STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH
DOCKET NO. E-100, SUB 180

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-100, Sub 180	)	
	)	
In the Matter of:	)	BRIEF OF
Investigation of Proposed Net	)	THE ATTORNEY GENERAL'S
Metering Policy Changes	)	OFFICE
	)	

The North Carolina Attorney General's Office (AGO) respectfully submits this brief regarding Duke Energy Progress, LLC (DEP) and Duke Energy Carolinas, LLC's (DEC) (together, Duke) joint application for approval of revised net energy metering tariffs.

INTRODUCTION

On July 27, 2017, Governor Cooper signed House Bill 589, codified as N.C.G.S. § 62-126.4, which required Duke to file new net metering rates "under all tariff designs" after "an investigation of the costs and benefits of customer-sited generation." The General Assembly reiterated the need for revised metering rates as well as the importance of these policy goals through the passage of House Bill 951. Signed by Governor Cooper on October 13, 2021, House Bill 951 requires the Commission to "revise net metering rates." House Bill 951 also directs the Commission to take all reasonable steps to achieve a 70% reduction in the emissions of carbon dioxide from Duke's electric generating facilities by 2030 and to achieve carbon neutrality by 2050.

Duke filed its joint petition for approval of revised net metering rates in the above-captioned docket on November 29, 2021 based on a Memorandum of Understanding (MOU) between Duke, North Carolina Sustainable Energy Association; Southern Environmental Law Center on behalf of Vote Solar and Southern Alliance for Clean Energy; Sunrun, Inc.; and Solar Energy Industries Association (MOU Parties). These revised net metering rates have several key changes compared to existing net metering rates. First, customers must be enrolled in the Time of Use – Critical Peak Pricing tariff (TOU-CPP). Second, customers are subject to a monthly minimum bill, a grid access fee for installations larger than 15 kW-dc, and a non-bypassable charge to recover all costs related to demand-side management and energy efficiency programs, storm cost recovery, and cyber security. Finally, exports to the grid are netted monthly with net exports credited at an annualized rate for avoided energy costs.

The AGO and other parties filed their initial comments in this docket on March 29, 2022. In response to initial comments, Duke negotiated an additional stipulation with Sundance Power Systems, Inc.; Southern Energy Management, Inc.; and Yes Solar Solutions (Solar Installers) on May 19, 2022. This stipulation created a Proposed Bridge Rate for legacy customers, which does not contain a grid access fee or require enrollment in a TOU-CPP tariff. Reply comments and surreply comments were filed on May 20, 2022 and May 27, 2022.

Since initial comments were filed in this docket, much has changed: Duke filed its proposed Carbon Plan on May 16, 2022, which showed that customer-sited generation can play a significant role in achieving the state's carbon reduction targets;[1] multiple other parties filed proposed plans for achieving House Bill 951's carbon emission reduction targets with varying reliance on distributed generation;[2] and the Inflation Reduction Act was signed on August 16, 2022, which provides numerous incentives and tax benefits that will lower the cost of installing distributed generation.[3]

ARGUMENT

A. THE COMMISSION SHOULD ENSURE THAT REVISED NET METERING RATES APPROPRIATELY VALUE THE BENEFITS OF DISTRIBUTED GENERATION.

Any proposed net metering tariff should ensure that customers are compensated for the benefits of customer-sited generation. This Office's initial comments recommended that the Commission delay reaching a decision in this docket "until a sufficient investigation has been done regarding the costs and benefits of customer-sited generation" as required by House Bill 589. Duke asserts that the Comprehensive Rate Design Study initiated on April 30, 2021 was sufficient to fulfill House Bill 589's requirements.[4] In support of that contention, Duke points to embedded and marginal cost studies.[5] The embedded cost studies examined "costs that have already been incurred and need to be recovered," while

