

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1071
DOCKET NO. E-7, SUB 1074
DOCKET NO. E-22, SUB 525
DOCKET NO. E-100, SUB 113
DOCKET NO. E-100, SUB 121
DOCKET NO. E-100, SUB 145

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1071)	
)	
In the Matter of)	
Application of Duke Energy Progress,)	
LLC, for Approval of Renewable Energy)	
and Energy Efficiency Portfolio Standard)	
Cost Recovery Rider Pursuant to)	
G.S. 62-133.8 and Commission)	
Rule R8-67)	
)	
DOCKET NO. E-7, SUB 1074)	ORDER ADDRESSING POULTRY
)	COMPLIANCE SHORTFALL AND
In the Matter of)	REQUESTING COMMENTS ON NEW
Application of Duke Energy Carolinas,)	ALLOCATION METHOD
LLC, for Approval of Renewable Energy)	
and Energy Efficiency Portfolio Standard)	
Cost Recovery Rider Pursuant to)	
G.S. 62-133.8 and Commission)	
Rule R8-67)	
)	
DOCKET NO. E-22, SUB 525)	
)	
In the Matter of)	
Application of Virginia Electric and)	
Power, d/b/a Dominion North Carolina)	
Power, for Approval of Renewable)	
Energy and Energy Efficiency Portfolio)	
Standard Cost Recovery Rider Pursuant)	
to G.S. 62-133.8 and Commission Rule)	
R8-67)	
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DOCKET NO. E-100, SUB 113)
)
 In the Matter of)
 Rulemaking Proceeding to Implement)
 Session Law 2007-397)
)
 DOCKET NO. E-100, SUB 121)
)
 In the Matter of)
 Implementing a Tracking System for)
 Renewable Energy Certificates Pursuant)
 to Session Law 2007-397)
)
 DOCKET NO. E-100, SUB 145)
)
 In the Matter of)
 2015 REPS Compliance Plans and 2014)
 REPS Compliance Reports)

BY THE COMMISSION: On September 21, 2015, the Commission issued an Order Requesting Comments on Options for Addressing Poultry REC Shortfall in the above-captioned dockets. The Order stated that on September 16, 2015, the Administrator of the North Carolina Renewable Energy Tracking System (NC-RETS) filed a letter with the Commission explaining that the 2013 retail sales for some electric power suppliers were corrected well after the June 1, 2014 deadline,¹ some as recently as August of 2015. This caused NC-RETS’s software to re-allocate the 170,000-MWh 2014 poultry waste resource obligation among electric power suppliers. Some electric power suppliers had already submitted their 2014 Renewable Energy and Energy Efficiency Portfolio Standard (REPS) compliance to the Commission when this re-allocation occurred. According to the letter, North Carolina’s electric power suppliers, in the aggregate, were 599 MWh short of the 2014 poultry waste resource obligation due to the re-allocation.

The Order requested comments on these questions:

- 1) What actions, if any, the Commission should take to address the apparent 599 MWh short-fall in the electric power suppliers’ aggregate 2014 poultry waste resource requirement, including the option of rolling the shortfall into the 2015 compliance year;
- 2) What changes to the Commission’s rules or the NC-RETS software are necessary to prevent a similar occurrence in the future; and

¹ See Commission Rule R8-67(h)(11).

3) Whether an independent audit of the NC-RETS system is advisable.

Comments addressing these questions were filed October 2, 2015, by: Dominion North Carolina Power (Dominion); jointly by North Carolina Eastern Municipal Power Agency and North Carolina Municipal Power Agency Number 1 (collectively the Agencies); jointly by Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP), (collectively Duke); and the Public Staff.

COMMENTS BY THE PARTIES

As to the question of what actions, if any, the Commission should take to address the apparent 599 MWh short-fall in the electric power suppliers' aggregate 2014 poultry waste resource requirement, Dominion stated that it had already updated its 2014 REPS compliance so that the poultry RECs in its 2014 compliance sub-account in NC-RETS is accurate.² "[Dominion] is not responsible for any portion of the 599 MWh shortfall...." Dominion recommended that each electric power supplier be required to notify the Commission by November 1, 2015, as to whether it has updated its 2014 poultry compliance or whether it elects to roll any shortfall into the 2015 REPS compliance year. If an electric power supplier elects to update its 2014 compliance, the supplier should not be required to refile its 2014 REPS compliance report. Instead, the power supplier would verify that it had submitted the required number of poultry RECS into its 2014 compliance sub-account.

