STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 1329
DOCKET NO. E-2, SUB 1380

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1329 In the Matter of Application of Duke Energy Carolinas, LLC for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina and Performance-Based Regulation DOCKET NO. E-2, SUB 1380 In the Matter of Application of Duke Energy Progress, LLC for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina and Performance-Based Regulation	)	INITIAL COMMENTS OF THE ATTORNEY GENERAL'S OFFICE

The North Carolina Attorney General's Office (AGO), by and through its undersigned counsel, hereby respectfully submits the following comments[1] for consideration by the North Carolina Utilities Commission (Commission) in response to the Order Requesting Comments issued in Docket No. E-7, 1329, on August 12, 2026 (DEC Order), and Order Requesting Comments issued in Docket No. E-2, Sub 1380, on August 14, 2026 (DEP Order and, collectively with the DEC Order, Comments Orders).

The AGO appreciates the opportunity to provide further feedback on issues related to the growth expected in Duke Energy's service territories. Responses to the questions posed by the Commission in Appendix B of the Comments Orders are provided below.

[1] The absence of a comment on a particular issue or component in one of the tariffs under consideration should not be construed as agreement or ambivalence on the issue. The AGO reserves the right to supplement its responses to the questions in the Comments Orders in its Reply Comments that will be filed on September 25, 2026.

The AGO's views on the appropriate approach to large load customers have evolved over the course of these proceedings. That evolution is discussed where appropriate in the information below. Notwithstanding that evolution, the AGO stands by the contents of its prefiled and evidentiary hearing testimony unless otherwise noted.

The most significant evolution alluded to above is the change in the target audience of the tariff. The AGO's prefiled testimony recommended a tiered approach that applied to customers with a load of 20 MW or more. The Commission's apparent willingness to focus exclusively on data centers has moved the AGO to do the same with secondary emphasis on any customer with a contract demand of 100 MW or more and a peak load factor of 80% or more (Large Load Customer). The AGO's responses below are, unless otherwise noted, applicable to a tariff specific to data centers and LLCs should the Commission decide to move forward with a non-industry specific tariff.

Question No. 1: Whether to adopt a dedicated rate schedule, as proposed in Appendix A (or a potential alternative proposed by one or more parties), or a tariff overlay structure (in which the customer can select their rate schedule), as proposed by the Public Staff and DEC/DEP.

Response:
The AGO is advocating a set of terms and conditions that are specific to data centers that include the rates that data centers must pay based upon a newly created data center rate class. The AGO is not in favor of allowing data centers to choose which rates they pay or allowing data centers to customize the key provisions of letter agreements and electric service agreements.

Question No. 2: The proposed large load tariff provisions of the Public Staff submitted in Docket Nos. E-7, Sub 1329 and E-2, Sub 1380, respectively.[2]

Response:
The AGO appreciates the Schedule LL tariff put forward by Public Staff. While the AGO recommends a separate rate schedule for new large loads, as discussed above, the tariff overlay structure proposed by Public Staff is directionally consistent with many of the AGO's recommendations in these proceedings.

[2] There are three differences between the Public Staff's proposed large load tariff provisions. The primary difference between the Public Staff's DEC and DEP proposals relates to curtailment. During the evidentiary hearing in the DEC case, the Public Staff testified that it believes the updated language presented in its testimony in the DEP case is appropriate for DEC as well. See DEC Tr. vol. 14, 194. The AGO's commentary on the Public Staff's position related to curtailment is specific to the provisions in the Public Staff's DEP proposal.

However, many of the provisions in Schedule LL do not go far enough to protect customers. The AGO continues to advocate for the majority of the specific tariff provisions discussed in Mr. Brant's pre-filed testimony.

As we will discuss in more detail in response to Question No. 9, the AGO appreciates the Contribution in Aid of Construction (CIAC) for generation and transmission upgrade costs put forward by Public Staff. While this proposal is a step in the right direction by requiring customers to pay for both dedicated facilities and network upgrades, the Commission's proposal (Schedule DC-HLF), as modified by the AGO, will go further to protect other customers and ensure that data center customers pay their fair share. In particular, the AGO is concerned that the customer-specific revenue calculation required to implement Schedule LL could be challenging to implement and easily gamed by Duke Energy and data center customers. Given the uncertainty around future revenues from data center customers, it may be challenging to determine the appropriate CIAC level, that must be calculated up front under the Public Staff's proposal.