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[1] *See* Duke Energy Carbon Plan, Appendix E, Docket No. E-100, Sub 179, 17 (May 16, 2022).
[2] *See* e.g., Supplemental Joint Comments of the CLEAN Intervenors, Docket No. E-100, Sub 179, Carbon-Free by 2050 Report at A-9-A-10 (July 20, 2022).
[3] Inflation Reduction Act, Pub. L. 117-169 (2022).
[4] Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Joint Reply Comments, Docket E-100, Sub 180 at 1-2 (May 20, 2022) (Duke Reply Comments). *See also* Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Joint Petition for Approval of Revised Net Energy Metering Tariffs, Docket No. E-100, Sub 180 at 7 (Nov. 29, 2021). The Comprehensive Rate Design Study was the result of the Commission's orders in Duke's last general rate cases. *See* Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Customer Notice, Docket No. E-2, Sub 1219 (Apr. 16, 2021); Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Customer Notice, Docket No. E-7, Sub 1214 (Mar. 31, 2021).
[5] Duke Reply Comments at 6.

the marginal cost studies reviewed "the costs of the next unit." Although the Comprehensive Rate Design Study investigated the costs of customer-sited generation, it did not fully analyze potential benefits of customer-sited generation.

The Commission has previously recognized a number of benefits from customer-sited generation beyond energy production, including "environmental benefits, creat[ing] jobs, reduce[d] energy losses on the distribution and transmission systems, and provid[ing] sources of emergency power" as well as "energy independence; local job creation; reduced emissions; line loss reductions; improved voltage; diminished land use effects; lower right-of-way acquisition costs; reduced capacity, transmission and distribution costs; reduced congestion; and reduced vulnerability of the system to terrorism."[6] In addition, many intervenors in the Carbon Plan proceeding discussed additional benefits of increased customer-sited generation.[7] While some of these benefits are captured by the Comprehensive Rate Design Study, many are not.[8]

Duke acknowledges that these benefits were not accounted for in the Comprehensive Rate Design Study, but argues that:

> Because they are not actual direct costs of providing service, the Companies do not believe it is appropriate to include these potential benefits in the rate design for NEM. The Companies believe these benefits may be appropriate to consider when evaluating DSM/EE incentives, where the long-term value of DERs is considered.[9]

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[6] *See* Order Amending Net Metering Policy, Docket No. E-100, Sub 83, 4-6 (March 31, 2009).
[7] *See e.g.*, AGO Initial Carbon Plan Comments, Attachment 1, Docket No. E-100, Sub 179, 44-45 (July 15, 2022).
[8] *See* Initial Comments of the Public Staff, Docket No. E-100, Sub 180, 31 (Mar. 29, 2022).
[9] Duke Reply Comments at 12.

Duke's position on this issue is not supported by House Bill 589, which requires that both the costs and benefits of customer-sited generation be reflected in net metering rates. Further, net metering is separate and distinct from DSM/EE programs—customers need not enroll in any DSM/EE programs to enroll in net metering. The benefits of net metering should be reflected in the net metering tariffs rather than in a separate program.

Duke argues that quantifying these benefits would "unnecessarily delay these proceedings, stall required NEM reform, and likely result in contentious proceedings that would frustrate compliance with H.B. 589."[10] To the contrary, with the Commission's direction, it is possible to design a net metering tariff that accurately reflects the costs and benefits of customer sited generation in a timely manner.

B. AT A MINIMUM, THE COMMISSION SHOULD ENSURE THAT CARBON EMISSION REDUCTION BENEFITS ARE REFLECTED IN NET ENERGY METERING RATES.

Even if the Commission agrees that a full accounting of the costs and benefits of distributed generation would cause undue delay, it should still require Duke to ensure that the net energy metering tariffs reflect their carbon emission reduction benefits. Below are several ways this could be accomplished.

Under Duke's proposal, participating customers will be paid for excess exports at "a rate equal to the Commission-approved avoided cost rates that the Companies pay to utility-scale [qualifying facilities] under PURPA."[11] Duke argues that such a framework "places rooftop solar on a level playing field with the

[10] Duke Reply Comments at 8.
[11] Duke Reply Comments at 23.

precedents for ratemaking in North Carolina and evaluation of DSM/EE programs."[12] However, in its Carbon Plan filings, Duke acknowledged the need to "modernize the current framework for appropriately valuing demand-side DERs so that EE and other demand-side customer programs are evaluated on par with zero-carbon supply-side alternatives."[13] By doing so, Duke acknowledged that it "appropriately recognize[s] the customer benefits and risk reduction of zero-carbon demand-side programs on a consistent basis relative to zero-carbon supply-side alternatives in the Carbon Plan."[14] Therefore, there is a discrepancy between how Duke intends to quantify the benefits of DSM/EE programs—for which Duke recovers net lost revenues and other incentives—under this modernized framework and these proposed net metering rates.

