

**NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-2, SUB 1262

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Petition of Duke Energy Carolinas, LLC,	)	
and Duke Energy Progress, LLC, for	)	ORDER CLARIFYING AND
Issuance of a Storm Cost Recovery	)	CORRECTING FINANCING ORDER
Docket Financing Order	)	

BY THE CHAIR: On May 10, 2021, the Commission issued a Financing Order pursuant to N.C. Gen. Stat. § 62-172 granting Duke Energy Progress, LLC (DEP or the Company) the right to finance certain specified Storm Recovery Costs by issuing and selling Storm Recovery Bonds that will be repaid by customers via a nonbypassable Storm Recovery Charge.

On May 25, 2021, DEP filed a Motion for Clarification in order to address minor errors and inconsistencies in the Financing Order. DEP noted that these errors, although non-substantive, might cause confusion to persons who were not parties to this proceeding, such as investors and underwriters. Many of the errors identified by DEP are due to the fact that the enabling legislation was formally codified after the Financing Order was issued, and as a result some of the statutory citations do not match the numbering codified in the General Statutes of North Carolina. No party objected to the Commission granting PEC's Motion for Clarification.

The Chair, therefore, finds good cause to clarify and correct the Financing Order to address the statutory references and other minor errors and inconsistencies identified by DEP, as set forth on Attachment A hereto.

IT IS, THEREFORE, ORDERED that the May 10, 2021 Financing Order shall be and hereby is clarified by making the changes, as set forth on Attachment A hereto.

ISSUED BY ORDER OF THE COMMISSION.

This the 13<sup>th</sup> day of July, 2021.

NORTH CAROLINA UTILITIES COMMISSION



Lindsey A. Worley, Acting Deputy Clerk

**Page 4, at Paragraph 4:**

On January 27, 2021, in the in Docket Nos. E-2, Sub 1262 and E-7, Sub 1243, DEP, DEC and the Public Staff entered into and filed an Agreement and Stipulation of Partial Settlement (Securitization Stipulation) settling some issues in this case.

**Page 7, at Finding of Fact No. 13:**

13. The ongoing Financing Costs identified in DEP's Joint Petition and in Attachment 4 of the form Issuance Advice Letter (Appendix C hereto), estimated to be approximately \$910,000 annually, subject to update and adjustment in the Issuance Advice Letter as described in this Order, are reasonable and prudent and qualify as Financing Costs eligible for recovery pursuant to N.C.G.S. § 62-172(a)(6).

**Page 10, at Finding of Fact No. 28:**

28. DEP should strive for the Storm Recovery Bonds or SRB Securities to achieve AAA credit ratings or the equivalent highest credit ratings given for the type of securities the DEP SPE issues consistent with its overarching obligation to meet the Statutory Cost Objectives. DEP should agree to the necessary credit enhancements, with recovery of related costs as ongoing Financing Costs, to achieve such ratings, if and to the extent such credit enhancements and corresponding credit ratings are warranted in order to meet the Statutory Cost Objectives. The cost of any such credit enhancements shall be included in the determination whether the Statutory Cost Objectives are met.

**Page 18, at Paragraph 2:**

Section 62-172(a)(16) requires that DEP's Storm Recovery Costs eligible for financing be reasonable and prudent. Except for the Carrying Costs to be calculated as described herein and the adjustments to the Storm Recovery Costs made since the Public Staff's audit in the 2019 rate cases, the Storm Recovery Costs that were included in the Company's rate case application in the DEP Rate Case have been the subject of discovery and audit by the Public Staff and other interested parties to that proceeding.

