and in the affidavit of Public Staff witness Lucas. These findings of fact are

essentially informational, jurisdictional, and procedural in nature and are not contested.

N.C.G.S. § 62-133.8(b)(1) establishes a REPS requirement for all electric power suppliers in the State. The statute requires each electric public utility to provide a certain percentage of its North Carolina retail sales from various renewable energy or energy efficiency resources, including the following: (a) generating electric power at a new renewable energy facility; (b) using a renewable energy resource to generate electric power at a generating facility other than the generation of electric power from waste heat derived from the combustion of fossil fuel; (c) reducing energy consumption through the implementation of energy efficiency measures; (d) purchasing electric power from a new renewable energy facility; (e) purchasing RECs from a new renewable energy facility; (f) using electric power that is supplied by a new renewable energy facility or saved due to the implementation of an energy efficiency measure that exceeds the requirements of the REPS in any calendar year as a credit toward the requirements of the REPS in the following calendar year; or (g) electricity demand reduction. Each of these measures is subject to additional limitations and conditions. For 2020, DEP was required to meet a total REPS requirement of 10% of its previous year's North Carolina retail electric sales by a combination of these measures.

N.C.G.S. § 62-133.8(d) requires a certain percentage of the total electric power sold to retail electric customers in the State, or an equivalent amount of energy, to be supplied by a combination of new solar electric facilities and new metered solar

thermal energy facilities. The percentage requirement for solar resources in 2020 is 0.20%.

N.C.G.S. §§ 62-133.8(e) and (f) require DEP and the other North Carolina electric suppliers, in the aggregate, to procure a certain portion of their renewable energy requirements from electricity generated from swine and poultry waste. The swine waste energy requirement is based on a percentage of retail sales, similar to the solar energy requirement. The poultry waste energy requirement is based on each electric power supplier's respective pro-rata share derived from the ratio of its North Carolina retail sales as compared to the total North Carolina retail sales. Pursuant to the Commission's *Order on Pro-Rata Allocation of Aggregate Swine and Poultry Waste Set-Aside Requirements and Motion for Clarification*, issued on March 31, 2010 in Docket No. E-100, Sub 113, DEP's share of the aggregate state set-aside requirements for energy from swine and poultry waste is based on the ratio of its North Carolina retail kilowatt-hour sales for the previous year divided by the previous year's total North Carolina retail kilowatt-hour sales. In its 2019 Delay Orders, the Commission established a modified 2020 swine waste set-aside requirement of 0.07% of North Carolina retail sales, and changed the statewide poultry waste set-aside requirement to 700,000 MWh. (Jennings Direct at 6, Lucas Affidavit at 2)

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4-7**

The evidence supporting these findings of fact appears in DEP's 2020 REPS Compliance Report, which was admitted into evidence as Jennings Exhibit No. 1, in the direct testimony and exhibits of DEP witness Jennings, and in the affidavit of Public Staff witness Lucas. In addition, the Commission takes judicial notice of the

information contained in the North Carolina Renewable Energy Tracking System (NC-RETS). DEP's 2020 REPS Compliance Report provided the information required by Commission Rule R8-67(c).

Witness Jennings testified that the Company submitted for retirement 3,793,823 RECs to meet its 2020 total compliance requirement. Within this total, the Company submitted for retirement: 75,877 RECs to meet the solar set-aside requirement; 195,649 RECs to meet the poultry waste set-aside requirement; and 26,557 RECs to meet the swine waste set-aside requirement. (Jennings Direct at 7)

Witness Jennings' testimony states that the Billing Period for this Application covers two separate compliance reporting periods with different requirements for each period. In 2021, the Company estimates that it will be required to submit for retirement 4,521,086 RECs to meet its total compliance requirement. Within this total, the Company expects to be required to retire the following: 72,338 solar RECs, 25,319 swine waste RECs, and 251,548 poultry waste RECs, to meet the requirements set out in N.C.G.S. §§ 62-133.8(d), (e), and (f), respectively. In 2022, the Company estimates that it will be required to submit for retirement 4,663,823 RECs to meet its total compliance requirement. Within this total, the Company expects to be required to retire the following: 74,622 solar RECs, 52,235 swine waste RECs, and 251,548 poultry waste RECs, to meet the requirements set out in N.C.G.S. §§ 62-133.8(d), (e), and (f), respectively. (Jennings Direct at 8)

