

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1309
DOCKET NO. E-7, SUB 1279

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1309)	
)	
In the Matter of)	
Application by Duke Energy Progress, LLC,)	
for Approval of Residential Tariffed On-Bill)	
Program)	ORDER APPROVING
)	RESIDENTIAL TARIFFED
DOCKET NO. E-7, SUB 1279)	ON-BILL PROGRAM
)	WITH MODIFICATIONS
In the Matter of)	
Application by Duke Energy Carolinas, LLC,)	
for Approval of Residential Tariffed On-Bill)	
Program)	

BY THE COMMISSION: On September 30, 2022, Duke Energy Progress, LLC (DEP), and Duke Energy Carolinas, LLC (DEC, collectively Duke or the Company), filed in the above-captioned dockets applications for approval of a Residential Tariffed On-Bill (TOB) program.

On November 28, 2022, the Commission issued an order requesting comments and reply comments on the proposed TOB program.

Petitions to intervene filed by the North Carolina Sustainable Energy Association (NCSEA) and, jointly, the North Carolina Justice Center, the North Carolina Housing Coalition, and the Southern Alliance for Clean Energy (NCJC, et al.) were granted by the Commission. In addition, the intervention of the Attorney General's Office (AGO) is recognized pursuant to N.C. Gen. Stat. § 62-20.

On January 6, 2023, NCJC, et al. and the Public Staff filed comments. On January 31, 2023, NCJC, et al. and Duke filed reply comments.

On April 14, 2023, the Commission issued an Order Requiring Response to Reply Comments and Additional Information requiring Duke to file a response to recommendations made by NCJC, et al. in its reply comments and a sample calculation.

On April 27, 2023, Duke filed its response to NCJC, et al.'s reply comments and the requested workpapers.

DESCRIPTION OF THE PROGRAM

In its applications Duke states that the objective of the proposed TOB program is to provide a mechanism for customers to install energy efficient upgrades and pay for those upgrades over time through their monthly electric bill. By using premises-specific modeling based on an in-home assessment, applying all available rebates and incentives, and utilizing an initial copayment, if necessary, the customer's TOB monthly charge will not exceed the customer's projected average monthly savings over the repayment term of up to 12 years. The TOB program is not an energy efficiency (EE) program itself pursuant to N.C.G.S. § 62-133.9 and Commission Rule R8-68, and all costs will be recovered from participating customers or base rates, and not through the annual EE rider.

Duke states that the up-front costs of improvements have long been identified as a significant obstacle for customers wishing to improve the energy efficiency of their homes. The TOB program is intended to assist customers in overcoming this "first cost" barrier by allowing them to pay for residential EE investments in installments as part of their tariffed electric bill charges. The TOB tariff defines the obligation of the customer and utility, provides customer protections, and provides general requirements to ensure that both participants and nonparticipants benefit from making EE measures affordable.

Duke states that the TOB tariff is tied to the meter at the premises, not to the individual customer. Therefore, when one customer moves out of the residence, the next occupant resumes paying the TOB monthly charge and receiving the benefits of participation in the TOB program. The TOB monthly charge becomes part of the monthly bill for the customer taking service at that premises, and utility service is subject to disconnection for nonpayment of the TOB monthly charge. Duke states in the application that the TOB monthly charge "includes the cost of the installed measure(s) plus interest in the amount of the Company's most recently approved weighted average cost of capital." Although Duke states in the tariff that "[p]repayment of unbilled charges will not be permitted," it allows an account holder to "request a final bill for all remaining payments at the time of discontinuing service, starting service, or transferring service to a new owner or occupant." Duke will bill and collect the TOB monthly charge until all costs have been recovered.

The TOB program is available to individually metered residential customers receiving electric service under a residential rate schedule, whether owner-occupied or leased, where the customer's account is current and not on an active installment payment plan. The customer must have at least a 12-month billing history to establish the baseline consumption necessary for modeling projected energy savings. To participate in the program, the electric account holder and the property owner, if different, must sign an Owner Participant Agreement.