Like Duke's proposal in its Carbon Plan related to DSM/EE programs, customers should be credited for net monthly exports based on the avoided cost for zero-carbon emitting resources. During the Commission's latest avoided cost proceeding, the Public Staff recognized that updating avoided cost rates may be necessary "as the utilities pursue decarbonization and increase reliance on generation from renewable resources."[15] Duke committed to reevaluating the method for calculating avoided costs to reflect the benefits of decarbonization in its next biennial avoided cost proceeding in 2024.[16] The Commission has directed Duke, the Public Staff, and other interested parties "to evaluate before the next

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[12] Duke Reply Comments at 9.
[13] Duke Energy Carbon Plan, Appendix G, Docket E-100, Sub 179, 12-13 (May 16, 2022).
[14] Id.
[15] DEC, DEP, and the Public Staff's Joint Proposed Order Establishing Standard Rates and Contract Terms for Qualifying Facilities, Docket No. E-100, Sub 175, 11 (July 1, 2022).
[16] Id.

biennial proceeding whether to propose an alternative method to calculate avoided costs[.]"[17] However, under the MOU, Duke committed to not change the approved NEM Tariffs for at least 10 years.[18] Therefore, the Commission should make clear in this proceeding that if an avoided cost rate for zero-carbon emitting resources is approved in a separate proceeding, it would automatically apply to the approved net energy metering tariff as well.

In the alternative, customers should be compensated for their net monthly exports based on the implied cost of carbon of Duke's Carbon Plan. During the Commission's latest avoided cost proceeding, the Public Staff noted that "the implied cost of carbon resulting from HB 951 cannot be accurately determined until a Carbon Plan is approved," but recommended that "[o]nce a Carbon Plan is approved and an avoidable cost of carbon, if any, is determined within those proceedings or in subsequent proceedings," Duke should "include any Commission-approved avoidable cost of carbon in its calculation of rates in the next avoided cost filing."[19] The Commission agreed, and has held that it "anticipate[s] that the next avoided cost proceeding will address the cost of carbon and the approved Carbon Plan."[20] As discussed above, Duke is bound to maintain the NEM Tariffs approved in this docket for at least 10 years. Therefore, the Commission should only approve NEM Tariffs that include provisions for

[17] Order Establishing Standard Rates and Contract Terms for Qualifying Facilities, Docket No. E-100, Sub 175, 14-15 (Nov. 22, 2022).
[18] Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Joint Petition for Approval of Revised Net Energy Metering Tariffs, Docket No. E-100, Sub 180 (November 29, 2021).
[19] DEC, DEP, and the Public Staff's Joint Proposed Order Establishing Standard Rates and Contract Terms for Qualifying Facilities, Docket No. E-100, Sub 175 at 34 (July 1, 2022).
[20] Order Establishing Standard Rates and Contract Terms for Qualifying Facilities, Docket No. E-100, Sub 175, 30 (Nov. 22, 2022).

compensating customers for the implied cost of carbon if such an implied cost is determined in a future proceeding.

A third way that the Commission could ensure that customers are compensated for the carbon emission reduction benefits they provide is to require that the net metering tariff compensates customers for the Renewable Energy Credits (RECs) they generate. Under the current proposal, all RECs are required to be transferred to Duke. The Public Staff acknowledges that such a structure is no longer necessary under these revised net metering rates.[21]

RECs are valuable—they help Duke and other purchasers to meet their statutory obligations and corporate environmental goals.[22] Duke sells excess RECs through their Renewable Advantage program for $4/kWh.[23] However, their value was not included in the Comprehensive Rate Design Study.[24] The value of RECs continues to increase as more customers seek out greener energy sources.[25] The National Renewable Energy Laboratory found that nationwide the value of RECs increased from $1.50/MWh in 2020 to $6.60/MWh in 2021.[26] In the Commission's latest avoided cost proceeding, Duke urged the Commission to determine whether "renewable energy credits and environmental attributes should