Witness Jennings testified that DEP met its 2020 solar set-aside requirement by procuring and producing 75,877 solar RECs and that, pursuant to the NC-RETS Operating Procedures, the Company submitted these RECs for retirement by

transferring these RECs from the NC-RETS Progress Energy Electric Power Supplier Account to the Progress Energy Compliance Sub-Account. (Jennings Direct at 15)

Witness Jennings testified that DEP met its 2020 poultry set-aside requirement by procuring 195,649 poultry RECs and that, pursuant to the NC-RETS Operating Procedures, the Company submitted these RECs for retirement by transferring these RECs from the NC-RETS Progress Energy Electric Power Supplier Account to the Progress Energy Compliance Sub-Account. (Jennings Direct at 16)

Witness Jennings testified that DEP met its 2020 swine waste set-aside requirement of 26,557 swine waste RECs. Pursuant to NC-RETS Operating Procedures, the Company submitted these RECs for retirement by transferring them from the NC-RETS Progress Energy Electric Power Supplier Account to the Progress Energy Compliance Sub-Account. (Jennings Direct at 18)

Witness Jennings further testified that the Company complied with its general requirement for 2020 by submitting 3,495,740 RECs for retirement by transferring them from the NC-RETS Progress Energy Electric Power Supplier Account to the Progress Energy Compliance Sub-Account. (Jennings Direct at 8)

Witness Jennings testified that DEP is in position to comply with its 2021 poultry waste set-aside requirement, and that future-year compliance is dependent on the performance of energy developers on current contracts, including one that was previously generating poultry RECs for DEP, but is currently offline for repairs and modifications and is not expected to generate RECs again until 2023. She testified that the Company is taking various steps to secure poultry waste-to-energy resources to meet its future requirements, including: continuing direct negotiations for

additional supplies and executing contracts; working with developers to overcome technological, permitting, and operating risks, and amending existing contracts to reflect more realistic outcomes; exploring expansion of the use of poultry waste resources to produce thermal, multi-fuel, or directed biogas RECs; and searching the broker market for out-of-state RECs. (Jennings Direct at 17-18)

Witness Jennings testified that DEP is in position to comply with its 2021 swine waste set-aside requirement, but compliance with the obligation for 2022 and beyond may be difficult as the swine waste set-aside requirement increases. Witness Jennings testified that existing contracts have not been able to reach contracted levels of production, and projects associated with new contracts have not come online in the timeframes originally planned and have taken longer than expected to ramp up production. She stated that the degree to which DEP will be able to meet its established near-term future compliance requirements is dependent on a new swine waste-to-energy facility coming online as scheduled, and on all facilities producing REC quantities at fully-contracted levels. Witness Jennings further cited circumstances currently creating challenges for suppliers in meeting contracted swine waste REC production levels, including: local opposition to facility siting; the inability to secure firm and reliable sources of swine waste feedstock from waste producers in North Carolina; difficulties securing project financing and technological challenges encountered when ramping up production; the various negative effects of the COVID-19 pandemic further interrupting the availability of swine waste resources and delaying the development of new facilities; potential delays communicated by developers involved in regulatory processes related to their

development plans, and the effect of a market and associated pricing structure for swine-derived biogas outside of North Carolina on the cost to DEP of such resources for REPS compliance. The Company has continued to engage in a variety of actions to procure or develop swine waste-to-energy resources to meet its future requirements, including, among other efforts: negotiations for in-state and out-of-state supplies, including working with Piedmont Natural Gas Company, Inc. to locate favorable biogas injection sites for North Carolina facilities; working extensively with potential suppliers to overcome production risks and/or amend contracts to accommodate changing circumstances; and pursuing new biomass and biogas swine resource options. (Jennings Direct at 20-21)