The Agencies stated that:

Based on the data set forth in APX's [the NC-RETS administrator's] letter to the Commission, it appears that [Duke] and [TVA] moved slightly less poultry RECs into their respective 2014 compliance sub-accounts than they needed to, based on the revised data as to the total retail electric sales [of] all electric suppliers, with the total differential being 599 poultry RECs.

The Agencies stated that they believe there is an adequate number of poultry RECs available to comply with the 170,000 MWh poultry REC requirement for 2014, so there is no need to roll this "shortfall" into the 2015 compliance year.

In the event that [Duke] and TVA do not have a total of 599 additional poultry RECs to retire for 2014, then the Power Agencies are willing to, in effect, "advance" 599 poultry RECs on their behalf to maintain compliance with the poultry waste set-aside requirement. In that event, then for purposes of compliance with the poultry waste set-aside requirement in future years the Power Agencies would be "credited" with the excess poultry RECs which they retired for 2014.

² On October 14, 2015, Dominion submitted testimony in Docket No. E-22, Sub 525 confirming that it had substituted 27 poultry RECs for 27 general RECs in its 2014 compliance sub-account.

Duke stated that its poultry REC “shortfall” based on the revised poultry obligation is 574 poultry RECs, which is the vast majority of the shortfall. “Although the Companies have sufficient eligible REC inventories available for retirement now to make up the combined shortfall for DEC and DEP, the Companies recommend rolling [this amount] into the power suppliers’ 2015 poultry waste resource obligations.” Duke stated that this approach would be simpler because there would be no confusion regarding the 2014 REPS compliance reports that have already been filed,³ and there would be no need for the Commission to reject compliance sub-accounts in NC-RETS, which would then need to be adjusted by the power suppliers and re-submitted for approval.

The Public Staff stated that some electric power suppliers were already adjusting their 2014 compliance sub-accounts to ensure that the correct number of poultry RECs were submitted.

To the extent an electric power supplier has already submitted its RECs for compliance purposes based on an earlier allocation of the poultry waste resource obligation, it is appropriate for the Commission to allow those parties to either submit additional poultry RECs towards their 2014 compliance, or in the event the party does currently not have sufficient poultry RECs banked, to allow that shortfall to carry forward to the next compliance year. If a party has retired more RECs than its current allocation, the NC-RETS administrator should “un-retire” those excess RECs to allow them to be used for future compliance.

The second issue raised in the Commission’s Order is whether changes should be made to the Commission’s rules or the NC-RETS software in order to prevent a similar occurrence in the future.

Commission Rule R8-67(h)(11) states:

... Each electric power supplier, or its utility compliance aggregator, shall, within 60 days of NC-RETS beginning operations, and by June 1 of each subsequent year, enter its previous year’s retail electricity sales into NC-RETS, which sales will be used by NC-RETS to calculate each electric power supplier’s REPS obligations and NC-RETS charges. ... [Emphasis added.]

The Public Staff said that the following sentence should be added to Commission Rule R8-67(h)(11): “After June 1, no electric power supplier may amend its previous year’s retail electricity sales without approval of the Commission.” Similarly, the Public Staff stated that the Commission should direct the NC-RETS administrator to block any

³ In the case of DEC, the Commission has approved the Company’s 2014 REPS compliance by Order dated July 30, 2015, in Docket No. E-7, Sub 1074. In the case of DEP, that Company’s 2014 REPS compliance is pending in Docket No. E-2, Sub 1071.

functionality in NC-RETS that would allow power suppliers to change their previous year's retail sales after June 1 of each year.