Duke states that it will maintain and repair equipment, as needed. Customers agree to notify Duke when equipment is not functioning properly, and Duke agrees to repair it within five business days. If the equipment cannot be repaired within five business days of notice to Duke, subsequent monthly payments may be suspended. The ongoing maintenance by Duke ensures that the projected energy savings do not degrade over time and that the benefits to the entire utility system are realized. If Duke determines that the failure was deliberately or negligently caused, Duke may seek to recover the costs of repairs from the customer and/or immediate recovery of all remaining charges. Measures may include, but are not limited to, the following:

- heating ventilation and air conditioning (HVAC) equipment, service, and controls, including smart thermostats;
- thermal boundary improvements;
- HVAC duct replacement;
- heat pump water heaters; and
- other high efficiency equipment, products, and services as determined by the utility on a case-by-case basis.

Duke further states that it will initially target customers with the best opportunity to achieve energy savings because they are the most likely participants to qualify for program-related incentives and achieve adequate bill savings without an initial copayment. However, over time, Duke expects that many customers will wish to avail themselves of the convenience of on-bill payment for EE improvements to their home.

Lastly, the terms of the TOB program are set forth in Duke's proposed DEP Residential Tariffed On-Bill Program Tariff – Electric Customer Monthly Charge and DEC Tariffed On-Bill Program tariffs, which were provided in Attachment A to the applications. Duke states that it developed the program in compliance with Part III, Section Five of House Bill 951 (S.L. 2021-165), requiring the Commission to establish an on-utility-bill repayment program related to EE investments, and in consultation with the Tariffed On-Bill Working Group (TOB Working Group) consistent with the July 23, 2020 Agreement and Stipulation of Settlement, as amended, which was approved by the Commission on November 17, 2022, in DEP and DEC's last general rate cases, Docket Nos. E-2, Sub 1219 and E-7, Sub 1214.¹

¹ On the same date as the application in this docket was filed, DEP filed for approval of a Multi-Family New Construction Tariffed On-Bill Pilot (MFNC TOB Pilot) EE program in Docket No. E-2, Sub 1307 and Duke filed for approval of a Residential Smart Saver® Early Replacement and Retrofit (ERR) EE program for DEP and DEC in Docket Nos. E-2, Sub 1308 and E-7, Sub 1278. These programs were all the result of the efforts of the TOB Working Group.

SUMMARY OF COMMENTS

Initial Comments

NCJC, et al.

NCJC, et al. states that it supports Duke's TOB program as it is a product of extensive discussions and problem-solving collaboration within the TOB Working Group.² NCJC, et al., however, recommend several adjustments to the TOB program. First, they suggest that Duke consider in the future allowing customers with past due accounts or on installment plans to participate as these customers might benefit the most from EE investments and help bring those customers current on their bills. Second, NCJC, et al. agree that Duke should be able to disconnect a customer for nonpayment of the TOB monthly charge, but they request that Duke revise the tariff language to state that the TOB monthly charge is subject to the same terms and conditions as regular electric utility service. Third, NCJC, et al. request that Duke affix a large sticker to any TOB equipment indicating utility ownership and providing information on five-day malfunction reporting requirement, including contact information for reporting a malfunction. Also, NCJC, et al. state that Duke should clarify that there is no penalty for not reporting within five days because there could be numerous reasons for delay other than negligence or bad faith. Fourth, NCJC, et al. request that Duke change "may elect to" to "shall" in the repair section of the tariff indicating that Duke will suspend monthly charges until repairs are complete when equipment is no longer functioning as intended and the failure was not caused by the occupant or property owner. NCJC, et al. also suggest that the proposal to invoke accelerated cost recovery in the event that the occupant or property owner caused the equipment failure may be too punitive. Fifth, NCJC, et al. request that the Commission direct Duke to provide information to prospective TOB customers about programs available to income-qualified customers at the time the in-home assessment is made.

Lastly, NCJC, et al. request that the Commission require Duke to include in its process evaluation a report on adoption rates, such as the number of customers who accepted an offered assessment or the number of customers who enrolled in an offered package of EE upgrades, and to consider evaluating the non-energy benefits for program participants, such as improved comfort and indoor air quality and lower exposure to high utility bills following extreme weather.

Public Staff

The Public Staff states that it conducted an investigation of the application, including reviewing Duke's responses to data requests; that it has participated in various stakeholder processes regarding on-utility-bill programs, including the TOB Working Group; that the TOB program reasonably represents the consensus position of

² In addition to their comments filed in this docket, NCJC, et al. note that they filed related comments in response to Duke's applications for approval of an MFNC TOB Pilot EE program and an ERR EE program. NCJC, et al. incorporate by reference here their comments in those dockets.

stakeholders; and that it generally supports the proposed program. The Public Staff anticipates that the TOB program will assist participants with adopting EE measures by allowing them to avoid paying up front for EE measures directly out of pocket or having to secure financing. Although the list of eligible measures identified in the tariff is open-ended, through discovery Duke indicated to the Public Staff that the only EE measures that will be eligible initially are ones that have already been approved by the Commission pursuant to Commission Rule R8-68. The Public Staff recommends that initial approval of the TOB program be limited to EE measures, with the inclusion of anything other than EE measures requiring subsequent Commission approval.