> **<u>Question No. 3</u>: The proposed large load tariff provisions of DEC and DEP submitted in Docket Nos. E-7, Sub 1329 and E-2, Sub 1380, respectively.**

<u>Response</u>:
The proposed tariff overlays put forward by DEC and DEP in their respective rate cases do not go far enough to protect other customers and do not ensure that large load customers are paying the incremental costs incurred to serve them, as discuss below. In addition, limiting applicability to customers that signed a Letter Agreement (LA) and an Electric Service Agreement (ESA) after January 1, 2027, unnecessarily excludes all facilities in Duke Energy's interconnection queue. For these reasons, the Commission should reject Duke Energy's proposals and approve an approach like the one described in the response to Question No. 1, with cost-allocation provisions and terms and conditions that better protect other customers from Duke Energy shifting costs and risks to them.

> **<u>Question No. 4</u>: If neither a rate schedule nor a tariff overlay is supported, please explain how to best create an enforceable obligation in North Carolina consistent with the Ratepayer Protection Pledge, which addresses data centers: (1) building, bringing, or buying the new generation resources necessary to serve their load; (2) paying for the new power delivery infrastructure required for their service; (3) paying for demand and infrastructure requested whether they use the electricity or not; (4) investing in local job creation and workforce**

development; and (5) contributing to electric and community resilience by making their backup generation resources available at times of scarcity.

Response:
The AGO supports the approach described in response to Question No. 1.

Question No. 5: Whether the rate schedule or tariff overlay should apply to data center loads, "large" loads, and/or other categories of load (target load), and what the specific definition of the preferred target load should be.

For those commenters who prefer that the rate schedule or tariff overlay apply to "large" loads as the target load, please offer an alternative name for such loads to be used in North Carolina since DEC, DEP, and Dominion Energy North Carolina already have "large general service" rate schedules for loads that are significantly smaller than those contemplated in this docket. For example, "large" loads could be referred to as "significant system impact" loads.

Response:
The AGO advocates a rate schedule and rate class specific to data centers and data center customers consistent with the definitions the Commission set forth in its proposal. Experience gained during the development and implementation of a data center-specific tariff can be leveraged to determine whether a non-industry specific large load tariff is needed and, if a general large load tariff is needed, what that tariff should include and how it should function.

A non-industry specific large load tariff should be pursued expeditiously if there are unresolved concerns (1) about a data center-specific tariff being struck down as discriminatory or (2) about retroactive application to customers who executed LAs and ESAs before the effective date of the tariff. If a non-industry specific large load tariff is developed under those circumstances, it should be applicable to customers with contract demand of 100 MW or more and a load factor of 80%.

Concerns with Data Center-specific Tariff
The prohibition against discriminatory ratemaking should be top of mind as the Commission moves forward. Any data center-specific tariff must be artfully designed to ensure it can withstand a challenge under N.C.G.S. § 62-140.

A data center-specific tariff in Ohio has already been challenged as discriminatory. The case is currently pending before the Ohio Supreme Court.[3]

Oregon has an enabling statute that supports and mandates creation of a data center-specific tariff.[4]

Legislative action by the North Carolina General Assembly will increase the likelihood of a data center-specific tariff withstanding a legal challenge.

Question No. 6: Whether the target load should be a new rate class, and, if so, how that should be implemented.

Response:
The AGO advocates creation of a new rate class for customers subject to the Commission's proposal. Creation of a dedicated rate class is an important first step in ensuring that customers subject to the rate class are covering the costs they cause and contributing to the costs to operate and maintain the entire electrical system from which they receive service. A dedicated rate class promotes transparency, which is particularly important given the nationwide concern that data centers are shifting costs to other utility ratepayers. A dedicated rate class will also make it easier to allocate costs incurred to serve customers subject to the tariff directly to those customers in future rate cases, which ensures that costs and risks are not shifted to other customers.

