



17 October 2013

To: Chief Clerk Gail Mount  
The North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699-4325

**FILED**

**OCT 17 2013**

Clerk's Office  
N.C. Utilities Commission

From: The North Carolina Sustainable Energy Association  
P.O. Box 6465  
Raleigh, NC 27628

Re: Duke Energy Progress, Inc.'s ("DEP") Application for Approval of 2013 DSM/EE  
Cost Recovery Rider  
(Docket No. E-2, Sub 1030)

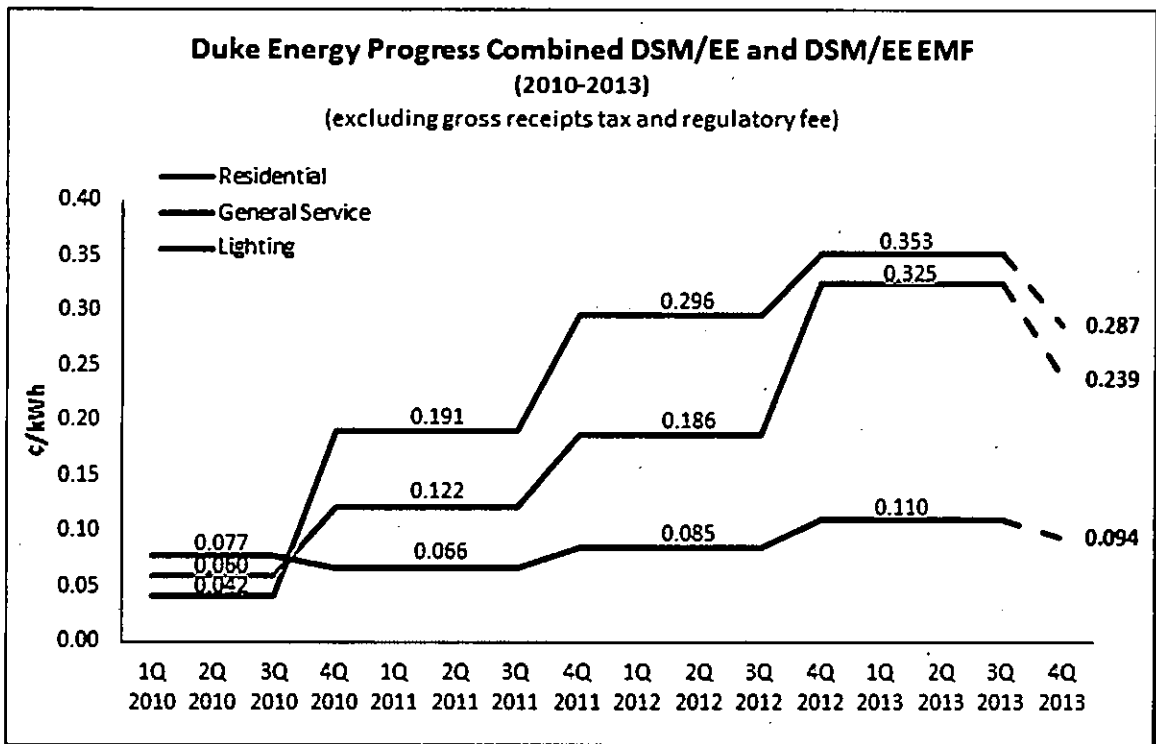
Honorable Clerk and Commissioners:

I serve as counsel and policy director for the North Carolina Sustainable Energy Association ("NCSEA"), an intervenor in this proceeding. NCSEA files this letter in lieu of a post-hearing brief.