**Page 19, at Paragraph 3:**

In the Joint Petition, DEP requested that its up-front Financing Costs associated with the securitization process be included in the principal amount of storm recovery bonds in accordance with N.C.G.S. § 62-172(a)(14). Company witness Heath testified that such costs include the fees and expenses to obtain the financing orders, as well as

the fees and expenses associated with the structuring, marketing, and pricing of each series of Storm Recovery Bonds, including the following: external and incremental internal legal fees, structuring advisory fees and expenses, any interest rate lock or swap fees and costs, underwriting fees and original issue discount, rating agency and trustee fees (including trustee's counsel), accounting fees, information technology programming costs, servicer's set-up costs, printing and marketing expenses, stock exchange listing fees and compliance fees, filing and registration fees, and the costs of any outside consultant and counsel retained by the Commission or the Public Staff. Tr. vol. 1, 48. A complete list of all up-front Financing Costs will be included on Attachment 2 of the Issuance Advice Letter, a form of such letter with preliminary estimates of up-front Financing Costs, is included in Appendix C of this Financing Order. Witness Heath further stated that up-front Financing Costs include reimbursement to DEP for amounts advanced for payment of such costs. *Id.* Witness Heath provided a range of estimates of the up-front Financing Costs in Heath Exhibit 1, and explained based on those figures DEP estimated the up-front Financing Costs would be \$9 million. He stated that the estimates will be updated to actual up-front Financing Costs incurred during the proposed Issuance Advice Letter process. Tr. vol. 1, 48.

**Page 20, at Paragraph 5:**

Section 62-172(a)(6) defines Financing Costs. The Commission finds that DEP's proposed up-front Financing Costs fall squarely within this definition, and that these issuance costs are therefore Financing Costs eligible for recovery pursuant to the...

**Page 22, at Paragraph 1:**

Having reviewed DEP's proposal, the Public Staff testimonies of Maness and Boswell, and the Securitization Stipulation, the Commission determines that the proposed ongoing Financing Costs identified in DEP's Joint Petition and Attachment 4 of the form of Issuance Advice Letter qualify as Financing Costs pursuant to N.C.G.S. § 62-172(a)(6) and are therefore eligible for recovery through a Storm Recovery Charge.

**Page 25, at Paragraph 1:**

In rebuttal testimony, Company witness Abernathy stated that the Company agreed with the Public Staff's recommendation. Tr. vol. 3, 49. Witness Abernathy further stated that the Tail-end Collections will stay with the DEP SPE trustee until the Storm Recovery Charge is set at \$0 and no more cash from the Storm Recovery Charge is being collected. *Id. at*, 49-50. At that point in time, all cash in the care of the trustee (i.e. the excess funds and capital subaccounts) will be distributed to DEP. *Id.* Once the cash from the Tail-end Collections is received by DEP, the regulatory liability discussed above would

be recorded. *Id.* Until DEP actually receives the cash from the DEP SPE trustee, there is no actual liability to customers. *Id.*

**Page 29, at Paragraph 2:**

The Commission determines, consistent with N.C.G.S. § 62-172(a)(17), that Storm Recovery Property consists of the following: (1) all rights and interests of DEP or any successor or assignee of DEP under this Financing Order, including the right to impose, bill, charge, collect, and receive Storm Recovery Charges authorized in this Financing Order and to obtain true-up adjustments to such Storm Recovery Charges as provided in this Financing Order and (2) all revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in this Financing Order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.