The new rate class should be implemented using the definitions and rates set forth in the Commission's proposal, as modified by the recommendations in these Comments. The appropriateness of the rates set forth in the Commission's proposal will be evaluated in future rate cases once customers have begun taking service under the rate schedule. As time progresses and more data becomes available, additional cost of service analysis can be completed and rates can be adjusted accordingly.

Question No. 7: Whether a standard form of ESA for the target load should be included as part of DEC's and DEP's tariff (with the term "tariff" being defined as a compilation of all effective

[3] Case No. 2025-1458: In the Matter of the Application of Ohio Power Company for New Tariffs Related to Data Centers and Mobile Data Centers. Information is available at: https://www.supremecourt.ohio.gov/Clerk/ecms/#/caseinfo/2025/1458.

[4] Oregon HB 3546: Protecting Oregonians With Energy Responsibility. Available at: https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/HB3546.

rate schedules of a utility and the general terms and conditions along with a copy of each form of service agreement).

Response:
The AGO advocates inclusion of a standard form LA and a standard form ESA. The standard form ESA should build upon the requirements in the LA and provide additional protections to other ratepayers and the utility.

The standard form LA must include the provisions described below.
- Technical requirements applicable to the customer's service requirements (such as the service address, load size, etc.);
- Deadline for payment of the customer's financial obligations;
- Deadline for execution of an ESA; and
- A statement that (1) the terms of the LA and ESA are subject to future Commission-approved changes in Duke Energy's Service Regulations, tariff, and other regulatory documents and (2) the terms of executed ESAs will change, by operation of law, to conform to the newly established requirements.

The standard form ESA must include the provisions described below.
- Technical requirements applicable to the customer's service requirements (such as the service address, load size, etc.);
- Minimum contract term of 15 years, not including the ramp period;
- Maximum ramp period of 5 years;
- Minimum monthly bills;
- Demand ratchets;
- Notice requirements for reductions in contract demand and early termination;
- Exit fees and liquidated damages applicable to changes in contract demand and early terminations;
- An itemized schedule that includes the estimated cost of infrastructure investments and categorizes the infrastructure investments that must be made for the customer to begin taking service based on who triggered the infrastructure investments and who will benefit from the infrastructure investment;
- An itemized schedule showing the infrastructure costs that will be recovered from the customer, ratepayers, and other stakeholders (if applicable);
- The description of the financial commitments that are due on the date the document is executed;[5]
- A statement that the (1) terms of the ESA are subject to future Commission-approved changes in Duke Energy's Service Regulations, tariff, and other regulatory documents and (2) the terms of executed ESAs will change, by operation of law, to conform to the newly established requirements;
- Curtailment requirements;

[5] The Commission's proposal requires upfront payments that the AGO believes are comprehensive in nature and may be sufficient to provide protection to existing customers. If an alternative is ultimately adopted, then the AGO advocates inclusion of provisions requiring liquid collateral or insurance as a form of protection for other customers.

- Options for flexible connections for customers who are interested in non-firm service; and
- Requirements related to participation in demand-side management and energy efficiency programs

The lists above are not meant to be exhaustive. They are, instead, non-negotiable provisions that must be included for the framework to adequately protect ratepayers from the risks posed by data centers.

A current version of Duke Energy's Service Regulations should also be attached for completeness. Duke Energy's Service Regulations should be revised to ensure they are consistent with the regulatory framework applicable to data center customers developed in these proceedings. The Public Staff's proposed modifications set forth in Exhibit 5 of the pre-filed direct testimony of the Public Staff's Large Load Panel and a Commission-approved Large Load Queue Process that expands upon and modifies the process discussed in Duke Energy's 2025 CPIRP testimony in Docket No. E-100, Sub 207 should be considered as part of that process.

Question No. 8: Whether retail customers other than the target load should be required to bear the cost of any risk associated with the target load, and, if so, how much risk and why should these customers be required to bear this risk.

Response:
No, they should not. Data center customers should be responsible for the incremental costs incurred to serve them and pay toward embedded costs to support the existing generation, transmission, and distribution system they will benefit from.