The Public Staff notes that Duke has made reasonable efforts to separate cost recovery for the TOB program and the underlying EE measures being implemented. TOB program costs not recovered from participants — including all other costs related to the operation, repair, and maintenance of measures funded through the TOB program, customer support, application processing, and other administrative costs — are separately recovered through base rates. Although there are no energy savings directly attributable to the TOB program, it provides value by increasing participation in EE programs by addressing the first-cost barrier. While the Public Staff does not object to Duke using the weighted average cost of capital in calculating the TOB monthly charge, it recommends that the Commission require annual reporting on the TOB program expenses and revenues, including the overall TOB program earnings.

The Public Staff states that Duke provided through discovery draft documents related to the TOB program, including Terms and Conditions, notices, and a Revert to Owner agreement obligating a landlord to pay the TOB monthly charge when utility service is maintained at an unoccupied unit. Duke stated that the documents would be finalized after Commission approval of the program. The Public Staff indicates that the draft Terms and Conditions, but not the Revert to Owner agreement, prohibits any landlord from increasing the rent based in whole or in part on the EE measure upgrades. The Public Staff questions how Duke could legally prevent landlords from increasing rent and how Duke would terminate or withdraw the TOB program in the event the landlord raised the rent based on EE upgrades.

The Public Staff notes that the tariff indicates that prepayment is not allowed, but that a participant may pay the obligation in full if the customer terminates utility service and provides notice of the desire to terminate the agreement. Duke replied to the Public Staff that allowing prepayment would undermine the coordination associated with the timing of payments and cost and would increase administrative costs and complexity. In addition, according to Duke, there would be no real benefit to prepaying as there would be no reduction in total cost or impact on a customer's credit since this debt is assigned to the electric account tied to the premises and not to the individual customer. The Public Staff concurs with the comments filed by the Attorney General's Office in Docket No. E-2, Sub 1307 regarding the proposed MFNC TOB Pilot and recommends that prepayment of TOB program obligations be allowed. Noting that there may be no direct benefit to the participant from doing so, the reason a participant might choose to prepay the full TOB

program obligation is not material to the administration of the TOB program, and the participant should have this option.

The Public Staff also notes that the concept of on-bill financing “is a fundamentally different approach for determining who is responsible for utility service,” obligating future residents to pay the TOB monthly charge. The Public Staff states that the “proposal seems to extend the definition of a consumer or customer to a piece of equipment or location, which challenges the fundamental understanding of utility service.” The Public Staff notes that it “has identified nothing that explicitly prohibits an electric utility from using the meter as the cornerstone for service,” but expresses concerns about the potential impact of this concept on utility service and the use of the term customer or consumer in the Commission’s rules. The Public Staff suggests that any approval of the TOB program address the definition of consumer and establish that any deviation from use of that term as set forth in Commission Rule R8-2 be limited to the TOB program.

The Public Staff believes disclosure of the TOB program obligation is critical to ensuring all customers are appropriately informed and recommends that application forms, the form of notice to future customers, the terms and conditions, and any other similar documents applicable to electric service that is related to the TOB programs be filed for Commission approval 60 days in advance of implementation of the TOB program, and that the parties have an opportunity to review and comment on the contents of each form and instrument.

In addition to the above comments and recommendations, the Public Staff recommends that Duke file an annual report detailing the activities of the TOB program that includes the following:

- a list of participating properties;
- total costs broken down by category;
- actual revenues and receipts;
- the aggregate amount of copayments paid;
- any over- or under- recovery of overall costs to date, and projections of any over- or under-recovery for the next three years;
- the number of participants in arrears and amount of arrearage;
- occurrences and complaints related to nonpayment or default of participants or disconnections for nonpayment;
- any prepayments made and reasons customers prepaid;
- any termination of agreements occurring before the obligation has been fully satisfied, and reason for termination;
- the number and type of EE measures requiring repair, the reasons for repair, and the costs of repair;
- any repairs where costs of the repairs are sought to be recovered from participants due to deliberate or negligent behavior; and
- any evidence that prospective buyers or renters were reluctant to purchase or rent a dwelling that is tied to the TOB program.