**Pages 34-35, beginning at Paragraph 4 on Page 34:**

In its Joint Petition, DEP requested the flexibility to determine which transaction structure is best tailored to then-existing rating agency considerations, market conditions, and investor preferences, so that the financing of the Storm Recovery Costs can achieve the Statutory Cost Objectives. Joint Petition at 23. DEP also proposed to issue the storm recovery bonds in either a registered public offering or unregistered exempt offering, in order to structure the transaction to achieve the highest possible credit rating from applicable rating agencies. Joint Petition at 21. Witness Atkins' direct testimony also proposed an optional, alternative Grantor Trust Structure, in which separate SPEs wholly owned by DEP and DEC, respectively, would simultaneously issue Storm Recovery Bonds to a third SPE, a grantor trust wholly owned by Duke Energy or jointly owned by DEP and DEC (SRB Issuer). Tr. vol. 2, 142. The structure of the DEP and DEC Storm Recovery Bonds and the SRB Securities would have the same tranching, payment dates, and maturity dates. Tr. vol. 2, 142-43. The true-up adjustment effective dates for the DEP and DEC Storm Recovery Bonds would be the same. Tr. vol. 2, 143. The debt service payments from the DEP and DEC bonds would be passed through to service the debt of the SRB Securities. *Id.* The SRB issuer would then issue to the market pass-through securities that are backed by the separate Storm Recovery Bonds issued by the DEP SPE and by the DEC SPE (the SRB Securities). Tr. vol. 2, 144. Witness Atkins explained that this structure has advantages to the ratepayers of both DEP and DEC. Because the Storm Recovery Bonds for both DEP and DEC would price on the same day, the interest rates would be the same. *Id.* He testified that customers of both DEP and DEC would benefit from interest rates that are set by a larger and more liquid issuance. *Id.* Additionally, he stated that utilizing the Grantor Trust Structure would ensure the DEC Storm Recovery Bonds would qualify for inclusion in the Bloomberg Barclays Aggregate

Bond Index (Index), which has an issuance size requirement, meaning a stand-alone DEC transaction would not qualify for inclusion in the Index. *Id.* He explained inclusion in the Index was preferred because many investors perceive bond issues that are included in the Index to be more tradeable or more liquid and therefore more attractive than bonds that are not so included. *Id.*

**Page 37, at Paragraph 5:**

The Commission agrees that combining the issuance of DEP's Storm Recovery Bonds and DEC's Storm Recovery Bonds in one transaction through the use of the SRB Issuer may result in lower Storm Recovery Charges for customers, and help ensure that the Statutory Cost Objectives are met. At the same time, the Commission credits the testimony of Public Staff witness Fichera that the Grantor Trust Structure may be overly complex and cause investor confusion.

**Pages 37-38, beginning at Paragraph 6 on Page 37:**

As also described by witness Atkins, the Companies have committed to consider the potential costs and benefits associated with each proposed transaction structure and issuance strategy to determine the strategies that best enable the Companies to achieve the Statutory Cost Objectives. The Commission additionally agrees with the Company and Public Staff that it is too early to determine which structure best achieves the Statutory Cost Objectives. At the hearing, witnesses for the Public Staff agreed that issuers need flexibility in every transaction. Tr. vol. 3, 436. The Commission believes such flexibility will best ensure the Statutory Cost Objectives are achieved. By allowing the Company flexibility to determine which of the above issuance structures are best tailored to then existing rating agency considerations, market conditions, and investor preferences, the financing of Storm Recovery Costs can be reasonably expected to result in the lowest Storm Recovery Charges consistent with market conditions at the time the Storm Recovery Bonds are priced. At the same time, the Grantor Trust Structure may only be used if it achieves the lowest Storm Recovery Costs both for ratepayers of DEP and for ratepayers of DEC. Moreover, the additional up-front Financing Costs and the ongoing Financing Costs associated with utilizing the Grantor Trust Structure must be allocated between the SPEs of DEP and DEC in a manner that considers the benefits the ratepayers of each of DEP and DEC will receive from utilizing that structure.

**Page 46, at Paragraph 3:**

To repay the Storm Recovery Bonds and ongoing Financing Costs, DEP is hereby authorized to implement Storm Recovery Charges to be collected on a per-kWh basis from all applicable customer rate classes until the Storm Recovery Bonds and associated Financing Costs are paid in full. The Storm Recovery Charges are nonbypassable and must be paid by all existing or future retail customers receiving transmission or distribution services from DEP or its successors or assignees under Commission-approved rate schedules or under special contracts, even if the retail customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this state. See N.C.G.S. § 62-172(a)(15) and (b)(3)b.4. In the event there is a fundamental change in the regulation of public utilities, the Storm Recovery Charges shall be collected from retail electric customers in a manner that will not adversely affect the credit rating on the Storm Recovery Bonds.