Requiring data center customers to pay for the incremental costs they cause should not become a substitute for prudent resource planning that minimizes the overall cost and risk of the incremental generation that is selected. Resource selections should be balanced and include a mix of demand-side and supply-side resources to ensure that Duke Energy continues to plan, build, and operate a least cost, low carbon system.

Question No. 9: Whether customers in the target load should be required to be financially responsible for "but-for" costs or incremental costs or other costs associated with customer cost-causation (including generation, transmission, and distribution). Please clearly define each allocation

methodology that is supported or opposed in the comments and explain in detail how to implement any methodology that is supported.

Response:
Yes, data center customers subject to the new rate class should be financially responsible for "but for" costs. Please see the response to Question No. 14 for a more detailed discussion of the AGO's proposal regarding generation, transmission, and distribution costs allocation.

Question No. 10: Whether and how a competent, qualified, and independent firm should be selected by the Commission to investigate and determine the "but-for" costs or incremental costs or other costs associated with customer cost-causation.

Response:
The use of an independent firm is a novel idea. It is not used in other jurisdictions so we cannot look to lessons learned in other jurisdictions. An independent firm can guard against bias, but can also duplicate tasks that are also completed as part of the interconnection studies conducted by DEC and DEP.

It may also be difficult to identify and select a qualified firm.

Notwithstanding the concerns articulated above, the AGO is interested in other parties' thoughts on the benefits of an independent firm.

Question No. 11: Whether and to what extent grandfathering should be permitted for existing customers who might be eligible for this new rate schedule or tariff overlay.

Response:
Existing and future customers with existing LAs and ESAs who are not currently subject to the additional requirements in the frameworks under consideration will likely seek to be grandfathered into the framework under which they are currently taking service or that existed when their existing LA or ESA was executed and, therefore, excluded from the tariff. There is a concern that customers without an existing LA or ESA will accelerate their efforts to sign a contract for future service before the effective date of the new tariff to avoid being subject to the more stringent requirements. Gamesmanship can be avoided if applicability is tied to the day on which the new customer begins taking service rather than the day on which the new customer's LA or ESA was executed.

Existing and future customers with LAs and ESAs that predate the tariff will likely oppose any framework that can reach back and pull them under its umbrella. Those customers will argue that such a framework is inequitable and violates the prohibition on retroactive ratemaking.

To ensure that ratepayers are adequately protected and the rights of existing and future customers are preserved, the AGO recommends:
(1) basing applicability on the day on which the customer begins taking service consistent with the language in the Public Staff's proposal; and
(2) creation of a safe harbor provision, applicable to existing customers who entered into contractual arrangements to expand their service and future customers with existing LAs and ESAs executed before May 29, 2026 (the date on which intervenors filed their direct testimony in Docket No. E-7, Sub 1329).

Any customer interested in exercising the safe harbor provision must seek and receive Commission approval in a dedicated Safe Harbor Proceeding initiated by the customer. The Safe Harbor Proceeding must be initiated within 90 days of the effective date of the tariff. Customers who do not initiate a Safe Holder Proceeding within the time prescribed will be subject to the tariff and have 45 days to comply with the conditions included in the tariff and any updates to the serving utility's Service Regulations.

A high-level overview of the Safe Harbor Proceeding is provided below.
(1) The petition must be filed within 90 days of the effective date of the tariff and include a copy of all documents the customer has entered into the Duke Energy.
(2) The petition must list each provision of the tariff the customer takes issue with and explain why the customer should be exempt from those provisions.
(3) If the customer is seeking waiver of any of the financial security or notice provisions, the petition must include a section that (a) describes the financial commitments the customer has already made; (b) compares the financial commitments the customer has already made to the financial commitments the customer will be subject to under the tariff; and (c) explains how the financial commitments the customer has already made provide adequate protection for other ratepayers.

<u>Question No. 12</u>: Whether any manufacturing customers of DEC or DEP are taking service on Rate Schedule HLF or have interest in writing in taking electric service on Rate Schedule HLF.

<u>Response</u>:
The AGO does not have the information required to respond to this question.

<u>Question No. 13</u>: Whether curtailment options in addition to, or in lieu of, those set forth in the form of ESA included in Appendix A should be offered to customers executing the form of ESA.