Reply Comments

NCJC, et al.

In their reply comments NCJC, et al. offer additional recommendations they believe would help remove potential ambiguities and provide clarity to customers.

NCJC, et al. disagree with the Public Staff's interpretation of how estimated savings are determined under the TOB program. Rather than using as-found savings, as in the case of the proposed ERR program, NCJC, et al. opine that the estimated savings are determined by comparing the weather-normalized energy consumption before the proposed upgrades are installed at the premises and the estimated weather-normalized energy consumption after the installation of site-specific EE measures. This concept of estimated savings is important, NCJC, et al. note, because savings cannot be ensured. In addition, NCJC, et al. note that the required estimated savings threshold is not set forth in the proposed TOB tariff. NCJC, et al. recommend specific changes to the language of the tariff specifying a required savings threshold of at least 10% and clarifying that it is estimated savings that determine that calculation.

Regarding the Public Staff's concern that the proposed TOB tariff does not allow prepayment, NCJC, et al. contend that if prepayment is allowed then it should be discounted to reflect the net present value of the prepayment as opposed to monthly payments that cover the remaining investment and weighted average cost of capital over a longer period of time. Further, NCJC, et al. highlight a potential ambiguity or contradiction in the Cost Recovery section in the proposed TOB tariff where prepayment of unbilled charges is explicitly not permitted but a customer may request a final bill for all remaining payments at the time of discontinuing service, starting service, or transferring service to a new owner or occupant. NCJC, et al. assert that if prepayment of unbilled charges is not permitted then a final bill for all remaining payments could not be requested by the account holder. NCJC, et al. recommend specific changes to the language of the tariff to allow customers to elect to pay unbilled future TOB monthly charges at their discretion at the then net present value of the outstanding charges.

NCJC, et al. disagree with the Public Staff that the measures eligible for the TOB program should be limited to Commission-approved EE measures as long as requisite consumer protections and robust estimated bill savings are included in the site-specific utility investment. Further, NCJC, et al. request that the bullet point for HVAC duct replacement in the list of eligible measures in the proposed TOB tariff be revised to include "HVAC duct *sealing and* replacement." NCJC, et al. also recommend specific changes to the language of the tariff in the Purpose section to clarify that the utility is making the investments in EE upgrades, not the customer, and that it is the site-specific nature of those investments in EE measures at the customer's premises that are at the heart of the program.

In response to the Public Staff's concern about providing adequate notice to subsequent occupants at the premises that has received TOB upgrades, NCJC, et al.

suggest that Duke add language from the Pay As You Save Model Tariff to the Notification to Successor Customers section of the TOB tariff.

Finally, NCJC, et al. disagree with the Public Staff's concern that the proposed TOB tariff has the potential to modify the definition of customer in the Commission's rules. They state that under the proposed TOB tariff no new fundamental customer category is being created. Rather, the TOB monthly charge would be billed to the customer occupying the premises during the cost-recovery period, who is also the customer receiving the benefits of the utility's bill-saving investments in EE upgrades.

Duke

In its reply comments Duke notes that all parties recommend approval of the TOB program and responds to issues raised by NCJC, et al. and the Public Staff in their initial comments.

In response to the Public Staff's concern, Duke agrees that the TOB program is limited to EE measures that have been filed with the Commission, including the pending ERR EE program, and that further expansion would require additional approvals.

In response to the Public Staff's request for program form documents, Duke attaches as Exhibits A-C a proposed pro forma Owner Participant Agreement, a sample Electricity Provider Notice of Tariff On Bill, and a sample Cancellation of Notice of Tariff On Bill.

In response to the Public Staff's reporting requests, Duke agrees to provide annual reports including:

- the overall TOB program earnings;
- a summary of all co-payments received;
- a summary of prepayments received but not the reasons therefor;
- a summary of agreements terminated before the TOB Program obligation has been fully satisfied and the reasons to the extent known; and
- a summary of the repair costs sought to be recovered from the participants due to deliberate or negligent behavior of a premises owner or occupant, the amounts charged to these customers, and the amounts recovered.