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[21] Public Staff Initial Comments, Docket No. E-100, Sub 180, 36 (Mar. 29, 2022).
[22] *See, e.g.*, N.C.G.S. § 62-133.8.
[23] Order Approving Increase in Price of Renewable Energy Credits and Notice to Customers, Docket Nos. E-2, Sub 1190, E-7, Sub 1185, E-100, Sub 90 (Aug. 16, 2022).
[24] Initial Comments of the Public Staff, Docket No. E-100, Sub 180, 35 (Mar. 22, 2022).
[25] NC GreenPower Annual Report to the NC Utilities Commission, Docket No. E-100, Sub 90 (Dec. 1, 2022) ("While donations for RECs and [carbon offsets] have declined over the years, there has been a recent increase in clients wanting to purchase products to meet their sustainability goals.").
[26] Jenny Heeter, Status and Trends in the Voluntary Market (2020 data), National Renewable Energy Laboratory (September 29, 2021), available at: https://www.nrel.gov/docs/fy22osti/81141.pdf.

be credited to customers if customers are paying [qualifying facilities] for avoided carbon benefits of generation."[27] By the same logic, if net energy metering customers are not being compensated for the avoided carbon benefits, they should not be required to transfer renewable energy credits and environmental attributes without just compensation.

C. THE COMMISSION SHOULD NOT APPROVE THESE REVISED NET ENERGY METERING RATES UNLESS IT APPROVES THE SMART $AVER SOLAR EFFICIENCY PROGRAM.

This Office's initial comments noted that the MOU Parties negotiated "a creative approach that balances a variety of interests" and urged the Commission to maintain that balance by only approving these revised net metering rates if it also approved the Smart $aver Solar Efficiency program.[28] Duke argues that the Commission should not link consideration of these revised net metering tariffs and the Smart $aver Solar energy efficiency program.[29] Duke claims that linking consideration of the two would be "tying these programs together in a way that North Carolina law simply does not."[30] While the law may not require that these two programs be considered together, the MOU that Duke entered into does. The MOU states: "In the event of a partial or limited NCUC approval of the proposed resolution described in this MOU, the Parties agree to vigorously pursue all avenues—regulatory and legislative—to give effect to the terms of this Agreement."[31] The MOU further prohibits any party from advocating against either

[27] DEC and DEP Reply Comments, Docket No. E-100, Sub 175 at 21 (April 1, 2022).
[28] AGO Comments, Docket No. E-100, Sub 180 (Mar. 29, 2022).
[29] Duke Reply Comments at 39.
[30] Id. at 40.
[31] MOU at 2.

proposal. As with any compromise, the MOU Parties undoubtedly made compromises to reach an agreement. Parties that may have otherwise advocated against certain aspects of these net metering revisions may have refrained from doing so to secure approval of the Smart $aver Solar Efficiency program. The Commission should be mindful of that compromise and the effect that it may have had on the advocacy in this proceeding, and attempt to effectuate it to the extent possible.

CONCLUSION

The AGO respectfully recommends that the Commission:

1. Ensure that all benefits of customer-sited generation are fully examined and accounted for in revised net metering rates.
2. At a minimum, ensure that the carbon reduction benefits of customer-sited generation are reflected in revised net metering rates by either:
    a. Crediting customers for net monthly exports based on the avoided cost for zero-carbon emitting resources if approved by the Commission in a future proceeding;
    b. Compensate customers for the implied cost of carbon if such an implied cost is determined in a future proceeding; or,
    c. Compensate customers for the value of any renewable energy credits produced by their customer-sited generation.
3. Approve or deny these revised net metering rates in conjunction with the Smart $aver Solar Efficiency program application in Docket Nos. E-2, Sub 1287 and E-7, Sub 1261.

Respectfully submitted this the 16th day of December, 2022.

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CERTIFICATE OF SERVICE

The undersigned certifies that he has served a copy of the foregoing BRIEF OF THE ATTORNEY GENERAL'S OFFICE upon the parties of record in this proceeding by email, this the 16th day of December, 2022.

/s/ Tirrill Moore
Assistant Attorney General