<u>Response</u>:
The AGO appreciates the curtailment requirements in Appendix A, which require a customer to either curtail up to 95% of its loads for 50 hours or up to 50% of its load for 100 hours per year, or separately purchase equivalent curtailment from another Duke Energy customer. This proposal is consistent with the floor proposed by Mr. Brant, with the modification to allow a data center customer to purchase firm curtailment rights from another customer. The AGO supports this modification and recommends additional improvements below.

While the minimum threshold of curtailment in Appendix A is a good idea, the AGO also recommends that Schedule DC-HLF be improved to allow customers to negotiate different terms with varying levels of flexibility that exceed the minimum requirements. The goal of this would be to minimize overall system costs while tailoring curtailment to the individual capabilities of each customer. For example, some customers may be able to deliver greater levels of curtailment than the required level in exchange for an incentive or faster interconnection to the system. Other customers may have more limited capability overall, but could target curtailment towards the highest risk hours. One way to accomplish this is development of a flexible interconnection tariff. The AGO sees benefit in providing flexibility for data center customers and Duke Energy to collaborate on development of curtailment or other programs that can deliver maximum benefits to the system.

Towards the goal of a flexible approach, Duke Energy should provide more public information and data to prospective data center customers on the timing of high risk hours that could inform the development of tailored curtailment offerings. For example, Duke Energy could publish an 8,760 hourly “heatmap” indicating the magnitude and timing of Loss of Load Probability (LOLP) from its Resource Adequacy studies to serve as guidance for how curtailment terms should be structured. Curtailment during the highest LOLP hours has higher system value and should be given more weight when negotiating these terms.

Furthermore, the AGO recommends that the Commission modify its proposal to allow customers subject to the tariff to invest in distributed capacity by purchasing curtailment rights from third-party Duke Energy customers. Through a distributed capacity program, data center customers can invest in behind-the-meter battery storage or other firm capacity resources at multiple customer sites and aggregate that load into a firm capacity resource equivalent to the curtailment requirements set forth in the ESA. Such a mechanism maintains the spirit of the Commission’s proposal regarding investment in off-site curtailment while expanding the universe of potential customers who could benefit from these investments by data center customers.

In addition to including mandatory curtailment as part of the ESA, the AGO maintains its recommendation that the Commission direct Duke Energy to develop a flexible connection tariff for data center customers and other LLCs and require that load flexibility be considered a resource in future integrated resource planning analyses.

> **Question No. 14: Whether modifications should be made to Appendix A or the proposed tariff overlays of the Public Staff and DEC/DEP for the target load regarding eligibility criteria (such as load size and load factor), customer funding of generation, transmission, distribution, and interconnection facilities and reimbursement mechanisms, minimum contract terms, automatic contract extension, minimum billing demand, load ramps, notice requirements for termination and load changes, fees for early termination or significant load changes, liquidated damages, collateral requirements, demand ratchet mechanisms, sudden disconnection and reconnection, and any other provisions or forms of protection that are believed to be necessary to allocate risks appropriately between new target load and existing ratepayers.**

Response:
The AGO appreciates the Commission's proposed Schedule DC-HLF. It is evident that the Commission thoughtfully considered the testimony of the AGO and other parties related to large loads in putting forward a proposal that contains nation-leading protections for other customer classes. There are multiple options available to the Commission to ensure that data centers and other LLCs pay their fair share and that costs and risks are not shifted to other customer classes. These options regarding ESA provisions and cost allocation methods must work together.

The AGO proposes relatively small modifications and clarifications to the Commission's proposal in Appendix A. These recommendations build upon the general structure proposed by the Commission in this proceeding, but do not reflect the full range of cost allocation and consumer protection options available.

With those caveats, the AGO recommends modifications to the Commission's proposal listed below.

Applicability: The new Schedule DC-HLF should apply to all new and existing data center customers, as defined by the Commission, regardless of the date on which they began taking service or signed their LA or ESA.