Overview

NCSEA does not challenge the cost recovery sought by DEP and agreed to by the Public Staff. If the North Carolina Utilities Commission ("Commission") approves DEP's application, the graph, *infra*, depicts DEP's monthly charges for its various customer classes on a cents/kWh basis for the period 2010 through 2013:

al  
Full DSA



While NCSEA is not contesting DEP's recovery of costs agreed to by the Public Staff, NCSEA does respectfully request that the Commission's final order in this proceeding

- (1) incorporate DEP's commitment (a) to create a collaborative working group and (b) to task the working group with developing a position regarding a limited study or survey of DEP's opt-out customers; and
- (2) direct DEP to submit, within 45 days of the issuance of a final order, a written explanation as to why DEP should not be ordered to develop and propose a general education and awareness program designed to (a) notify its residential customers by the most economical means available of the anticipated periods in the near future when DEP's generating capacity is likely to be near peak demand and (b) urge its residential customers to refrain from using electricity at these peak times of the day.

**Creation of a DEP Collaborative to Discuss, *Inter Alia*,  
A Study or Survey of DEP's Opt-Out Customers**

At the 17 September 2013 evidentiary hearing, DEP Witness Evans testified that “DEP is willing to establish a Collaborative similar to the one used by DEC.”<sup>1</sup> *Transcript of Testimony Volume 1 (Heard September 17, 2013)* (“Tr. Vol. \_\_ at p. \_\_”), p. 71, Commission Docket No. E-2, Sub 1030 (24 September 2013). DEP’s counsel thereafter made the following statement for the record:

[A]s part of the Company’s testimony in this case, [DEP] has discussed its intent to establish a collaborative process for EE and DSM programs similar to the one that Duke Energy Carolinas currently has, and as part of that collaborative process, the Company plans to have a collaborative consider and develop a position regarding either a limited study or survey of [DEP’s] opt-out customers, and the Company will report back to the Commission as to the results of the collaborative discussions and any conclusions or recommendations as part of its 2014 DSM/EE rider application and proceeding. And we will make that point as well in our proposed order.

Tr. Vol. 1 at pp. 87-88.

NCSEA supports establishment of a DEP collaborative and DEP’s plan to have the collaborative consider how best to study or survey DEP’s opt-out customers. A better understanding of DEP’s opt-out customers is important because, since 2008, DEP’s annual opt-out sales (kWh) have increased by 10.2% while its overall retail sales (kWh) have decreased by 1.6% and its non-opt out sales (kWh) have decreased by 6%. The table, *infra*, contains the DEP-provided data (see red-boxed data) that form the basis for these assertions.

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<sup>1</sup> DEP Witness Evans’ statement responded to a suggestion made by SACE Witness Mims in her pre-filed testimony. See Tr. Vol. 1 at p. 71.

A	B	C	D	E	F	G	H	I	J	K
Period	Actual NC Retail Sales (kWh)	Source for Previous Column	Actual Opt-Out Sales (kWh)	Source for Previous Columns	Number of Opt-Out Customers (as of March 31)	Source for Previous Column	Average Sales Per Opt-Out Customer (kWh) [Col. D/ Col. F]	Actual Non-Opt-Out Sales (kWh) [Col. B- Col. D]	Non-Opt-Out General Service and Lighting Sales (kWh)	Source for Previous Column
4/1/12-3/31/13	36,857,231,531	Babcock Workpaper, p. 4, Docket E-2, Sub 1031	11,201,188,837	Evans Direct Ex. No. 2, p.1, Docket E-2, Sub 1030	618	NCSEA Data Request No. 1 Docket No. E-2, Sub 1030	18,124,901.03	25,656,042,694	11,004,771,000	Evans Direct Ex. No. 1, Docket E-2, Sub 1030
4/1/11-3/31/12	36,855,896,329	Barkley Ex. No. 3, Docket E-2, Sub 1018	11,192,486,014	Evans Ex. No. 2, Docket E-2, Sub 1019	630	NCSEA Data Request No. 1 Docket No. E-2, Sub 1030	17,765,850.82	25,663,410,315	11,215,319,000	Evans Ex. No. 3, Docket E-2, Sub 1019
4/1/10-3/31/11	38,486,457,421	Barkley Ex. No. 3, Docket E-2, Sub 1001	10,965,387,377	Evans Ex. No. 2, Docket E-2, Sub 1002	597	NCSEA Data Request No. 1 Docket No. E-2, Sub 1030	18,367,483.04	27,521,070,044	11,509,553,000	Evans Ex. No. 3, Docket E-2, Sub 1002
4/1/09-3/31/10	37,170,119,613	Barkley Ex. No. 3, Docket E-2, Sub 976	10,361,527,109	Evans Ex. No. 2, Docket E-2, Sub 977	563	PEC Ex. No. 1, Appdx. A, Docket E-2, Sub 977	18,404,133.41	26,808,592,504	11,196,035,000	Evans Ex. No. 3, Docket E-2, Sub 977
4/1/08-3/31/09	37,454,704,547	Barkley Ex. No. 3, Docket E-2, Sub 949	10,165,706,612	Evans Ex. No. 3, Docket E-2, Sub 951	499	PEC Ex. No. 1, Appdx. A, Docket E-2, Sub 951	20,372,157.54	27,288,997,935	13,299,685,000	Evans Ex. No. 4, Docket E-2, Sub 951