Duke further agrees to provide a list of properties and the participants' costs at a summary level in the corresponding EM&V report, but it will not disclose specific customer names or property addresses due to Code of Conduct and privacy considerations. Duke agrees to report administrative costs related to TOB program delivery and any other cost of the TOB program not specific to the EE measure or EE program incentives, including repair costs, and any over- or under-recovery as part of the general rate case process. Cost related to the EE measures will be reported in the annual cost recovery rider proceedings. Duke does not agree, however, with providing information in the annual report on the number of participants in arrears and amount of arrearage, particularly for any arrearage

resulting from the TOB program itself; any occurrences and complaints related to the non-payment or default of participants or disconnections for nonpayment; and any evidence that prospective buyers or renters were reluctant to purchase or rent a dwelling that is tied to the TOB obligation either because such tracking is beyond the scope of the TOB program or because Duke would not have such information.

In response to the Public Staff's concerns about rent increases, Duke acknowledges that it cannot prevent a landlord from increasing the rent and has deleted that provision in the pro forma agreement.

In response to the Public Staff's concerns about the new customer relationship, Duke states that there is no need to amend the definition of consumer. While the TOB program is tied to the meter at the premises, it is designed to provide electric service to the premises when there is an account holder in place to receive service and the benefit of TOB upgrades. In the instance where the property is unoccupied or abandoned, electric service would be suspended.

In response to the Public Staff's request that prepayment be allowed, Duke states that the TOB program synchronizes repayment of the costs with the realization of benefits, ensuring that the person paying the TOB monthly charge is also the one reaping the energy savings. Duke states that the TOB monthly charge is a fixed charge determined at the time the agreement is signed with a participating property owner and does not change throughout the term of the agreement. Thus, there is no finance charge avoidance to a resident for prepayment of the TOB monthly charge. Duke further states that "to simplify potential changes in ownership of the property," it included in the pro forma agreement a provision to allow property owners to repay the outstanding balance in full at any time during the term upon request. Duke disagrees with the request that prepayment be allowed for tenants because there is no economic benefit for the tenant and might protect a tenant in the event a landlord requests that the tenant prepay on the owner's behalf.

Duke agrees with NCJC, et al. that the TOB program should not be limited to only low-income customers; however, low-income customers will be a segment of customers that are eligible to participate. Duke also notes that limiting participation to only low-income customers would negatively impact the program's cost-effectiveness by reducing expected participation and preventing administrative costs from being spread across a wider participant base.

Duke agrees with NCJC, et al.'s recommendations to clarify the language of the TOB tariff regarding disconnection for nonpayment of the TOB monthly charge and to invoke accelerated cost recovery only in the event of willful misconduct or gross negligence resulting in damage to TOB equipment. Duke agrees to revise the language of the pro forma agreement to state that the participant shall notify Duke of a malfunction as soon as reasonably possible and not more than 30 days after discovery of the malfunction. Duke further agrees to affix a sticker to TOB equipment to inform customers about who to contact for help if the equipment malfunctions and how to report the

malfunction to Duke. Duke agrees with NCJC, et al.'s recommendations to provide prospective customers with information about EE and weatherization programs whenever such programs are known to Duke and will engage with the State to discuss the possible coordination of rebates from the Inflation Reduction Act (IRA) with EE programs.

Duke does not agree, however, with NCJC, et al.'s recommendation that customers who are not current on payments, have a past due balance, or are on an installment plan initially be allowed to participate in the TOB program. Duke states that limiting eligibility to customers who are current in their payments is a best practice employed by TOB programs across the country. However, Duke agrees to consider this modification of the program once it has been operating for some period of time.

Supplemental Reply Comments

Duke

In its supplemental reply comments Duke agrees with NCJC, et al.'s recommendations to modify the language of the TOB tariff to specify that the required savings threshold is at least 10%, to clarify that estimated savings are used for the calculation, and to include HVAC duct sealing and replacement. Duke, however, disagrees with the recommended change to the purpose statement of the tariff, as it is the customer making the EE investment in their home, not the utility.

Regarding prepayment, Duke agrees with NCJC, et al.'s recommendation to clarify the language of the TOB tariff to allow a customer to obtain a final bill at any time to initiate early repayment. Duke, however, reiterates its opposition to allowing customers to prepay the TOB obligation at a discounted amount. Duke states that the TOB obligation is not calculated nor managed as a loan with interest, as it is not a loan, and that the utilities are not financial lending institutions.

Finally, as directed by the Commission in its April 14, 2023 order, Duke attached an example showing the calculation of the TOB monthly charge for a hypothetical customer receiving a \$5,000 HVAC upgrade with the TOB obligation to be repaid over seven years.