Dominion stated that it is able to submit its prior year retail sales by June 1, and does not oppose moving this deadline back to September 1. "However, the Company does believe NC-RETS and all other electric power suppliers should have a high level of confidence that an electric power supplier's retail sales data is correct, once filed." Accordingly, Dominion supported the amendment to Commission Rule R8-67(h)(11) that the Public Staff proposed (discussed above).

The Agencies stated that the Commission rules should be revised to move the date for reporting retail sales data to later in the year, preferably to the same date that the compliance report is due (September 1). The Agencies explained that they rely on data that its member power suppliers submit to the Energy Information Administration, U.S. Department of Energy (EIA). The Agencies stated that EIA made changes to its reporting requirements that made it difficult to secure the data from EIA by June 1. For example, the EIA did not open the 2014 submittal window for reporting retail sales data until June 3, 2014, which was two days after the June 1 due date for reporting data to NC-RETS. The EIA's reporting window closed on August 5, after which EIA reviews the data, sometimes resulting in changes. The Agencies stated further that:

Delaying the date for submission of sales data to NC-RETS to September 1, as recommended by the Power Agencies, would have no adverse impact on the ability of electric suppliers to determine their REPS compliance requirements, as that determination is not made until the following year, e.g., 2013 retail sales data was due to be reported on June 1, 2014, and then was used in 2015 to determine the number of RECs to be retired in August 2015.

The Agencies provided no explanation as to why correct sales data for all of its power suppliers for 2013 was not available until August of 2015.

Duke recommended that electric power suppliers be required to establish their compliance sub-accounts late in a given compliance year (rather than waiting until the subsequent year when compliance is documented to the Commission), and that the NC-RETS administrator be tasked with auditing each electric power supplier's retail sales data, comparing the data that is provided by June 1 as required by the Commission's rules, with the data that is provided when the compliance sub-account is established. The administrator should then "investigate and resolve any differences prior to finalizing the poultry waste resource obligation for each electric power supplier on January 1. This process would be complete before the actual retirement of RECs, which occurs during the year following the end of the compliance year."

On the question of whether an independent audit of NC-RETS is needed, Dominion stated that it "believes that NC-RETS is operating effectively and that the time and potential expense associated with such an audit may not be warranted at this time."

The Agencies stated that they “see no need for such an audit.” Duke stated “that there are no related and inherent NC-RETS system flaws requiring review by an independent auditor.” The Public Staff stated that it “does not have any objections to the Commission authorizing an independent audit of the NC-RETS system in order to identify potential issues before they arise and to suggest improvements to the functionality of the system.”

DISCUSSION AND CONCLUSIONS

The Commission has considered the comments filed by parties, as well as updated records in NC-RETS, and concludes that there are advantages in resolving the 2014 poultry compliance shortfall issue sooner rather than later. Although Duke did not cause the shortfall in question, the re-allocation nonetheless caused its 2014 poultry obligations to increase somewhat. Since Duke has enough poultry RECs banked to allow it to comply now by adding poultry RECs to its 2014 compliance sub-accounts, the Commission will require it to do so. The Commission will require DEC to add 317 and DEP to add 211 poultry RECs with vintages dated 2014 or earlier to their 2014 REPS compliance sub-accounts.⁴ The Commission anticipates that DEC and DEP would also remove a similar number of general RECs from their compliance sub-accounts.

The Commission has already “accepted” DEC’s compliance sub-account in NC-RETS, and the RECs have been retired. Therefore, the Commission will instruct the NC-RETS administrator to “un-retire” 334 general RECs, and allow DEC to replace them with poultry RECs, thereby coming into compliance with the poultry requirement as it has been re-allocated.

NC-RETS now shows that some of the smaller electric power suppliers have under-complied by only one poultry REC, while several others have over-complied by a small number of poultry RECs. The Commission will not require adjustments in these cases.

The Commission is no longer comfortable allowing electric power suppliers to rely on EIA’s data procurement timelines, which are subject to change and are not related to the REPS and the Commission’s rules. While it might be convenient for the Agencies to piggy-back on the EIA’s data reporting requirements, no party has described any barrier preventing the individual municipal power suppliers from reporting their retail sales data to the Agencies directly in time for the Agencies to submit the data to NC-RETS on June 1 each year as the Commission’s rules require. In fact, DEC and DEP apparently have no problem securing this data, on time, from the municipal power suppliers for which they act as compliance aggregators.