DEP is uniquely positioned to secure a better understanding of its opt-out customers because (1) it has pre-existing relationships with the opted-out industrial and large commercial customers and (2) it possesses a wealth of data about those customers that can be used to direct the design and goals of any study or survey. DEP maintains a database with significant information about its opt-out customers that can be used to inform the creation of a study or survey of optimal value. A noteworthy example of the type of data DEP possesses can be found in the DEP Witness Babcock exhibits that were filed in support of DEP's 2013 *Fuel and Fuel-Related Cost Recovery Rider Application* in Commission Docket No. E-2, Sub 1031. As the excerpt from Witness Babcock's Workpaper 5, *infra*, illustrates, DEP's database houses data that can at a minimum be broken down by revenue class (e.g., commercial, industrial, military), rate schedule (e.g., SGS, MGS, LGS, LGS-TOU, LGS-RTP), and rate class:

DUKE ENERGY PROGRESS, INC.  
Annualized Revenue at Current Rates - Year Ended March 31, 2013

Revenue Class (1)	Annual Sales (2) per RMC2B	Annual Opt-Out Sales (3) per RMCY14	Customer Count (4) per RMC2B
Residential	15,073,890,948	0	13,550,445
Residential	14,971,376,428	0	13,437,417
SGS	2,473	0	3
MGS	0	0	0
LGS	0	0	0
Lighting	102,512,047	0	113,025
Commercial	11,931,611,088	2,997,250,191	2,288,876
Residential	3,695	0	12
SGS	1,770,749,635	6,832,339	1,794,213
MGS	8,758,886,950	2,087,524,117	482,404
LGS	1,173,613,903	895,504,520	1,016
Lighting	228,356,905	7,389,215	11,231
Industrial	8,313,367,678	6,770,975,047	45,252
Residential	0	0	0
SGS	21,408,486	6,488,098	13,807
MGS	2,085,694,241	1,056,449,726	28,852
LGS	6,190,110,455	5,701,900,985	2,329
Lighting	16,154,496	6,136,238	264
Public Streets & Highways	105,375,347	0	15,819
Residential	0	0	0
SGS	8,028,034	0	10,051
MGS	0	0	0
LGS	0	0	0
Lighting	97,347,313	0	5,768
<b>Military</b>	<b>1,432,986,470</b>	<b>1,432,736,598</b>	<b>55</b>
Residential	0	0	0
SGS	0	0	0
MGS	96,000	72,000	3
LGS	1,432,888,550	1,432,664,598	52
Lighting	1,920	0	0
NC Retail	36,857,231,531	11,200,961,836	15,900,447
Rate Schedules			
RES (includes RES-RECD)	14,390,461,041	0	13,119,061
SGS	1,791,867,798	13,320,437	1,807,606
MGS	2,498,841,791	204,546,765	188,754
SGS-TOU	8,224,336,498	2,933,585,328	246,001
LGS	1,200,712,210	850,516,528	1,238
LGS-TOU	2,034,847,163	1,726,824,548	1,349
LGS-RTP	4,431,702	4,431,702	24
LGS-RTP-TOU	5,556,621,833	5,448,297,325	786
LGS Class	8,796,612,908	8,030,070,103	3,397
Rate Class			
Residential	14,971,380,123	0	13,437,429
SGS	1,800,188,628	13,320,437	1,818,074
MGS	10,844,677,191	3,144,045,843	511,259
LGS	8,796,612,908	8,030,070,103	3,397
Lighting	444,372,681	13,525,453	130,288
	36,857,231,531	11,200,961,836	15,900,447
Per CIM Report Totals	36,857,231,531	11,200,961,836	15,900,447