DISCUSSION AND CONCLUSION

Based on the foregoing and the record, the Commission finds that the TOB program, as modified by this Order, is in the public interest and should be approved. A number of issues were raised in comments by NCJC, et al. and the Public Staff, most of which were resolved by the parties, and are discussed below.

Prepayment

The Cost Recovery section of DEP's revised TOB tariff attached to Duke's supplemental reply comments provides as follows:

No sooner than 30 days after the Company or its authorized agent notifies the customer of a completed project the Customer shall be billed the Monthly Service Charge in accordance with this tariff and the "Owner Participant Agreement." The Company will bill and collect Monthly Service Charges until cost recovery is complete, except as described below. Prepayment of monthly service charges will not be permitted unless a final bill is requested. A final bill may be requested at any time.

Section 6 of the pro forma agreement attached to Duke's reply comments provides:

NO PREPAYMENT. Owner acknowledges that Upgrade Service Charges cannot be prepaid unless in connection with an early termination as permitted under Section [15(C)]. In the absence of a request for early termination, any payment made to the Utility in excess of current charges will be held as a credit on the appropriate customer account and applied to charges, including electric charges, as they become due. During the Term of this Agreement, Utility will provide Owner with an accounting of Upgrade Service Charges received so far and remaining Upgrade Service Charges upon request.

Lastly, section 15(C) of the pro forma agreement provides:

Early Termination by Owner. If Owner desires to terminate this Agreement prior to the end of the term the Owner may request, in writing, a final bill of all amounts due under this Agreement together with notice of its desire to terminate the Agreement. Upon receipt of Owner's request as permitted above, the Utility will prepare the final bill. When all amounts due under this Agreement have been irrevocably paid in full to the Utility, the Agreement shall be terminated and notice of the termination will be provided to the Owner and the current Customer at the Property. The failure to pay the full amount due under the final bill by the specified due date will result in the termination of the request for early termination and the Owner will be deemed to have withdrawn the termination request and the Agreement will continue in accordance with its terms.

NCJC, et al. highlight the apparent inconsistency in the TOB tariff between the sentence that prohibits prepayment and the subsequent sentence that appears to allow for it. In the initial proposed tariff, the instances where repayment was allowed — "when an account holder may request a final bill for all remaining payments" — were limited to when that customer is "discontinuing service, starting service, or transferring service to a new owner or occupant." The revised tariff now allows a customer to request a final bill at

any time. This apparent inconsistency is resolved by the pro forma agreement which was attached to Duke's reply comments. The agreement clarifies that when a customer requests a final bill for all remaining payments, they are requesting early termination of the TOB program and an opportunity to pay off the costs incurred for the measures installed under the program at that premises. In this event, Duke no longer has any obligation to maintain the TOB equipment, and the customer is no longer obligated to pay the TOB monthly charge. Thus, Duke distinguishes between prepayment of future charges and termination, which triggers repayment of all remaining amounts due.

The Commission agrees with Duke that as long as the TOB program is not terminated by the customer and Duke is still obligated to maintain the equipment, no prepayment option is necessary. As Duke notes, the TOB program is designed to allow participating customers to repay the cost of the installed measures with energy savings resulting from those measures. The fixed TOB monthly charge is determined up front to produce customer bill savings which exceed costs by at least 10%, which may require an initial copayment. Not only do these installed measures directly benefit the customer through energy savings and an expected lower monthly bill, the measures, which are Commission-approved cost-effective EE measures, also provide benefits to all other ratepayers. The participating customer and the utility enter into an agreement up front where the utility agrees to maintain the TOB equipment for the term of the agreement and the customer agrees to pay the fixed TOB monthly charge for the term of the agreement. Duke's obligation to repair TOB equipment during the repayment term ensures that the measures deliver savings to the customer and benefits to the system as a whole.

Moreover, while some customers might sign up for the TOB program, allow Duke to initially pay for the installed measures, and then desire to use funds from another source to repay Duke before the end of the term, the program, by design, is intended to assist customers that do not have access to funds required to take advantage of Duke's available EE measures. As Duke states in its initial application, "[t]he up[-]front costs of improvements have long been identified as a significant obstacle for customers wishing to improve the energy efficiency of their homes." Programs such as the one proposed here "have been able to assist customers in overcoming the 'first cost' barrier by allowing them to pay for residential energy efficiency investments in installments as part of their tariffed electric bill charges." Lastly, Duke notes that there is no economic benefit for tenants to prepay for installed measures, and the lack of such a provision may protect a tenant were a landlord to request that the tenant exercise such a prepayment option.