**Page 47, at Paragraph 2:**

DEP also submitted with its Joint Petition the supporting testimony of witness Byrd with respect to allocation of these periodic costs and the computation of the Storm Recovery Charges for each customer rate class for DEP. As discussed in the testimony of witness Abernathy and shown in Abernathy DEP Exhibits 1-4, DEP computed the estimated Storm Recovery Charges, as described in N.C.G.S. § 62-172(a)(15).

**Page 70, at Paragraph 2:**

Additionally, the Commission finds and concludes that there is abundant evidence that the process established by DEP and as set forth in this Financing Order relative to the structuring and pricing of the Storm Recovery Bonds, along with the continued oversight of the Commission through the Bond Advisory Team, the Issuance Advice Letter process, and the certifications and letter required by Findings of Fact Nos. 48-50, are reasonably expected to result in the lowest Storm Recovery Charges consistent with market conditions at the time the storm recovery bonds are priced and the terms set forth in this Financing Order, as required by N.C.G.S. § 62-172(b)(3)b.3. The record in this case demonstrates that professionals who collectively possess decades of experience in pricing, structuring, and marketing complex securities—including ratepayer-backed securities—will provide their expertise to the pricing, structuring, and marketing of the Storm Recovery Bonds through their participation on the Bond Advisory Team. Many of them were involved in the successful \$1.3 billion securitization of DEF's nuclear plant retirement costs. The terms of this Financing Order are similar in many respects to the DEF financing order. The testimony of the witnesses for DEP and for the Public Staff manifests their intention and ability to achieve the lowest possible Storm Recovery Charges for North Carolina ratepayers. Importantly, this Financing Order establishes a

robust and flexible procedure to allow DEP to address the requirements of market participants or any changes in market conditions as the issuance date approaches. After the bonds are priced, and as otherwise provided for in this Order, the major participants will report to the Commission—and DEP, the lead underwriters, and the Commission’s financial consultant will give the applicable certifications—as to whether the Statutory Cost Objectives have been met. After participating in the Bond Advisory Team and reviewing the certifications, the Commission has a final opportunity to approve or disapprove issuance of the Storm Recovery Bonds.

**Appendix A:**

Estimated Carrying Costs through bond issuance date<sup>1</sup>

Estimated up-front Financing Costs<sup>2</sup>

**Appendix B, Page 1 of 2, at Paragraph 3:**

Ordering Paragraph 23 of the Financing Order describes how such True-up Adjustment Letters are to be handled. Upon the filing of a True-up Adjustment Letter made pursuant to this Financing Order, the Commission shall either administratively approve the requested true-up calculation in writing or inform the servicer of any mathematical or clerical errors in its calculation as expeditiously as possible but no later than 30 days following the servicer’s true-up filing; and that notification and correction of any mathematical or clerical errors shall be made so that the true-up is implemented within 30 days of the servicer’s filing of a True-up Adjustment Letter. No potential modification to correct an error in a True-up Adjustment Letter shall delay its effective date and any...

**Appendix B, at Attachment 1:**

DUKE ENERGY PROGRESS, LLC  
Storm Recovery Charge True-up Mechanism Form For the

**Appendix C, Attachment 6, at Footnote 1:**

*(1) Abernathy Exhibit 3 – Allocation of Storm Recovery Charge to Customer Classes as filed in Docket No. E-2, Sub 1262. Revenue Requirements were grossed-up to reflect uncollectible account write-offs and regulatory fees.*

**Appendix C, Attachment 8, Page 1 of 4, at Subject Line:**

Re: Duke Energy Progress, LLC's Company Certification  
Docket No. E-2, Sub 1262

**Appendix C, Attachment 8, Page 1 of 4, at Paragraph 1:**

Duke Energy Progress, LLC (the "Company") submits this Certification pursuant to Ordering Paragraph 29 of the Financing Order in Docket No. E-2, Sub 1262 (the "Financing Order"). All capitalized terms not defined in this letter shall have the meanings ascribed to them in the Financing Order.