*Duke's Exhibits of Sharon S. Babcock Filed with Testimony, pdf p. 59 of 68, Commission Docket No. E-2, Sub 1031 (12 June 2013) (red-box added for emphasis).*

Examining such data permits study/survey questions to be generated. For example: Do almost 100% of DEP's military sales constitute opt-out sales because the military has already implemented DSM/EE measures outside of DEP's programs; or because DEP's DSM/EE measures and programs are somehow not responsive to the military's needs; or because of some other reason or set of reasons?<sup>2</sup>

For the foregoing reasons, NCSEA believes the Commission's final order should incorporate DEP's commitment (a) to create a collaborative working group and (b) to task the working group with developing a position regarding a limited study or survey of DEP's opt-out customers.

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<sup>2</sup> NCSEA does not believe DEP has previously filed this type of information at the Commission. To the extent that past "snapshots" of such information exist, a temporal analysis can be conducted – in other words, continuing the example set out above, one could begin to examine whether DEP's military customers have opted-out from the outset or whether the opt-out rate has grown from a lower percentage to almost 100% over time.

## A DEP Peak Notification Program

### *A. Development of a DEP Peak Notification Program*

A peak notification program would offer residential customers the opportunity to serve themselves in at least two ways: First, reduced residential consumption at peak demand times can reduce long-term cost of service and yield savings in the form of lower future proposed revenue requirements. Second, reduced residential peak consumption can reduce the residential allocation of future proposed revenue requirements in base rate cases.

In 1975, the North Carolina General Assembly enacted N.C. Gen. Stat. § 62-155, entitled “Electric power rates to promote conservation.” The statute provides in pertinent part:

(b) If the Utilities Commission after study determines that conservation of electricity and economy of operation for the public utility will be furthered thereby, it shall direct each electric public utility to notify its customers by the most economical means available of the anticipated periods in the near future when its generating capacity is likely to be near peak demand and urge its customers to refrain from using electricity at these peak times of the day. . . .

(c) The Commission itself shall inform the general public as to the necessity for controlling demands for electricity at peak periods and shall require the several electric public utilities to carry out its program of information and education in any reasonable manner.

N.C. Gen. Stat. § 62-155(b) & (c).

Thirty-three years later, in 2008, the Commission after analysis “recommend[ed] that utilities aggressively pursue opportunities for increased demand response” and concluded that “[d]emand response programs have a tremendous potential to impact peak demand and should be fully utilized by utilities.” *Report of the Commission to the Governor of North Carolina et al. Regarding an Analysis of Rate Structures, Policies, and Measures to Promote Renewable Energy Generation and Demand Reduction in North Carolina*, p. 48, Commission Docket No. E-100, Sub 116 (2 September 2008). In 2012, the Commission “strongly encourage[d] utilities to take reasonable measures to inform all customers of the forecasted summer peak to allow all customers to engage in

voluntary demand response and peak shaving.” *Order Denying Rulemaking Petition*, pp. 10-11, Commission Docket No. E-100, Sub 133 (30 October 2012).