Public Staff witness Lucas recommended that the Commission approve DEP's 2020 REPS Compliance Report. (Lucas Affidavit at 3) Specifically, witness Lucas stated in his affidavit that for 2020 compliance, DEP needed to pursue retirement of a sufficient number of eligible RECs and energy efficiency certificates (EECs) so that the total equaled 10% of its 2019 North Carolina retail electricity sales. Witness Lucas stated that DEP needed to pursue retirement of sufficient solar RECs to match 0.20% of its retail sales in 2019, sufficient swine waste RECs to match 0.07% of its retail sales in 2019, and sufficient poultry waste RECs to match its pro-rata share of the state-wide 700,000 poultry waste RECs required by the poultry set-aside compliance requirement. In addition, he stated that the swine waste and poultry waste REC requirements were determined by the Commission in its 2019 Delay Orders. (Lucas Affidavit at 2)



No party disputed that DEP has fully complied with the applicable REPS requirements, or argued that DEP's 2020 REPS Compliance Report should not be approved.

Based on the evidence presented and the entire record herein, the Commission finds and concludes that DEP has fully complied with the REPS requirements for 2020, as modified by the Commission's 2019 Delay Orders, and that DEP's 2020 REPS Compliance Report should be approved. The Commission further concludes that the RECs and EECs in the related NC-RETS compliance sub-accounts should be permanently retired.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8**

The evidence supporting this finding of fact is found in the testimony of DEP witness Jennings.

Witness Jennings explained that under the current Net Metering for Renewable Energy Facilities Rider offered by DEP (Rider NM-4B), a customer receiving electric service under a schedule other than a time-of-use schedule with demand rates shall provide any RECs to DEP at no cost. She further stated the Company performed site visits and complied with the other measurement, verification, and reporting requirements set out by the Commission in its June 5, 2018 *Order Approving Rider and Granting Waiver Request* in Docket Nos. E-2, Sub 1106 and E-7, Sub 1113, and the RECs associated with these net metering facilities are currently in DEP's REC inventory and available for use in meeting future compliance requirements. (Jennings Direct at 9-13) No party to this proceeding contested this testimony.

Witness Jennings further testified that DEC and DEP (the Companies) filed a letter on May 4, 2021 in Docket Nos. E-7, Subs 1113 and 1246 and Docket No. E-2, Sub 1106, advising the Commission that the Companies discovered an error in the amount of RECs from net metering facilities that each respective Company had reported to NC-RETS. As detailed in the letter, the Companies recently learned that some time-of-use demand (TOUD) customers, from which the Companies do not own the rights to the RECs, had been inadvertently included in the monthly reports provided to NC-RETS, as well as in the calculation of RECs reported to NC-RETS annually. The letter detailed the cause of the error and the changes that have been made to ensure the correct customers and estimated generation are reported going forward. The letter also detailed the steps necessary to correct the historical production of net metering RECs reported by the Companies to NC-RETS. These steps were approved by the Commission in its May 11, 2021 *Order Granting Waiver Request and Approving Prior Period Adjustment*. The Companies worked with the NC-RETS Administrator to ensure the corrections were made to the NMNTD RECs historically reported to NC-RETS. The corrected number of RECs generated from the NMNTD facilities are currently in DEP's REC inventory and available for use for future compliance requirements. (Jennings Direct at 11-12) No party to this proceeding contested this testimony.

Based on the foregoing and the entire record herein, the Commission finds and concludes that the RECs generated by the net metering facilities as described above are properly included in DEP's inventory of RECs available for future REPS compliance use.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence supporting this finding is procedural in nature, found in the testimony and exhibits of DEP witness Williams, the affidavit of Public Staff witness Lucas, and the joint testimony of Public Staff witnesses Akpom and Boswell, and is not contested.