⁴ While this matter has been pending the Commission learned that the recent 2013 retail sales data changes had caused NC-RETS to allocate a 170,075-MWh poultry obligation, rather than the required 170,000-MWh obligation, to the electric power suppliers. This error has since been corrected, thereby reducing the poultry REC shortfall.

Part of the Commission's rationale for the June 1 deadline is that each electric power supplier's current year REPS obligation should be defined while there is still time in the current year to acquire the necessary renewable energy/RECs at reasonable cost. If the reporting of retail sales data were moved back to September 1, as the Agencies advocate, electric power suppliers would have to wait until the fourth quarter of the year to have a clear understanding of that year's compliance obligation. Granted, the compliance report is not due to the Commission until the following year (early March for DEC, early June for DEP, early August for Dominion, and early September for all other electric power suppliers). However, the intent of the rule is that the renewable energy, and/or related RECs, be acquired during the compliance year, not after-the-fact or just-in-time for filing the compliance report in the subsequent year.

Based on these concerns, the Commission does not support Duke's proposal whereby electric power suppliers could submit one sales number in June, and a different one in the context of their compliance sub-accounts later in the year, and the NC-RETS administrator would be relied upon to resolve any discrepancies. Under Duke's proposal, electric power suppliers would need to wait until all discrepancies are resolved before they would have certainty regarding their share of the aggregate poultry requirement. While the poultry REC obligation change might have been small in 2014, the aggregate requirement in 2014 was only 170,000 MWh. When the requirement grows to 900,000 MWh as required by G.S. 62-133.8(f) it will be more difficult for electric power suppliers to meet their obligations if there is a delay in allocating the aggregated requirement among them each year.

The Commission finds that the rule change that is proposed by the Public Staff and Dominion (wherein if an electric power supplier wants to change its sales data after June 1 it must first seek permission from the Commission) is unnecessary. The existing rule states that this data is due by June 1; as with other Commission rules, it is implicit that if a regulated entity cannot comply, it must ask the Commission for a waiver. (In this instance, Electricities should have requested a waiver before changing its sales numbers, and if a similar situation were to occur in the future, the Commission might consider reallocating the poultry requirement so that any additional burden would fall only on the electric power supplier that requested permission to update its retail sales data.)

This is the first year in which the NC-RETS functionality for allocating the aggregate poultry obligation has been used. The Commission believes that this method is too dynamic in that every electric power supplier's obligation changes whenever one electric power supplier corrects a retail sales data error. The Commission believes it would be preferable to periodically establish an allocation of the poultry obligation, based on historic retail sales, and leave that allocation in place for a period of years. (For example, perhaps each electric power supplier would submit three years of retail sales data to the Commission, and that data would be used to establish a poultry MWh allocation that would remain static for five years, after which the process would be repeated.) The Commission seeks comments on how an allocation that is stable and fair, yet based on each electric power supplier's share of total retail sales, might be accomplished.

Finally, the Commission agrees with the majority of parties who stated that there is no need for an independent audit of NC-RETS at this time.

IT IS, THEREFORE, ORDERED as follows:

1) That DEC and DEP shall work with the NC-RETS administrator to adjust the RECs in their 2014 compliance sub-accounts as discussed in this Order as soon as reasonably possible;

2) That the NC-RETS administrator shall submit a report to the Commission in Docket No. E-7, Sub 1074 and Docket No. E-2, Sub 1071 as to the status of this effort as soon as possible after the adjustments have been completed, but no later than November 6, 2015; and

3) That all parties are invited to provide comments as to alternative methods of allocating the aggregate poultry obligation in the future. Such comments should be filed in Docket No. E-100, Sub 113 by December 30, 2015. Reply comments may be filed by January 29, 2016.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of October, 2015.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "Jackie Cox", written in a cursive style.

Jackie Cox, Deputy Clerk