Despite the Commission’s 2008 recommendation and its 2012 strong encouragement, DEP does not appear to have taken clear and discernable steps to inform its residential customers of the forecasted summer peak so that they can engage in voluntary demand response and peak shaving. In response to the 5 February 2013 Comments filed by the Public Staff in Commission Docket No. E-100, Sub 137, DEP discussed its plans to inform all customers of the system summer peaks so that they might engage in voluntary demand response and peak shaving. *Duke Energy Carolinas and Progress Energy Carolinas’ Reply Comments*, pp. 7-8, Commission Docket No. E-100, Sub 137 (5 March 2013). DEP stated in pertinent part that it

proactively provide[s] voluntary programs for customers to participate in managing peak demand[, and i]n addition, during those periods when peak customer usage and/or system conditions may forecast the need for customers to take additional conservation measures, DEC and [DEP] have communication plans that include notifying appropriate state government agencies through existing emergency communication channels, the general public through the news media and other means, as well as notifying Company facilities and employees to conserve electricity.

DEP’s reply comments are not responsive to the core issue.

When the issue is notification of customers about forecasted summer peaks, it is inapposite that DEP provides programs for customers to participate in managing peak demand, unless one of those programs is a program that *notifies* the customers of impending summer peaks. Similarly, when the issue is notification so that customers can engage in *voluntary* demand response and peak shaving, DEP notifications limited to when DEP has a “need for customers to take additional conservation measures” does not provide residential customers the full opportunity to *voluntarily* peak shave at those times when DEP does not “need” them to. Yet, DEP only provides notice when it “needs” load shed. DEP’s 11 October 2013 late-filed exhibit in this proceeding provides that “[i]f adequate reserves are forecasted for . . . a peak period . . . the Company would not appeal to customers to reduce load based on this forecast.” *See* Response to Question No. 1.



During the 17 September 2013 hearing, DEP's witness confirmed that DEP does not have a residential peak notification program. *See* Tr. Vol. 1 at pp. 90-94.<sup>3</sup>

Pursuant to the Commission's statutory authority set out in N.C. Gen. Stat. § 62-155(b) & (c) and the Commission's mandate to inform the general public as to the necessity for controlling demands for electricity at peak periods set out in N.C. Gen. Stat. § 62-155(c), the Commission should direct DEP to submit, within 45 days of the issuance of a final order on DEP's application, a written explanation as to why DEP should not be ordered to develop and propose a general education and awareness program designed to (1) notify its residential customers by the most economical means available of the anticipated periods in the near future when DEP's generating capacity is likely to be near peak demand and (2) urge its residential customers to refrain from using electricity at these peak times of the day. The Commission should reserve the right to direct DEP to develop and propose a program in the event the Commission is not satisfied with DEP's explanation.

*B. DEP Cost Recovery for a Peak Notification Program*

DEP may argue that this is not the appropriate proceeding within which to raise this issue. *See Public Staff's and Duke Energy Carolinas, LLC's Joint Proposed Order* ("DEC Proposed Order"), p. 31, Commission Docket No. E-7, Sub 1031 (25 July 2013) (order proposes the Commission conclude that "[t]he issue of the notice to customers of impending peaks has been raised in [other dockets], and the Commission believes it would be more appropriate to consider the issue in those dockets"). NCSEA believes the applicable General Statutes and Commission rules cover a peak notification initiative within the definition of "program." N.C. Gen. Stat. § 62-133.8(a)(2) defines "Demand-side management" as

*activities, programs, or initiatives undertaken by an electric power supplier or its customers to shift the timing of electricity use from peak to nonpeak demand periods . . . includ[ing], but . . . not limited to, load management, electric system equipment and operating controls, direct load control, and interruptible power.*

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<sup>3</sup> Though asked twice whether DEP has a residential peak notification program, DEP's witness was unable to answer in the affirmative. Instead, his responses meandered and indirectly referenced DEP's General Load Reduction & System Restoration Plan filed each May in Commission Docket No. E-100, Sub 10A.