Commission Rule R8-67(e)(3) provides that the test period for REPS rider proceedings shall be the same as that used by the utility in its fuel charge adjustment proceedings, which is specified in Commission Rule R8-55(c) for DEP to be the twelve-month period ending March 31 of each year. Company witness Williams testified that the Test Period or EMF period used for this proceeding was the twelve months beginning on April 1, 2020 and ending on March 31, 2021. (Williams Direct at 3) Commission Rule R8-67(e)(5) provides that “the REPS EMF rider will reflect the difference between reasonable and prudently incurred incremental costs and the revenues that were actually realized during the test period under the REPS rider then in effect.” Witness Williams further stated that the rider includes the REPS EMF component to recover the difference between the compliance costs incurred and revenues realized during the Test Period. (Williams Direct at 4-5) Witness Williams also testified that the Billing Period for the REPS rider requested in the Company’s application is the twelve months beginning on December 1, 2021 and ending on November 30, 2022. (Williams Direct at 3) Witness Williams stated that, in addition to an EMF component, the current proposed rider includes a component to recover the costs expected to be incurred for the Billing Period. (Williams Direct at 5) The

Test Period and the Billing Period proposed by DEP were not challenged by any party.

Based on the foregoing and the entire record herein, the Commission concludes that, consistent with Commission Rule R8-67(e)(3), the Test Period for this proceeding is the twelve months beginning on April 1, 2020 and ending on March 31, 2021.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO 10**

The evidence for this finding of fact can be found in the testimony and exhibits of DEP witness Jennings, the affidavit of Public Staff witness Lucas, and the joint testimony of Public Staff witnesses Akpom and Boswell.

Witness Jennings sponsored Jennings Exhibit Nos. 2 and 3 to her testimony, wherein she identified the renewable energy and REC costs, as well as “Other Incremental,” “Solar Rebate Program,” and “Research” costs that the Company has incurred or projects to incur in association with REPS compliance. With respect to research costs, Jennings Exhibit No. 2 shows that the research costs are under the \$1 million per year cap established in N.C.G.S. § 62-133.8(h)(1)(b). Consistent with the Commission’s orders in prior REPS proceedings, witness Jennings provided testimony and exhibits on the results and status of various studies, the costs of which DEP is including for recovery as research in its incremental REPS cost for the Test Period. (Jennings Direct at 29-38) Research costs included for recovery in the REPS EMF and REPS riders in this proceeding were not contested by any party.

Witness Jennings also testified that, pursuant to N.C.G.S. § 62-155(f), DEP developed a Solar Rebate Program, and she discussed the processes in place to pay

rebates, the resulting effect on the payments made each year, and an ongoing open proceeding before the Commission to consider modifications to the Solar Rebate Program. (Jennings Direct at 23-27) She further testified that the incremental costs incurred to “provide incentives to customers, including program costs, incurred pursuant to N.C.G.S. § 62-155(f)” are allowed to be recovered under N.C.G.S. § 62-133.8(h). Therefore, DEP has included for recovery in this filing costs incurred during the EMF period, and projected to be incurred in the Billing Period, related to the implementation of the Solar Rebate Program. These costs include the annual amortization of incentives paid to customers and program administration costs, which include labor, information technology, and marketing costs. (Jennings Direct at 27-28) Solar Rebate Program costs included for recovery in the REPS EMF and REPS riders in this proceeding were not contested by any party.

The Commission concludes based on the foregoing and the entire record herein that the costs identified as Solar Rebate Program are properly recoverable in the REPS EMF and REPS riders calculated in this proceeding. The Commission also concludes the research activities funded by DEP during the Test Period are renewable research costs recoverable under N.C.G.S. § 62-133.8(h)(1)(b), and that such research costs included in the Test Period are within the \$1 million annual limit provided in that statute. The Commission further concludes that the Company has complied with the prior Commission orders requiring filing results of such research studies. In addition, the Commission finds that the research information DEP provided is helpful. Therefore, the Commission finds that DEP should continue to file this information with future REPS compliance reports and to provide procedures

for third parties to access the results of studies that are subject to confidentiality agreements. For research projects sponsored by the Electric Power Research Institute, DEP should provide the overall program number and specific project number for each project, as well as an internet address or mailing address that will enable third parties to inquire about the terms and conditions for access to any portions of the study results that are proprietary.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11**

The evidence for this finding of fact can be found in the testimony and exhibits of DEP witness Jennings, the affidavit of Public Staff witness Lucas, and the joint testimony of Public Staff witnesses Akpom and Boswell.