The above calculus changes, however, when prepayment, or a final bill for all remaining payments, results in early termination of the program pursuant to the agreement. In that case, Duke has no further obligation to maintain the equipment. The customer is repaying whatever remains of Duke's up-front costs, freeing up that capital to be reinvested by the utility, perhaps using it to install measures for a new TOB customer. Duke contends in its supplemental reply comments that the TOB obligation "is not calculated nor managed as a loan with interest." This is contrary to Duke's footnoted statement in its application: "The TOB charge includes the cost of the installed measure(s) *plus interest* in the amount of the Company's most recently approved weighted average

cost of capital [WACC].” (Emphasis added.) In addition, in the example calculation of the TOB monthly charge attached as Attachment A to Duke’s supplemental reply comments, Duke lists the cost of the measure as the “Financed Amount” and the “Interest on Financing” as equal to the WACC. The utilities may not be banks, but Duke is describing the transaction as a bank would a loan to be paid back in equal installments over a defined period of time. If a customer exercises the early termination option and pays the remaining amount due before the end of the term, the amount due should exclude Duke’s return on the unpaid balance of the initial cost of the installed measures. To return Duke’s capital early and to charge a return (or interest) on that capital would result in double recovery for Duke as it now has the opportunity to reinvest that capital and earn a return over the remaining term of the now-canceled agreement. Duke no longer has any obligation to maintain the TOB equipment, so it has no potential future expense, and it has fully recovered its up-front costs with a reasonable return during the shortened term of the agreement. Thus, the Commission will require Duke to amend its tariff and pro forma agreement to provide that when a customer requests early termination and a final bill for all remaining payments the amount due shall exclude the rate of return on the unpaid balance. In addition, Duke should conform the Cost Recovery section of DEC’s revised TOB tariff to match the language of DEP’s tariff quoted above.

Account Status Eligibility

Regarding NCJC, et al.'s recommendation that Duke customers who are not current on their electric bill be allowed to participate in TOB program, the Commission agrees with Duke that best practice counsels otherwise, especially during the infancy of the program. While the TOB program is designed to provide participating customers with bill savings, Duke notes that allowing a customer who is already having difficulty paying their electric bill to participate may add risk to the program and additional uncollectible expense for all ratepayers. Although the monthly bills for participating customers may be no higher due to the energy savings realized, there are increased costs to be recovered for the installed measures. The Commission is not persuaded at this juncture that there is good cause for adding such uncertainty to the TOB program. Moreover, Duke has agreed to consider incorporating higher-risk customers once the TOB program is established. The Commission expects that Duke will discuss this potential modification of the TOB program with stakeholders after the program has been begun operating.

Remaining Issues

The parties raised a number of additional issues, many of which were agreed to by Duke in its reply comments. For example,

- NCJC, et al. suggest that customers should have more time to report equipment failures, and Duke extended that period from 5 to 30 days;
- NCJC, et al. suggest that invoking accelerated cost recovery in the event the occupant or property owner caused the equipment failure, even if due to negligence, was too punitive, and Duke revised that provision to apply only in the case of willful misconduct or gross negligence;

- NCJC, et al. request that Duke provide information to prospective TOB customers about any no-cost (or zero-contribution) efficiency or weatherization programs available for income-qualified customers at the time an assessment is offered or completed, and Duke agreed to provide such information whenever such programs are known to the utilities;
- NCJC, et al. request that Duke consider how the TOB program will interact with other funding that will be made available under the IRA, and Duke agreed to engage with the State to discuss the possible coordination of IRA rebates with EE programs;
- NCJC, et al. request that Duke revise the proposed TOB tariff to specify the required savings threshold of at least ten percent and to clarify that it is estimated savings that determine that calculation, and Duke agreed to make these changes in the revised tariff;
- NCJC et al. request that Duke revise the proposed TOB tariff to specifically include HVAC duct sealing and replacement as an eligible measure, and Duke agreed to make this change in the revised tariff;
- the Public Staff recommends that initial approval of the TOB program be limited to EE measures, and Duke agreed to limit initial approval of the TOB program to EE measures that have been filed with the Commission, including the pending ERR EE program;
- the Public Staff questions Duke's ability to enforce the provision prohibiting a landlord from increasing the rent based in whole or in part on the EE measure upgrades, and Duke deleted that provision from its pro forma agreement;
- the Public Staff requests that Duke file certain forms and other documents for Commission approval in advance of implementation of the TOB program, and Duke attached a pro forma Owner Participant Agreement, a sample Electricity Provider Notice of Tariff On Bill, and a sample Cancellation of Notice of Tariff On Bill to its reply comments; and
- the Public Staff requests that Duke file an annual report on the TOB program and include certain specific information, and Duke agreed to many of the requested items.