Network Improvements Definition: The AGO recommends removing the requirement that a "data center customer receives the majority of benefits from such incremental facilities" from the definition of Network Improvements. As discussed below, given the size of data centers under development, other customers will likely receive little to no benefit from transmission network upgrades that would not be needed "but for" new large loads. In addition, determining the appropriate percentage of benefits that may flow to specific customers will be challenging in the future and could require adjudication of individual ESAs to identify what qualifies as Network Improvements. Instead, it would be easier and fairer to directly allocate all network improvements not needed "but for" the interconnection of a new data center customer directly to those customers.

Required CIAC: All Dedicated Facilities and But-For Costs as defined by the Commission should be fully paid for up-front by eligible customers as a non-refundable CIAC, with those costs being excluded from rate base in the future. This recommendation differs from the Commission's proposal by also including Network Transmission Upgrade costs in the up-front CIAC payment. Network Transmission upgrades driven by the interconnection of large loads are unlikely to benefit other customers, given the size of the proposed loads. In addition, revenue projections are challenging with large loads given their size and uncertainty. For these reasons, the AGO recommends directly allocating all distribution and transmission upgrades caused by new large loads to those customers through a CIAC. In addition to these upgrade fees, customers subject to the tariff should also be required to pay embedded transmission and distribution charges, as determined through ongoing cost allocation in future rate cases, because those customers will benefit from the broader transmission and distribution system funded by embedded costs.

ESA Deposit Refunds: The AGO supports requiring data center customers to pay for incremental generation upgrades up front and then receive a refund over time, as the load materializes. This treatment ensures that new data center customers have sufficient "skin in the game" to prevent speculation and avoids shifting near-term costs to other customer classes with the potential for a future benefit. As one additional clarification to the Commission's proposal, the AGO suggests that any monies from the ESA Deposit not refunded during the Initial Term be treated as a non-refundable CIAC payment. This will ensure new data center customers reach their contracted capacity as soon as possible and limit the potential refund period.

In addition to the option laid out by the Commission, incremental generation costs could also be directly allocated to the new data center rate class through direct allocation or through a growth for growth payment model. Both options were discussed in Mr. Brant's pre-filed testimony. Under both options, Duke Energy would determine the incremental generation costs attributable to data center customers and allocate those costs directly to the data center rate class as it puts those costs into rates. Under both models, data center customers are required to pay their incremental generation costs and their fair share of embedded costs for generation resources.

Minimum Contract Term: The AGO maintains its recommendation that the initial ESA term for new customers be at least 15 years, not including a ramp period of up to five years. This would result in a minimum initial contract term of 15 years and a maximum term of 20 years. The Commission's Form ESA did not specify the contract term. An initial contract term of this length is necessary to ensure a long-term stream of revenues from data center customers.

Energy Efficiency Program Opt-Out: Appendix 1 of the Standard Form ESA includes language regarding the ability of large load customers to opt-out of DSM programs, including paying into the annual rider to collect funds for utility-funded DSM programs. The AGO recommends that the Commission remove this language and, instead, require all data center customers to commit to contributing to utility-run DSM programs by not opting out of the annual rider. The AGO also recommends that data center customers have the ability to increase their investment in DSM beyond the standard amount as part of the incremental cost they pay for new resources (in lieu of an equivalent amount of supply-side resources). This would provide significant incremental funding for DSM programs that Duke Energy offers and an avenue to help mitigate some of the costs and risks associated with large loads.

Question No. 14: On what basis or bases and in what manner DEC/DEP and a target load customer may petition the Commission for a modification to, or waiver of, one or more ESA provisions, if the standard form of ESA is included in the applicable rate schedule or tariff overlay.

Response:
Waivers of a future tariff implemented to protect other ratepayers and the utility from the risks posed by the customers subject to the tariff should be approached with caution. The process should be rigorous and a waiver should only be granted in extraordinary circumstances. The AGO does not oppose a construct similar to the Safe Harbor Proceeding described in response to Question No. 11.

WHEREFORE, the AGO respectfully requests that the Commission consider these comments in its deliberations in these proceedings.

Respectfully submitted, this the 9th day of September, 2026.

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CERTIFICATE OF SERVICE

The undersigned certifies that she has served a copy of the foregoing **Initial Comments of the Attorney General's Office** upon the parties of record in this proceeding by email.

This the 9th day of September, 2026.

Reita D. Coxton-Shanaghan
Special Deputy Attorney General