Witness Jennings identifies total “Other Incremental” costs of REPS compliance in Jennings Exhibit Nos. 2 and 3, and states in her testimony these amounts comprise labor costs associated with REPS compliance activities and non-labor costs associated with administration of REPS compliance. Among the non-labor costs associated with REPS compliance are the Company’s subscription to NC-RETS, and accounting and tracking tools related to RECs, with such costs reduced by agreed-upon liquidated damages paid by sellers for failure to meet contractual milestones, and amounts paid by sellers for administrative contractual amendments requested by them. (Jennings Direct at 23)

In their joint testimony, witnesses Akpom and Boswell described the Public Staff’s investigation of DEP’s REPS EMF riders, including procedures intended to evaluate whether the Company properly determined its incremental compliance costs for the Test Period by reviewing the Company’s filing, other Company data provided,

details on specific types of expenditures affecting costs, and DEP's responses to numerous written Public Staff data requests. (Akpom and Boswell Joint Testimony at 3-4) Jennings Exhibit No. 2, page 10 of 11, and Williams Exhibit No. 1, page 1 of 2, show Test Period "Other Incremental" costs of \$1,406,287.

Witnesses Akpom and Boswell also testified that, as a result of their investigation, they were recommending the REPS EMF riders be adjusted to reflect the removal of [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL] (Akpom and Boswell Joint Testimony at 4) Witnesses Akpom

and Boswell testified regarding their recommended adjustment, stating [BEGIN

CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL] (Akpom and Boswell Joint Testimony at 4-5)

Witnesses Akpom and Boswell testified Commission Rule R8-67(e)(2) states that electric public utilities may charge a rider to recover “the reasonable incremental costs prudently incurred to comply with N.C.G.S. § 62-133.8(b), (d), (e), and (f)”, and [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL], and DEP should instead record the costs in base rate cost of service in the year incurred, and seek recovery in a base rate proceeding. (Akpom and Boswell Joint Testimony at 5-6) In his affidavit, witness Lucas stated that the Public Staff had reviewed the costs that produce the REPS and REPS EMF riders and, apart from the EMF Period cost item for which they recommended removal as discussed above, the Public Staff takes no issue with them. (Lucas Affidavit at 4)

In her rebuttal testimony, witness Jennings testified that Optima MH’s Motion for Declaratory Relief filed on December 7, 2020, requested a “ruling declaring that the only attributes of a “directed biogas” resource used to generate electric power that are necessary to produce Renewable Energy Certificates (“RECs”) eligible for compliance with North Carolina’s Renewable Energy and Energy Efficiency Portfolio Standard (“REPS”) are the attributes required for the directed biogas to meet the definition of a “renewable energy resource” as set forth in N.C.G.S. § 62-133.8(a)(8).” Witness Jennings stated DEP and DEC filed initial comments,





referred to “California’s low carbon market,” and the Affidavit referred to California’s “vibrant market for carbon emission reduction credits.” Witness Jennings testified the above statements introduced issues that required the Companies to understand relevant California law in connection with their compliance with NC REPS. She further explained that Optima MH, through its Motion, required that DEP and DEC understand the effect on NC REPS compliance of characteristics and requirements of programs other than NC REPS, such as the California Renewable Portfolio Standard (RPS), the California Low Carbon Fuel Standard (LCFS), North Carolina truth-in-advertising law, North Carolina anti-fraud law, federal truth-in-advertising law, and federal anti-fraud law. (Jennings Rebuttal at 4-5)

Witness Jennings testified that in this current REPS proceeding, the Public Staff asked DEP to respond to a question about the application of the California RPS market rules and other California-related products and associated rules, as those products and markets affected the Optima MH Motion’s claims that environmental attributes associated with the swine waste methane could be sold in California (i.e., California compliant) simultaneous with sales in North Carolina for purposes of compliance with NC REPS. She testified “Legal Expert A” provided legal advice to DEP and DEC concerning California compliance programs that Optima MH and the Public Staff raised as issues in filings and data requests related to the Optima MH Motion. After receiving the initial correspondence from Optima MH noted above, the Companies had concerns about achieving and maintaining compliance with NC REPS if Optima MH were to sell the environmental attributes associated with the swine waste methane into the California RPS and environmental products markets.