On the remaining items raised by NCJC, et al. and the Public Staff, the Commission finds Duke's position to be reasonable. For example, the Commission agrees with Duke's reporting limitations on customer-specific information on Code of Conduct and privacy considerations. The Commission further agrees with Duke that information on arrearages and disconnections attributable to the TOB program are beyond the scope of the program, and that Duke cannot be expected to know how the TOB program might have factored into prospective buyers or renters' decisions. The Commission agrees with Duke that the current language in the Purpose section of the TOB tariff reflecting consumer, not utility, investment in EE measures is appropriate and declines to require that section be revised as suggested by NCJC, et al. Lastly, the Commission agrees with Duke and NCJC, et al. that approval of the program does not impact the definition of consumer in the Commission's rules. The TOB program requires the payment of TOB monthly charges by the account holder at the premises where the

EE measures were installed, but it does not otherwise affect the utility's relationship with the customer.

IT IS, THEREFORE, ORDERED as follows:

1. That the proposed Residential Tariffed On-Bill Program shall be, and is hereby, approved subject to the following modifications:

- a. Duke shall revise the tariffs to state that the monthly charge is subject to the same terms and conditions as regular electric utility service;
- b. Duke shall revise the tariffs to include HVAC duct sealing and replacement as an eligible measure;
- c. Duke shall revise the tariffs to limit the program to EE measures that have previously been filed with the Commission;
- d. Duke shall revise the pro forma agreement to delete the provision that would prevent a landlord from increasing the rent;
- e. Duke shall revise the pro forma agreement to require a participant to notify Duke of a malfunction as soon as reasonably possible and not more than 30 days after discovery of the malfunction;
- f. Duke shall affix a sticker to equipment to inform customers about who to contact for help if the equipment malfunctions and how to report the malfunction to Duke;
- g. Duke shall revise the tariffs and pro forma agreement to provide that invoking accelerated cost recovery shall apply only in the case of willful misconduct or gross negligence;
- h. Duke shall revise the tariffs to require a savings threshold of at least ten percent;
- i. Duke shall revise the tariffs to state that energy savings are based on estimates;
- j. Duke shall amend its tariffs and pro forma agreement to allow a customer to request early termination and a final bill at any time;
- k. Duke shall amend its tariffs and pro forma agreement to provide that when a customer requests early termination and a final bill for all remaining payments the amount due shall exclude the rate of return on the unpaid balance; and
- l. Duke shall revise the Cost Recovery section of DEC's tariff to match the language of DEP's tariff;

2. That Duke shall file with the Commission within 30 days following the date of this Order revised tariffs compliant with this Order and showing the effective date of the tariffs;

3. That Duke shall provide information to prospective program customers at the time an assessment is offered or completed about any no-cost (or zero-contribution) efficiency or weatherization programs known to the utilities that are available for income-qualified customers;

4. That DEC and DEP shall file an annual report on the Residential Tariffed On-Bill Program that includes the following information, with the first report due to be filed one year after the effective date of the program:

- a. the overall program earnings;
- b. a summary of all co-payments received;
- c. a summary of prepayments received but not the reasons therefor;
- d. a summary of agreements terminated before the program obligation has been fully satisfied and the reasons to the extent known; and
- e. a summary of the repair costs sought to be recovered from the participants due to deliberate or negligent behavior of a premises owner or occupant, the amounts charged to these customers, and the amounts recovered;

5. That Duke shall provide a list of properties and the participants' costs at a summary level in the corresponding EM&V report; and

6. That Duke shall report administrative costs related to program delivery and any other cost of the program not specific to the EE measure or EE program incentives, including repair costs, and any over- or under-recovery as part of the general rate case process.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of August, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "A. Shonta Dunston". The signature is written in a cursive, flowing style.

A. Shonta Dunston, Chief Clerk