(Emphasis added). Notifying residential customers (or all customers) of forecasted peaks and urging them to refrain from using electricity at these peak times of day, *see* N.C. Gen. Stat. § 62-155, is an activity or initiative that squarely fits within the statutory definition of demand-side management for which DEP could recover costs.<sup>4</sup>

In fact, Duke Energy Carolinas, LLC (“DEC”) and the Public Staff have essentially acknowledged that DEP could recover costs for a peak notification program in this annual rider proceeding. In their 25 July 2013 joint proposed order in DEC’s 2013 DSM/EE rider proceeding, they suggested the Commission conclude that DEC’s “save-a-watt mechanism does not specifically provide for the recovery of costs from general education and awareness programs, *as does the DSM/EE cost recovery mechanism approved for [DEP] in Docket No. E-2, Sub 931.*” DEC Proposed Order at p. 31 (emphasis added). The foregoing supports the proposition that a notification initiative’s costs could be recovered under DEP’s DSM/EE rider if the Commission deemed it advisable.

For the foregoing reasons, NCSEA believes that this is an appropriate proceeding within which to address this issue. NCSEA further believes that the first reasonable step to take in addressing this issue is to give DEP an opportunity to fully set out why no further action need be taken by it to comply with N.C. Gen. Stat. § 62-155 or to be responsive to the Commission’s recent encouragement that notification be given so that customers can engage in voluntary demand response and peak shaving. Based on any DEP explanation, the Commission can determine whether DEP should be directed to take any additional steps, such as proposal of a notification program.

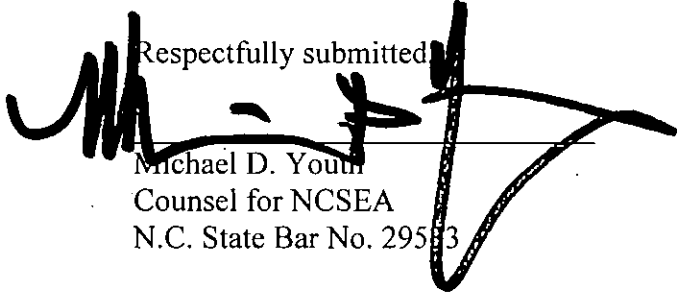
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<sup>4</sup> N.C. Gen. Stat. § 62-133.9(a) makes the quoted definition of demand-side management applicable to DSM/EE cost recovery proceedings. Further, N.C. Gen. Stat. § 62-133.9(d) provides that the “Commission shall, upon petition of an electric public utility, approve an annual rider to the electric public utility’s rates to recover all reasonable and prudent costs incurred for adoption and implementation of new demand-side management . . . .” To the extent “consideration” is required for eligibility, any notification provided to customers could itself constitute a “[t]hing of economic value . . . given or offered to any person by an electric public utility . . . .” *See* Commission Rule R8-68(b)(2).

**Conclusion**

For the reasons set out in the foregoing letter, NCSEA does respectfully request that the Commission's final order in this proceeding (1) incorporate DEP's commitment (a) to create a collaborative working group and (b) to task the working group with developing a position regarding a limited study or survey of DEP's opt-out customers; and (2) direct DEP to submit, within 45 days of the issuance of a final order, a written explanation as to why DEP should not be ordered to develop and propose a general education and awareness program designed to (a) notify its residential customers by the most economical means available of the anticipated periods in the near future when DEP's generating capacity is likely to be near peak demand and (b) urge its residential customers to refrain from using electricity at these peak times of the day.

Respectfully submitted,

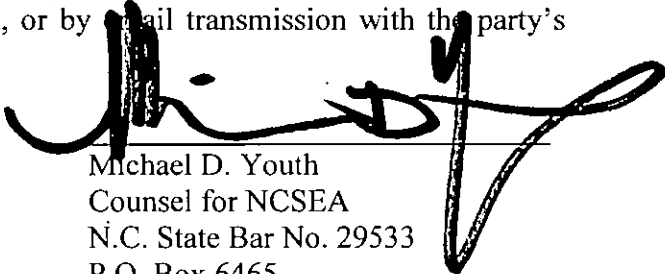


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**CERTIFICATE OF SERVICE**

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing Post-Hearing Brief by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by e-mail transmission with the party's consent.

This the 17<sup>th</sup> day of October, 2013.



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