Witness Jennings stated DEP and DEC sought Legal Expert A's advice, which related to the application of NC REPS legislative provisions, the Companies' compliance with those NC REPS legislative provisions, and NC REPS prohibitions against double counting or double selling. (Jennings Rebuttal at 5-6)

Witness Jennings testified that N.C.G.S. §62.133.8(i)(3) requires that "the Commission shall ... *Ensure* that energy credited toward compliance with the provisions of this section *not be credited toward any other purpose, including* another renewable energy portfolio standard or voluntary renewable energy purchase program in this State or *any other state.*" The California legal issues on which the Companies received advice from Legal Expert A applied to the Companies' compliance under NC REPS due to the effect of California law on what attributes the Companies must possess for the purpose of complying with NC REPS. She stated that Optima MH proposed to sell directed biogas to DEP or DEC to create RECs that allegedly would comply with NC REPS, while at the same time selling all attributes for the California RPS and California LCFS. She cited California's LCFS regulation §95488.8(i)(2)(C).2 which requires any entity reporting any RNG to submit attestations including "I certify *under penalty of perjury under the laws of the State of California* that no other party has or will sell, transfer, or retire the environmental attributes corresponding to the biomethane for which (entity name) claims credit in the LCFS program." Witness Jennings further testified the regulation makes it clear that a sale into California's LCFS program cannot coexist with a sale for NC REPS, because the sale to DEP or DEC would (i) either be of "undifferentiated gas" from

which renewable energy cannot be created or (ii) would be double counting in both markets. (Jennings Rebuttal at 6-7)

Finally, witness Jennings testified that the Companies' concern about how a delivery into a California program by a developer that is also selling to DEP or DEC under NC REPS creates multiple claims on environmental attributes that would thereby render the Companies' claim over those same environmental attributes double counting under NC REPS. She concluded that the legal advice provided by Legal Expert A, that was required in order for DEP and DEC to fully understand the effects of the California RPS and LCFS regulations, is directly related to the Companies' compliance with NC REPS. (Jennings Rebuttal at 7-8)

Based on the foregoing and the entire record herein, the Commission concludes that the Company provided sufficient evidence that the costs of legal advice the Public Staff recommended be removed from recovery from the REPS EMF rider, as described above, were reasonable and prudently incurred directly in support of compliance with NC REPS, and the costs are properly recoverable in the REPS EMF rider. Notably, the Company demonstrated the costs incurred were related singularly to assessing the risk associated with entering a contract to be executed solely for the purpose of meeting the Company's compliance with its ongoing NC REPS requirements. As such, the Commission does not accept the Public Staff's conclusion that the costs do not fit the definition of costs prudently incurred to comply with NC REPS, and rejects the Public Staff's recommended adjustment to the Company's EMF Period costs and revisions to the EMF riders proposed by the Company. The Commission also concludes the remainder of Other Incremental costs

are properly recoverable in the REPS EMF and REPS riders calculated by DEP in this proceeding, and the REPS EMF and REPS riders as proposed by the Company are approved.

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12-14**

The evidence for these findings of fact is found in DEP's Application and in the testimony and exhibits of DEP witnesses Jennings and Williams, the joint testimony of Public Staff witnesses Akpom and Boswell, and the affidavit of Public Staff witness Lucas.

N.C.G.S. § 62-133.8(h)(4) requires the Commission to allow an electric power supplier to recover all of its incremental costs incurred to comply with N.C.G.S. §§ 62-133.8(b)-(f) through an annual rider. N.C.G.S. § 62-133.8(h)(1) provides that "incremental costs" means all reasonable and prudent costs incurred by an electric power supplier to comply with the REPS requirements set forth in N.C.G.S. §§ 62-133.8(b) – (f) that are in excess of the electric power supplier's avoided costs other than those costs recovered pursuant to N.C.G.S. § 62-133.9. The term "avoided costs" includes both avoided energy and avoided capacity costs. Commission Rule R8-67(e)(2) provides that the "cost of an unbundled renewable energy certificate to the extent that it is reasonable and prudently incurred is an incremental cost and has no avoided cost component."

DEP witness Williams testified regarding the calculation of DEP's various incremental costs of compliance with REPS requirements, which were based on detailed incurred and projected costs provided by DEP witness Jennings. Witness Williams also described in detail the methods used by the Company to determine the

appropriate avoided cost to apply to REPS compliance purchased power agreements and the Company's biogas purchases used to produce renewable energy at its generating stations. (Williams Direct at 5-6) Williams Exhibit No. 1, page 1, identified total incremental costs incurred during the Test Period as \$46,460,124, and Williams Exhibit No. 1, page 2, showed estimated incremental costs for the Billing Period as \$39,775,221.

In their joint testimony, witnesses Akpom and Boswell described the Public Staff's investigation and review of the Company's filing, including its evaluation of DEP's per books incremental costs for the Test Period. (Akpom and Boswell Joint Testimony at 3-4) Based on their review of the costs submitted for recovery, witnesses Akpom and Boswell recommended no changes in DEP's proposed monthly and annual REPS EMF increment riders except for the effect of the adjustment to costs identified as Other Incremental, and described in detail in the evidence for Finding of Fact No. 11 above. (Akpom and Boswell Joint Testimony at 4-6) In his affidavit, witness Lucas stated the Public Staff had reviewed the costs that produced the Billing Period REPS and EMF riders requested by DEP and, apart from the one adjustment discussed in the joint testimony of witnesses Akpom and Boswell, took no issue with them. (Lucas Affidavit at 4)

In its conclusion related to Finding of Fact No. 11 above, the Commission did not accept the Public Staff's recommended adjustment to Test period incremental costs. Based on the foregoing and the entire record herein, the Commission concludes that DEP's total incremental costs incurred during the Test Period are \$46,460,124,

as filed by the Company, and that DEP's estimated incremental costs for the Billing Period are \$36,775,221.

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15-21**

The evidence supporting these findings of fact appears in DEP's Application, in the testimony and exhibits of DEP witness Williams, the joint testimony of Public Staff witnesses Akpom and Boswell, and the affidavit of Public Staff witness Lucas.

In her testimony, witness Williams described the method used by the Company to allocate incremental REPS costs among customer classes, including an adjustment to the allocation requested and recommended by the Public Staff and approved by the Commission in DEC's 2021 REPS rider proceeding in Docket No. E-7, Sub 1246. Witness Williams testified the adjustment to the allocation method affects the calculation that gives credit to each customer class for energy efficiency savings contributions specifically provided by each class. She stated that DEP and DEC use the same customer class cost allocation method and proposed adopting the adjustment approved in the DEC REPS docket, and indicated that her exhibits in this instant proceeding reflect the modification. She also stated that if the modification causes one or more customer classes to exceed the statutory per-account cost cap, the Company would reallocate costs among classes to the extent necessary to compute per-account charges that do not exceed the caps. (Williams Direct at 7-8) Witness Lucas stated the Public Staff agrees with DEP's revision to the process for determining credit for energy efficiency savings and the associated energy efficiency savings allocation among customer class, in order to match DEC's process. (Lucas Affidavit at 3)

Williams Exhibit No. 2, page 2, shows an EMF Period under-collections by customer class of: of \$3,282,789 for residential, \$1,061,397 for general service, and \$11,723 for industrial. Williams Exhibit No. 4 shows additional credits for contract receipts by customer class of \$(34,965) for residential, \$(31,113) for general service, and \$(1,822) for industrial. The EMF period under-collections net of contract-related credits by customer class are: \$3,247,824 for residential, \$1,030,284 for general service, and \$9,901 for industrial. As reflected on Williams Exhibit No. 4, witness Williams calculated monthly per-account REPS EMF charges (excluding the regulatory fee) by customer class of: \$0.21 for residential, \$0.42 for general service, and \$0.47 for industrial. Also on Williams Exhibit No. 4, she calculated the projected REPS costs for the Billing Period of \$18,530,054 for the residential class, \$17,206,214 for the general service class, and \$1,038,953 for the industrial class. Williams Exhibit No. 4 shows that the proposed monthly prospective REPS riders per customer account, excluding the regulatory fee, to be collected during the Billing Period are \$1.20 for residential accounts, \$6.97 for general service accounts, and \$48.91 for industrial accounts. Witness Lucas recommended approval of the proposed monthly prospective REPS riders included on Williams Exhibit No. 4. (Lucas Affidavit at 4) The combined monthly REPS and REPS EMF rider charges per customer account, excluding the regulatory fee, to be collected during the Billing Period are \$1.41 for residential accounts, \$7.39 for general service accounts, and \$49.38 for industrial accounts. Including the regulatory fee, the combined monthly REPS and REPS EMF rider charges per customer account to be collected during the Billing Period are \$1.41 for residential accounts, \$7.40 for general service accounts,



and \$49.44 for industrial accounts. Witness Williams testified that the Company's REPS incremental cost rider to be charged to each customer account for the twelve-month Billing Period is within the annual cost cap established for each customer class in N.C.G.S. § 62-133.8(h)(4). (Williams Direct at 11)

Witness Lucas recommended approval of the proposed monthly prospective REPS riders included on Williams Exhibit No. 4. (Lucas Affidavit at 4) However, as discussed in the evidence and conclusion for Finding of Fact No. 11 above, the Public Staff disagreed with DEP's proposed monthly EMF rider amounts.

Based on the foregoing and the entire record herein, the Commission concludes that DEP's calculations of its REPS and REPS EMF riders are reasonable and appropriate. Accordingly, the Commission finds that the Company's test period REPS costs and associated monthly REPS EMF riders, as well as the projected Billing Period REPS costs and the corresponding monthly REPS riders, as set out on Williams Exhibit No. 4, are appropriate. Finally, the Commission finds that these amounts are below the respective annual per-account cost caps as established in N.C.G.S. § 62-133.8(h)(4).

IT IS, THEREFORE, ORDERED as follows:

1. That DEP shall establish the following monthly REPS riders per account (excluding the regulatory fee) that shall remain in effect for a 12-month period beginning on December 1, 2021, and expiring on November 30, 2022: \$1.20 for residential, \$6.97 for general service, and \$48.91 for industrial;
2. That DEP shall establish the following monthly EMF riders per account (excluding the regulatory fee) that shall remain in effect for a 12-month

period beginning on December 1, 2021 and expiring on November 30, 2022: \$0.21 for residential class, \$0.42 for general service, and \$0.47 for industrial;

3. That DEP shall file the appropriate rate schedules and riders with the Commission in order to implement the provisions of this Order as soon as practicable, but not later than ten (10) days after the date that the Commission issues orders in this docket as well as in Docket Nos. E-2, Sub 1272, E-2, Sub 1274 and E-2, Sub 1275;

4. That DEP shall work with the Public Staff to prepare a joint notice to customers of the rate changes ordered by the Commission in this docket, as well as in Docket Nos. E-2, Sub 1272, E-2, Sub 1274 and E-2, Sub 1275, and the Company shall file such notice for Commission approval as soon as practicable, but not later than ten (10) days after the Commission issues orders in all four dockets;

5. That DEP's 2020 REPS Compliance Report is hereby approved, and the RECs in DEP's 2020 compliance sub-accounts in NC-RETS shall be retired;

6. That DEP shall file in all future REPS rider applications the results of studies the costs of which were or are proposed to be recovered via its REPS EMF and rider and, for those studies that are subject to confidentiality agreements, information regarding whether and how parties can access the results of those studies; and

7. That DEP shall continue to file a worksheet explaining the discrete costs it includes as "other incremental costs" in all future REPS rider proceedings. DEP shall also continue to include detail on its primary compliance cost exhibits of

its renewable energy and REC purchases by REC type (e.g., thermal, electric), in addition to the established resource type and supplier breakdown.

ISSUED BY ORDER OF THE COMMISSION.

This the \_\_\_ day of \_\_\_\_\_, 2021.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk