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September 9, 2026

North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4300

Submitted via email

RE: Docket Number E-2, Sub 1380CS

NCEJN AND EJCAN'S CONSUMER STATEMENT OF POSITION FOR DUKE ENERGY PROGRESS'S APPLICATION FOR ADJUSTMENT OF RATES AND CHARGES

INTRODUCTION

North Carolina Environmental Justice Network ("NCEJN") and the Environmental Justice Community Action Network ("EJCAN"), whose members, supporters, and partners in North Carolina are customers of Duke Energy Progress, LLC ("DEP," "Duke Energy," or "Duke"), respectfully submit this joint consumer statement (the "Statement") for the North Carolina Utilities Commission's (the "Commission") consideration in the above-captioned docket for DEP's requests to increase retail electric base-rates (collectively, the "Proposal").

NCEJN and EJCAN are concerned about the affordability, fairness, long-term consequences, and immediate impact that DEP's proposal to increase retail base rates will have on all North Carolina ratepayers and in particular on historically marginalized and low-income communities. Through this Statement, NCEJN and EJCAN seek to ensure that the Commission fully considers alternatives to DEP's proposal and requests that the Commission reject or require DEP to further reduce its proposed increase in retail electric base rates.

ABOUT NCEJN AND EJCAN

NCEJN is a Raleigh-based 501(c)(3) nonprofit dedicated to advancing environmental justice with a primary mission of promoting health and environmental equity for all people in the State through community action for clean industry, safe workplaces, and fair access to human and natural resources. NCEJN has more than 1,000 members and volunteers, the vast majority of whom live in North Carolina, and a portion of whom are DEP customers.

EJCAN is a 501(c)(3) nonprofit based in Sampson County, North Carolina. It is a community-based organization committed to informing, educating, and empowering communities to fight environmental injustice and advocate for positive change. EJCAN works toward a vision of clean and safe air, soil, and water for rural communities, grounded in equity and dignity. EJCAN has several members and volunteers who live across North Carolina, and a portion of whom are DEP customers.

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NCEJN and EJCAN acknowledge that on August 5, 2026[1] DEP announced a proposed settlement ("Comprehensive Revenue Requirement Agreement and Stipulation of Settlement") with the Public Staff that would reduce, but not eliminate, the burden of its requested rate increase. Rather than DEP's original proposal of an 18.1% residential rate increase, [2] the proposed settlement would lower the residential rate increase to approximately 9.3% over the next two years, according to the North Carolina Attorney General's Office ("N.C. Attorney General").[3]

Although the settlement cuts DEP's original request nearly in half, the remaining increase would still impose significant hardship on households already struggling with rising living and energy costs. NCEJN and EJCAN recognize DEP's continued movement in response to concerns raised by North Carolinians, but further reductions are necessary to protect vulnerable and marginalized communities and ensure that rates remain just and reasonable, particularly considering that increased generation need is largely driven by large-load customer demand. Therefore, NCEJN and EJCAN respectfully request the Commission to require DEP to further reduce its proposed rate increase in accordance with this Statement.

RATEMAKING REQUIREMENTS AND REQUESTS FOR CONSIDERATION

The Commission has the authority "to regulate public utilities generally, their rates, services, and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements."[4] The public entrusts the Commission with these responsibilities so it can "promote adequate, reliable and economical utility service to all of the citizens and residents of the State."[5] For the ratemaking process, this responsibility also includes the requirement to fix rates that are both "...fair to the public utilities and to the consumer" while ensuring a true least-cost, reliable, and reasonable path for customers.[6] These statutes intend to "assure the public of adequate service at a reasonable charge," rather than "to guarantee to the stockholders of a public utility constant growth in value…"[7] At this time, DEP's proposed rate increase does not adequately meet these requirements.

The Commission's decision regarding DEP's proposed retail electric rate increases will directly impact all ratepayers in the State of North Carolina, with the most significant impact falling on communities that are historically marginalized and low-income (collectively, "vulnerable communities"). NCEJN and EJCAN submit this Statement to ensure that those same

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[1] Duke Energy Progress and Public Staff *et. al*'s Comprehensive Revenue Requirement Agreement and Stipulation of Settlement, Docket E-2, Sub 1380 (Aug. 5, 2026), p.1.

[2] Zhu, Christian, *NC AG Jackson: Duke Energy Gave Wrong Info About Rate Hike Under Oath*, Queen City Nerve (Aug. 14, 2026), https://qcnerve.com/jeff-jackson-duke-energy/ .

[3] N.C. Attorney General Jeff Jackson, *Duke Energy Gave Incorrect Residential Rate Increase; Families to Pay 9.3% More, Not 6.8%,* North Carolina Department of Justice (August 13, 2026), https://ncdoj.gov/duke-energy-gave-incorrect-residential-rate-increase-families-to-pay-9-3-more-not-6-8/https://ncdoj.gov/duke-energy-gave-incorrect-residential-rate-increase-families-to-pay-9-3-more-not-6-8/ ; Zhu, Christian, *NC AG Jackson: Duke Energy Gave Wrong Info About Rate Hike Under Oath*, Queen City Nerve (Aug. 14, 2026), https://qcnerve.com/jeff-jackson-duke-energy/ .

[4] N.C.G.S. § 62-2(b).

[5] *State ex rel. N.C. Utils. Comm'n v. Carolina Indus. Grp. for Fair Util. Rates II*, Nos. 75A24-1, 139A24-1, 2026 LX 274717, at *109 (May 22, 2026); N.C.G.S. § 62-2(a)(1), (3).

[6] N.C.G.S. § 62-133(a); *see* N.C.G.S. § 62-2(3a); *see also* N.C.G.S. §§ 62-2 and 62-110.9 (which emphasize adequate, reliable, and economical service with just and reasonable rates); *and State ex rel. Utils. Comm'n v. Carolina Power & Light Co.*, 359 N.C. 516, 521-22, 614 S.E.2d 281, 285 (2005) (noting "...NCUC is responsible for ensuring that, in exchange for having a monopoly in its franchise area, a public utility provides adequate and reliable service to North Carolina citizens at reasonable rates." (internal citations omitted)).

[7] *State ex rel. Utils. Comm'n v. Gen. Tel. Co. of the Se.*, 285 N.C. 671, 680, 208 S.E.2d 681 (1974).

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vulnerable communities are not overlooked in the ratemaking process. To that end, NCEJN and EJCAN request that the Commission reject or require DEP to further reduce its request in accordance with the following points:

(1) The Commission should critically examine whether DEP's increased rates and return on equity ("ROE") equate to noticeable improvements in reliability;

(2) The Commission should require DEP to minimize the impacts of fuel costs on all ratepayers through renewable generation and a fuel-cost-sharing mechanism;

(3) The Commission should establish an expedited dedicated docket to create a separate rate class and tailored tariff for data centers and other large load customers; and

(4) The Commission should require public transparency in DEP's business practices with large load customers such as data centers.

DISCUSSION

I. The Commission Should Critically Examine Whether DEP's Increased Rates and Return on Equity Equate to Noticeable Improvements in Reliability.

Increasing the reliability of North Carolina ratepayers' access to energy is one of the most significant considerations in the ratemaking process.[8] Ultimately, approved rate increases not only have an impact on the bottom-line for all North Carolina ratepayers, and in particular those in low-income communities, but also have an impact on the future reliability of North Carolina's utility infrastructure. Accordingly, even after taking into consideration the reduction in the rate increase from the proposed settlement, the Commission should critically examine DEP's proposed rate increase to determine if it will actually contribute to a long-term noticeable increase in reliability for North Carolina ratepayers.

A. DEP's Historic Rate Increases Have Not Significantly Improved Reliability But Have Increased Unaffordability.

In DEP's Application to Adjust Retail Base Rates, it regularly cites reliability as a significant consideration in its rate increase request.[9] Specifically stating "DEP's Application is driven by capital-intensive investments necessary to achieve continued ***reliability***, operational excellence and an enhanced customer experience..."[10] However, DEP's historic rate increases have

[8] *See* N.C.G.S. § 62-2(3a); *see also* N.C.G.S. § 62-110.9.
[9] *See* DEP's Application to Adjust Retail Base Rates, Docket E-2, Sub 1380 (noting that system reliability as a rationale for rate increases is cited to 65 times throughout the document); *see also* Comments of NCJC, *et al.*, Docket E-2, Sub 1380 (January 26, 2026), p. 6.
[10] *Id*., p. 6.

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not significantly increased reliability but have played a role in the affordability concerns affecting many low-income households across North Carolina.[11]

In 2022, Duke Energy put rolling black outs into effect that left half a million North Carolina ratepayers powerless during peak December demand.[12] One of the causes of these rolling black outs was some of Duke's fossil fuel plants failed during the cold.[13] As recently as February 2026, Duke Energy requested ratepayers to reduce their usage in order to minimize the potential for temporary power outages.[14] Additionally, the metrics that DEP uses to analyze its own reliability show that, at best, DEP's reliability has "fluctuated without showing consistent improvement."[15] North Carolina Justice Center ("NCJC"), *et al.*, discussed those metrics in its comment as follows: "[w]hile DEP's [System Average Interruption Frequency Index ("SAIFI")] scores which indicates the average amount of electricity interruptions a customer may experience over a year[16]] are generally lower in the last several reporting periods compared to the period between 2019 and 2021, it reported its second-highest outage duration numbers—1.3—since 2019 in the second quarter of 2025."[17] Also, that "in South Carolina, DEP's recent [System Average Interruption Duration Index ("SAIDI"), which measures the duration of electricity interruptions a customer experiences over a year][18] and SAIFI scores have improved, but over a ten-year time horizon, have only 'seen marginal improvement' and that DEP in South Carolina is among the worst performers on these reliability metrics when compared to other Duke subsidiaries."[19]

DEP's infrastructure unreliability and inability to meet ratepayer energy demand can also have a dramatic impact on the environment.[20] During a 2025 heatwave, the Trump Administration permitted power plants across the Southeast, including in North Carolina, to exceed their emission limits to ensure power availability for North Carolina ratepayers as the power grid reached its limit.[21] Meanwhile, Duke Energy is simultaneously seeing an increase in "non-pay disconnections" where individual ratepayers are unable to pay their energy bills, so their power is disconnected.[22] DEP's present rate increase will only add to these affordability challenges that many low-income North Carolina households are actively experiencing.[23]

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[11] Comments of NCJC, *et al.*, Docket E-2, Sub 1380 (January 26, 2026), pp. 6-9.
[12] Satterfield, Cynthia, *Duke Energy – Less Reliability, Higher Costs*, WRAL News (June 30, 2023, https://www.wral.com/archive/20934719/; *see also FERC/NERC Winter Storm Elliot Report*, Carolinas Clean Energy Business Association (November 8, 2023), https://carolinasceba.com/ferc-nerc-winter-storm-elliott-report/.
[13] *Id.*
[14] Watson, Starleta, *Duke Energy urges NC Customers to Reduce Power Usage to Prevent Outages, Electrical Grid Issues*, CBS 17 News (February 1, 2026), https://www.cbs17.com/news/north-carolina-news/duke-energy-urges-nc-customers-to-reduce-power-usage-to-prevent-outages-electrical-grid-issues/.
[15] Comments of NCJC, *et al.*, Docket E-2, Sub 1380 (January 26, 2026), pp. 7-8.
[16] U.S. Energy Information Administration, *Reliability Metric of U.S. Distribution System*, Form EIA-861, Annual Electric Power Industry Report, https://www.eia.gov/electricity/annual/html/epa_11_01.html ("System Average Interruption Frequency Index").
[17] Comments of NCJC, *et al.*, Docket E-2, Sub 1380 (January 26, 2026), p. 8.
[18] U.S. Energy Information Administration, *Reliability Metric of U.S. Distribution System*, Form EIA-861, Annual Electric Power Industry Report, https://www.eia.gov/electricity/annual/html/epa_11_01.html.
[19] Comments of NCJC, *et al.*, Docket E-2, Sub 1380 (January 26, 2026), p. 8.
[20] *See* Department of Energy Order No. 202-25-5 (June 24, 2025), https://www.energy.gov/sites/default/files/2025-06/Duke%20Energy%20Carolinas%20202%28c%29%20Order.pdf.
[21] *See Id*.
[22] Comments of NCJC, *et al.*, p. 9.
[23] *See Id*., at pp. 9-10.

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NCEJN and EJCAN agree with NCJC, *et al*.'s position that "[a]ny potential material benefits from additional, marginal reliability improvements, particularly for residential customers, do not appear to be worth the cost."[24] Therefore, NCEJN and EJCAN respectfully request that the Commission critically examine whether DEP's proposed rate increase will bring noticeable changes in reliability.

B. DEP's Proposed Return on Equity Protects Shareholder and Investor Interests More than It Focuses on Improving Reliability and Protecting Ratepayers.

The August 6, 2026 proposed comprehensive settlement further reduced the ROE to 9.8% from the initially requested 10.95%.[25] Generally, this is good news for North Carolina ratepayers and will save millions of dollars across all rate classes. However, NCEJN and EJCAN support the N.C. Attorney General's recommendation that DEP can still go further by bringing its requested ROE closer to 7.4%.[26] ROE is one of the most important components of the utility's overall rate of return. It represents the amount a utility is allowed to earn to attract investors to buy and hold common stock. But excessive ROE directly harms customers. North Carolina Supreme Court Justice Anita Earls recognized in her dissent in *State ex rel. Utils. Comm'n v. Cooper* (*Cooper I*), 366 N.C. 484, 485 n.1 (2013), the higher the ROE, the higher the rates customers pay to the utility.[27] Justice Earls emphasized that calculating the proper ROE is extremely important because equity is the most expensive form of capital accumulation, and ratepayers ultimately bear its cost.[28] If the Commission sets the ROE above the actual cost of capital, "it unlawfully transfers wealth from ordinary consumers to Duke Energy's shareholders."[29] The Commission has previously found that it must "fix rates as low as may be reasonably consistent with the requirements of the Due Process Clause of the Fourteenth Amendment to the Constitution."[30]

Daniel Cassara, expert on behalf of the North Carolina Attorney General's Office, recommends that a fair ROE for DEP is 7.4%.[31] Under this recommendation, residential customers would save $572 million in rates, which translates to roughly $420 per customer over the course of the Multiyear Rate Plan ("MYRP").[32] Mr. Cassara cites several studies undertaken across the country that show the cost of equity ("COE"), comparable to a utility's ROE, for US stocks is currently no higher than 8%.[33] While the average authorized ROE for electric utilities is 9.84%,[34] studies indicate that authorized ROEs currently exceed utilities' actual COE. Steven Kihm, testifying on behalf of NCJC, *et al*., supports this premise as well. Mr. Kihm's testimony explains that unnecessary increases in authorized ROE create windfall gains for existing utility investors.[35]

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[24] *See Id*., at p. 10.
[25] Comprehensive Revenue Requirement Agreement and Stipulation of Settlement, Docket E-2, Sub 1380 (Aug. 6, 2026), p. 3.
[26] Response of N.C. Attorney General's Office to Presiding Commissioner McKissick's Request Requiring Response from Non-participating Parties Regarding Objections, if any, to the Comprehensive Stipulation, Docket E-2, Sub 1380 (Aug. 12, 2026), p. 1.
[27] *State ex rel. Utils. Comm'n v. Cooper* (*Cooper I*), 366 N.C. 484, 485 n.1 (2013).
[28] *State ex rel. N.C. Utils. Comm'n v. Carolina Indus. Grp. for Fair Util. Rates II*, Nos. 75A24-1, 139A24-1, 2026 LX 274717, at *111 (May 22, 2026).
[29] *Id*., at *112. Justice Earls explains how Duke Energy's own expert witness acknowledged that changes in ROE have real-world impacts on people's bills.
[30] *State ex rel. Utils. Comm'n v. Duke Power Co*., 285 N.C. 377, 388 (1974).
[31] Direct Testimony of the N.C. Attorney General's Office Expert Daniel Cassara, Docket E-2, Sub 1380 (July 9, 2026), p. 4.
[32] *Id*., at p. 6.
[33] *Id*., at p. 59.
[34] S&P Regulatory Research Associates (RRA) Rate Case Statistics as of December 31, 2025.
[35] Direct Testimony of NCJC et. al. Expert Steven Kihm, Docket No. E-2, Sub 1380 (July 9, 2026), p.32.

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This means that increasing the ROE does not necessarily improve capital attraction in the way Duke Energy suggests.[36] Instead, it benefits existing shareholders while forcing customers to pay higher rates.[37]

The Commission must also take into consideration the broader context of North Carolinians already facing rising energy costs, while Duke Energy continues to earn record profits.[38] Electricity bills are increasingly becoming unaffordable, and the median household income in North Carolina is lower than the national average, making it more difficult to afford electric utility bills.[39] Electric utility bills are currently 2.56% of the median household income in North Carolina, compared to 2.04% at the national level.[40] DEP's proposed ROE is going to further increase North Carolinians' utility expenses, further accelerating the unaffordability trend. When rates increase and "never seem to stop," the Commission must carefully scrutinize whether each requested increase is truly necessary and fair.[41] In addition to an increased ROE, DEP plans to discontinue its Customer Assistance Program pilot, which would further increase the monthly bills of former program participants by an additional $42.[42] In light of this planned termination, it is even more important for the Commission to require DEP to commit to additional dollars for bill payment and weatherization assistance proposed in the August 6, 2026 Comprehensive Settlement.[43]

For these reasons, the Commission should place the interests of North Carolina ratepayers—especially low-income customers and communities with high energy burdens[44]—above DEP's request for increased shareholder returns on the basis of expanding its reliability. Therefore, NCEJN and EJCAN support N.C. Attorney General's recommendation that a reduced ROE, such as 7.4%, would still allow DEP to retain access to markets, raise substantial capital, and provide reliable service to its customers while also saving DEP ratepayers from substantial rate increases.

II. The Commission Should Require DEP to Minimize the Impacts of Fuel Costs on all Ratepayers through Renewable Generation and a Fuel-Cost-Sharing Mechanism.

North Carolina law requires the Commission to ensure adequate, reliable, and economical utility service at just and reasonable rates.[45] This is also in line with its policy goals that require

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[36] Direct Testimony of NCJC et. al. Expert Steven Kihm, Docket No. E-2, Sub 1380 (July 9, 2026), p. 32.
[37] *Id.*, at p. 32.
[38] Clark, Kirstyn, *Duke Energy reports nearly $5B net income as customers face higher bills, pending rate increases*, (Feb. 11, 2026), https://www.wral.com/news/local/duke-energy-net-income-5b-rate-increases-february-2026/ .
[39] U.S. Census Bureau, *Median Household Income in North Carolina and Median Household Income in the United States* [MEHOINUSA646N], FRED, Federal Reserve Bank of St. Louis (2024).
[40] Direct Testimony of the N.C. Attorney General's Office Expert Daniel Cassara, Docket E-2, Sub 1380 (July 9, 2026), p. 65.
[41] *State ex rel. N.C. Utils. Comm'n v. Carolina Indus. Grp. for Fair Util. Rates II*, Nos. 75A24-1, 139A24-1, 2026 LX 274717, at *121 (May 22, 2026).
[42] Corrected Joint testimony of North Carolina Utilities Commission Public Staff Dustin Metz and Jeff Thomas, Docket E-2, Sub 1380 (July 22, 2026), pp. 45-46.
[43] Comprehensive Revenue Requirement Agreement and Stipulation of Settlement, Docket E-2, Sub 1380 (Aug. 6, 2026), p. 20.
[44] U.S. Dept. Of Energy, *Low Income Energy Affordability Data (LEAD) tool*, https://www.energy.gov/cmei/scep/low-income-energy-affordability-data-lead-tool ("Energy burden is defined as the percentage of gross household income spent on energy costs. It is calculated by dividing the average housing energy cost by the average annual household income. A household with 6% or greater energy burden is considered to be a high energy burden household.").
[45] *State ex rel. N.C. Utils. Comm'n v. Carolina Indus. Grp. for Fair Util. Rates II*, Nos. 75A24-1, 139A24-1, 2026 LX 274717, at *109 (May 22, 2026); § 62-133(b)(4) (2023); *State ex rel. Utils. Comm'n v. Thornburg*, 316 N.C. 238, 242 (1986).

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the Commission to examine whether DEP will unreasonably prejudice any class of ratepayers in a way that will result in a sudden, substantial rate increase or "rate shock."[46] As it currently stands, DEP's proposed rate increase places the financial risk of uncertain, capital-intensive generation investments on ratepayers, disproportionately impacting low-wealth ratepayers. The Company's plans as reflected in the 2025 Carbon Plan rely heavily on large capital investments in resources, including natural gas generation.[47] Those choices require customers to pay not only for the capital costs of the assets, but also for the increased return that DEP seeks for its shareholders on those assets. This structure shifts risk away from Duke Energy and onto its existing ratepayers.

A. The Commission Should Require DEP to Further Diversify its Generation Portfolio Toward Renewables and Away from Volatile Fossil Fuel Dependent Generation.

North Carolina General Statutes § 62-133.2 permits Duke Energy to pass through 100% of prudently incurred fuel and fuel-related costs to ratepayers. This provision authorizes DEP to annually charge customers through a rider process for changes in fuel and fuel-related costs.[48] This fuel-allowance even goes as far as to include permitting DEP to pass on the risk of fuel-price volatility to the public while DEP and its shareholders remain insulated. When Duke Energy does not bear the costs of fuel-price volatility, it has less financial incentive to minimize those costs, reduce dependence on volatile fuel-based generation, or compare fuel-based resources objectively against fuel-free alternatives such as solar, wind, storage, energy efficiency, demand response, distributed energy resources, and conservation.[49] DEP is made whole for its fuel-related operating costs while customers are left to absorb the risks of poor fuel choices and market volatility.[50]

Year after year, the energy burden on ratepayers is increasing, and ratepayers are constantly exposed to rate increases, especially during disasters such as storms.[51] From 2020 to 2025, the average monthly energy bill in North Carolina increased by approximately 22%; nearly two-thirds of the increase in residential bills between 2017 and 2024 was driven by fuel cost increases, principally of natural gas.[52] In its rebuttal, DEP acknowledges that despite its best efforts, "drivers of fuel costs such as fuel commodity prices and weather impacts on customer load are beyond the utility's control."[53] This is especially concerning because 70% of DEP's owned generation portfolio is made up of natural gas, coal, and oil resources,[54] the costs of which are volatile as these fuels are susceptible to wide market swings and sudden geopolitical shifts.[55] Heavy reliance on

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[46] N.C.G.S. § 62-133.16.
[47] Appendix J, Nuclear of 2025 Carolinas Resource Plan, Docket E-100, Sub 207 (Oct. 1, 2025), pp. 2,11-13; Appendix I, Natural Gas & Low Carbon Fuels of 2025 Carolinas Resource Plan, Docket E-100, Sub 207 (Oct. 1, 2025), pp.14-23.
[48] N.C.G.S. § 62-133.2.
[49] Direct Testimony of NCSEA Expert Albert Lin, Docket E-2, Sub 1380 (July 9, 2026), pp.11-12.
[50] *Id*.
[51] Direct Testimony of SACE et. al. expert Michael Goggin, at 84-85, Docket E-100, Sub 207 (Mar. 30, 2026); Phil Mattingly et. al., *Global disruption in real time: A White House scramble to contain a crisis*, CNN Business (April 18, 2026), https://www.cnn.com/interactive/2026/04/business/timeline-strait-of-hormuz-global-economy/ ("US average gas prices climbed more than $1 per gallon in just six weeks, surpassing $4.10, the highest level since 2022").
[52] Direct Testimony of NCSEA Expert Karl R. Rabago, at 14, Docket E-100, Sub 207 (Mar. 30, 2026), citing *Issue Brief: The Role of Fuel Costs in Duke Energy's North Carolina's Retail Rates From 2017 Through March 2024*, EQ RESEARCH LLC (updated Apr. 22, 2024), https://www.edf.org/sites/default/files/documents/Issue_Brief_Narrative_4_22_24.pdf .
[53] Rebuttal Testimony of DEP Experts Laura A. Bateman and S. Renee Farmer, Docket E-2, Sub 1380 (July 24, 2026), p. 75.
[54] Direct Testimony of NCSEA's Expert Albert Lin, Docket E-2, Sub 1380 (July 9, 2026), p.13. (*citing* Direct Testimony of James M. Coyne for Duke Energy Progress, LLC, Docket No. E-2, Sub 1380 (Nov. 20, 2025), p.60).
[55] *Id.*

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fossil fuel-based generation magnifies customer exposure to fuel-cost volatility.[56] Continuing to allow Duke Energy to pass through all fuel costs without meaningful sharing of fuel-cost risk can make fuel-based generation appear artificially competitive against cleaner and less volatile resources.[57] A more diversified generation portfolio, with greater reliance on renewable energy, storage, demand response, distributed energy resources, and energy efficiency, would reduce the amount of fuel burned, protect customers from avoidable fuel-price volatility, and reduce pollution burdens associated with fossil-fuel generation.

A true least-cost plan of prioritizing fuel-free sources of energy, such as renewables, would reduce customer exposure to volatile fuel markets. Instead, Duke Energy's proposal continues to rely on capital-intensive and fuel-dependent resources while passing all fuel risk volatility on to customers. That approach does not meet the company's legal obligations for a balanced and consumer-protective plan under North Carolina law.[58]

B. The Commission Should Require DEP to Adopt a Fuel-Cost-Sharing Mechanism that Would Require DEP to Share a Portion of Fuel Costs with Ratepayers.

In addition to shifting toward more renewable sources of energy, NCEJN and EJCAN request that the Commission require DEP to adopt a fuel-cost-sharing mechanism, such as the Fuel Cost Efficiency Performance Incentive Mechanism ("PIM")[59], as proposed by the North Carolina Sustainable Energy Association ("NCSEA").[60] In utilizing a PIM, DEP would be required to share some responsibility for fuel-cost outcomes rather than DEP passing on 100% of fuel costs to customers.[61] That would encourage Duke Energy to optimize fuel procurement, improve generation efficiency, manage system exposure to fuel-price volatility, and diversify its resource portfolio.[62] Such a mechanism would better align DEP's financial incentives with customer interests.[63] A fuel-cost-sharing mechanism would also support North Carolina's public-interest standards for performance-based regulation[64] and advance environmental justice. It could help ensure that: (a) no customer or class of customers is unreasonably harmed; (b) rates remain fair to both the utility and customers; (c) safe and reliable service continues; and (d) customers are protected from sudden, substantial rate increases or rate shock.[65] It would also advance statutory policy goals, including efficient use of the system, utility-scale clean energy and storage, distributed energy resources, energy efficiency, carbon reductions, and reliability.[66]

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[56] *Id.*, at p. 14.
[57] Direct Testimony of NCSEA's Expert Albert Lin, Docket E-2, Sub 1380 (July 9, 2026), p. 12.
[58] N.C.G.S. § 62-133(b)(4).
[59] *See* Zheng, Xavier et al., *How Fuel Cost-Sharing Can Deliver Savings for Utility Customers*, RMI (Feb. 26, 2026), https://rmi.org/resources/how-fuel-cost-sharing-can-deliver-savings-for-utility-customers/ ("A Fuel Cost Efficiency Performance Incentive Mechanism is a regulatory framework that financially rewards or penalizes electric and gas utilities based on how well they manage fuel and commodity costs. It shifts the financial risk of fuel price volatility away from ratepayers and creates an incentive for utilities to contain costs.").
[60] Direct Testimony of NCSEA Expert Albert Lin, Docket E-2, Sub 1380 (July 9, 2026), p.10.
[61] *Id.,* at pp. 2, 6, 10, 20.
[62] *Id.,* at p.12.
[63] *Id*.
[64] N.C.G.S. § 62-133.16.
[65] Direct Testimony of NCSEA Expert Albert Lin, Docket E-2, Sub 1380 (July 9, 2026), p.27.
[66] *Id.,* at pp. 27-29.

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This is especially important for low-income customers already facing disproportionate energy, environmental, and economic burdens. Low-income households spend a larger share of their income on utility bills and have fewer financial resources to absorb unexpected increases in electricity costs. Sudden bill increases can also increase the risk of arrearages, disconnections, and long-term financial instability. Moreover, there are disproportionate impacts on Hispanic, Black, and Native American households, as they are found to spend a larger share of their income on energy bills, making them more vulnerable to the risk of utility shutoffs when the rates go up, and they become unable to pay their bills.[67] Seniors and other people on fixed incomes are another group of people who cannot afford to have rate hikes, as they do not have sufficient increases in their annual incomes to cover the rate hikes."[68] For these customers, fuel-cost volatility is not an abstract market risk; it can translate directly into difficult choices between paying for electricity, rent, food, transportation, medicine, and other basic needs. Because fuel costs are a major component of customer bills, improving fuel-cost efficiency would directly lower overall rates and reduce the risk of billing spikes.

A plan that exposes low-income customers to avoidable fuel-cost volatility while protecting the utility and its shareholders from those same risks is unjust, unreasonable, or unlawful. Therefore, the Commission should require DEP to adopt a fuel-cost-sharing mechanism that would require DEP to share fuel costs with ratepayers.

III. The Commission Should Establish an Expedited Dedicated Docket to Create a Separate Rate Class and Tailored Tariff for Data Centers and Other Large Load Customers.

The National Electric Reliability Commission ("NERC") defines large loads as "[a]ny commercial or industrial individual load facility or aggregation of load facilities at a single site behind one or more point(s) of interconnection that can pose reliability risks to the BPS [bulk power system] due to its demand, operational characteristics, or other factors."[69] This includes but is not limited to data centers, cryptocurrency mining facilities, hydrogen electrolyzers, manufacturing facilities, and arc furnaces.[70] Recently, it has become clear that the primary large load facility that DEP will likely see in the coming years will overwhelmingly be data centers, as data centers account for 92% of projected load from Duke Energy of the Carolinas' ("DEC")currently signed electric service agreements ("ESAs").[71]

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[67] *State ex rel. N.C. Utils. Comm'n v. Carolina Indus. Grp. for Fair Util. Rates II*, Nos. 75A24-1, 139A24-1, 2026 LX 274717, at *121 (May 22, 2026).

[68] *State ex rel. N.C. Utils. Comm'n v. Carolina Indus. Grp. for Fair Util. Rates II*, Nos. 75A24-1, 139A24-1, 2026 LX 274717, at *121 (May 22, 2026).

[69] *Characteristics and Risks of Emerging Large Loads: Large Loads Task Force White Pap*er, North American Electric Reliability Corporation (July 2025), p. 1, https://www.nerc.com/globalassets/who-we-are/standing-committees/rstc/whitepaper-characteristics-and-risks-of-emerging-large-loads.pdf.

[70] *Id*.

[71] N.C.U.C. Hearing Testimony of Public Staff Experts Lucas, Ssengonzi, & Weaver (Large Load Panel), Docket E-7, Sub 1329 (July 14 and 15, 2026), 7:13:35; *see also Electric Services Agreement: Definition, Terms, Examples*, Contracts Counsel https://www.contractscounsel.com/t/us/electric-service-agreement ("An electric service agreement is a contract between an electric service provider and a consumer or business that procures electric services for them. The contract contains details about when electric service will begin, and what the individual or business must do to ensure the service remains active. A payment schedule and table of rates is often also located in this agreement. Many service providers have on and off-peak rates that are effective during certain times of the year that are mentioned in this agreement. The purpose of the electric service agreement is to ensure the rules and regulations of the service are easily accessible and understood.").

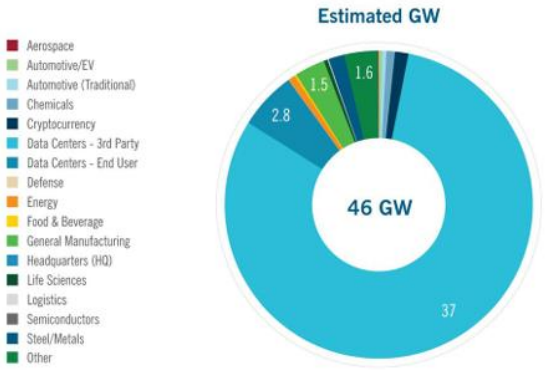
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Due to this significant new demand, the Commission should consider following EDF and N.C. Attorney General's recommendations to require DEP to include a customer class with a tailored tariff for data centers and other large loads in order to create effective regulation.[72] Additionally, the Commission should establish a unique expedited docket for data centers and other large loads in order to avoid the significant procedural due process concerns that Commissioner Donald R. van der Vaart laid out in his dissent to the Commission's August 14, 2026 "Order Requesting Comments."[73] Approaching data centers in this thoughtful manner will provide further protection for all North Carolina ratepayers, minimize economic impacts on vulnerable communities, and allow data center developers more legitimacy in their claim that they are paying for their own costs.

A. Projected Data Center Energy Demands Will Dramatically Change North Carolina's Energy Use Allocation and Create Risk for Residential Ratepayers.

North Carolina has become one of the most desirable destinations in the Southeast for data center developments.[74] In DEP's Fall 2025 Economic Development sales forecast, data centers are projected to make up 18% of Duke's 2026 total economic development sales, by 2030 that rises to 82%, and then, from 2034-2040, data centers are projected to be 86% of the total economic development sales.[75] This will dramatically change the allocation of energy use within DEP's North Carolina service territory. In 2024, sales were heavily weighted toward residential ratepayers (43%) over commercial ratepayers (32%). By 2030, however, the commercial class is expected to outweigh residential. The residential class is expected to decrease across all of DEP's sales.[76] The chart below shows Duke Energy's forecasted economic development, with data centers projected to take up 40 gigawatts of all of Duke Energy's total economic development use of 46 gigawatts:

Figure 1: Duke Energy's Economic Development Forecast as of October 8, 2025[2]



[77]

[72] *Id.*; *see also* Direct Testimony of N.C. Attorney General's Office Expert Justin Brant, Docket E-2, Sub 1380 (July 9, 2026), p. 4.
[73] N.C.U.C. Order Requesting Comments (August 14, 2026), pp. 3-6.
[74] Joint Direct Testimony of EDF Experts Timothy M. Lenell & Karan Pol, Docket E-2, Sub 1380 (July 9, 2026), p. 35.
[75] *Id.*, at p. 18.
[76] *Id.*, at p. 19 (In 2030, DEP's projected sales based on class includes: 36% to residential and 38% to commercial).
[77] Direct Testimony of N.C. Attorney General's Office Expert Justin Brant Docket E-2, Sub 1380 (July 9, 2026), pp. 6-7.

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Should all of this data center demand actually materialize, then commercial and data center ratepayers will have far greater potential to influence DEP's future rate changes than residential ratepayers[78] while further minimizing vulnerable communities' voices.

As it currently stands, any rate hike now or in the future will have an impact for all ratepaying North Carolinians but will fall the hardest on those with fixed and low incomes. These individuals "do not receive sufficient annual income increases to cover the financial burden of potentially[ ]approved requested rate hikes."[79] As previously mentioned, Hispanic, Black, and Native American households spend a larger share of their income on energy bills, which puts them at a higher risk of their utility being disconnected should these significant rate increases go forward. This also forces those on minimum wage to work additional hours so their families can use the same amount of electricity as they did before the increase.[80] These significant concerns are expressed throughout the consumer statement docket for this case and should be considered when establishing a dedicated rate class and tariff for data centers and other large loads.[81]

Duke Energy already appears to favor commercial ratepayers over residential, as its initial request included a more significant rate increase for residential ratepayers (18%) as compared to commercial (11% for business and 13% for industrial).[82] Since then, DEP stated it reduced the residential rate increase to approximately 6.8% in a proposed settlement with the Public Staff.[83] However, the N.C. Attorney General's Office has since noted that the accurate rate is approximately a 9.3% rate increase for residential ratepayers, not 6.8%.[84] At this moment, while DEP residential energy use is greater than commercial, Duke seems to be listening to the residential ratepaying public but only after significant public pushback. Duke Energy's State President for North Carolina even noted in her rebuttal testimony that hearing directly from customers on their affordability concerns led Duke Energy to re-evaluate whether a lower request was possible.[85] Duke Energy ultimately determined that it was. However, if Duke Energy's own projected data center energy sales actually materialize, then DEP might no longer give residential ratepayers this level of attention, creating further economic risk for vulnerable and marginalized communities.

B. Existing Ratepayers Should Not be Required to Pay for Data Center Infrastructure Upgrades.

The near-overnight push for significant data center development in North Carolina creates the risk of unutilized or underutilized stranded utility assets. EDF's expert projects that up to 50%

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[78] Direct Testimony of EDF Expert Timothy M. Lenell, Docket E-2, Sub 1380 (July 9, 2026), p. 20.
[79] *State ex rel. N.C. Utils. Comm'n v. Carolina Indus. Grp. for Fair Util. Rates II*, Nos. 75A24-1, 139A24-1, 2026 N.C. LEXIS 506, at *121 (May 22, 2026).
[80] *State ex rel. N.C. Utils. Comm'n v. Carolina Indus. Grp. for Fair Util. Rates II*, Nos. 75A24-1, 139A24-1, 2026 N.C. LEXIS 506, at *121 (May 22, 2026).
[81] *See* N.C.U.C Docket E-2, Sub 1380CS (*generally*).
[82] *See* Bracey, Autumn, *NC AG Jeff Jackson Rejects Duke Energy Rate Settlement, Calls 6.8% Hike 'Still too High'*, WCNC – Charlotte (August 11, 2026), https://www.wcnc.com/article/money/duke-energy-rate-hikes-customers-struggling-regulators-watchdog-pushback/275-897a3662-5e73-457d-8f3d-b5551f8e1e0a; *see also* Michaels, Will, *Duke Energy Wants an 18% Rate Hike. Here's What That Means*., The Assembly (June 5, 2026), https://www.theassemblync.com/news/business/energy/duke-energy-wants-an-18-rate-hike-what-that-means/.
[83] *Id*.
[84] N.C. Attorney General Jeff Jackson, *Duke Energy Gave Incorrect Residential Rate Increase; Families to Pay 9.3% More, Not 6.8%,* North Carolina Department of Justice (August 13, 2026), https://ncdoj.gov/duke-energy-gave-incorrect-residential-rate-increase-families-to-pay-9-3-more-not-6-8/.
[85] Rebuttal Testimony of DEP Expert Kendal C. Bowman, Docket E-2, Sub 1380 (July 24, 2026), pp. 2-4.

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of large data centers planned to come online in 2026 are expected to be delayed.[86] Additionally, counties and municipalities all across North Carolina are enacting data center moratoriums.[87] Industry insiders have also acknowledged that the technology underlying artificial intelligence ("AI"), for which data centers are required, is becoming more efficient, which may reduce data centers' energy needs.[88] These issues show the potential for DEP to overbuild generation and transmission infrastructure for data centers that may not ultimately materialize.[89]

Additionally, NCJC, *et al*.'s expert John D. Wilson highlights that there are serious questions about whether Duke Energy's large load analyses, including data centers, actually demonstrate that costs will be fairly allocated among customer classes or that new large-load revenues will cover the incremental cost of service.[90] DEP's "large load impact analysis" appears to only consider demand-related costs and revenues and does not consider variable or fuel costs.[91] This analysis assumes that all energy will be supplied with fuel and does not adequately account for capital investment that could support solar or other resources to reduce variable and fuel costs on the system.[92] It also assumes that new demand will not have other cost impacts on existing generation or transmission assets.[93] These assumptions understate the risk that costs created by new or growing loads will be shifted to other customers.[94] As for DEP's "bill impact analysis," it considers variable or fuel costs but presents bill impacts on a combined Carolinas basis using a load-weighted average cost rather than individual costs.[95] Based on this evidence, Mr. Wilson concludes that neither analysis reasonably demonstrates that fuel and other variable costs will be fairly allocated among customer classes using DEP's proposed cost-of-service methods for large load customers, including data centers.[96] In addition to what we discussed in Section II, this leaves open the possibility that residential ratepayers may have to cover fuel and other variable costs not associated with their energy use.

It appears DEP has attempted to address aspects of these concerns in its rebuttal, with its shift to recommending a tariff for large loads including data centers.[97] Even in Duke's proposed tariff for data centers, the existing customer base, which includes all current residential ratepayers, continues to share risk in potentially paying for data centers to connect to the grid unless those data centers are unable to meet a required demand in a specific timeframe.[98] Due to data centers'

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[86] Joint Direct Testimony of EDF Experts Timothy M. Lenell & Karan Pol, Docket E-2, Sub 1380 (July 9, 2026), p. 28; *see also* Direct Testimony of N.C. Attorney General's Office Expert Justin Brant, Docket E-2, Sub 1380 (July 9, 2026), p. 7 ("However, it is possible that the need for computational power—which requires electricity—is less than expected, either because the forecasted demand for AI products is overstated or because companies become more efficient at turning electricity into artificial intelligence.").

[87] Thomae, Lucas, *Data Center Moratorium Fever for NC Governments*, Carolina Public Press (June 11, 2026), https://carolinapublicpress.org/75853/data-centers-moratorium-fever-for-nc-local-governments/.

[88] Direct Testimony of N.C. Attorney General's Office Expert Justin Brant, Docket E-2, Sub 1380 (July 9, 2026), pp. 7-8 ("in early 2025, DeepSeek, a Chinese competitor to US- based generative AI models like ChatGPT, announced significant reductions in energy consumption following an innovative new approach to designing training algorithms.").

[89] Direct Testimony of EDF Expert Timothy M. Lenell Docket E-2, Sub 1380 (July 9, 2026), p. 28; *see also* Direct Testimony of N.C. Attorney General's Office Expert Justin Brant, Docket E-2, Sub 1380 (July 9, 2026), pp. 7-8.

[90] *See* Direct Testimony of NCJC, *et al*., Expert John D Wilson, Docket E-2, Sub 1380 (July 9, 2026), pp.47-48.

[91] *Id.,* at pp. 47, 49.

[92] *Id.*, at p. 49.

[93] *Id.,* at pp. 49-50.

[94] *Id.,* at p. 47.

[95] *Id.,* at pp. 47-48.

[96] *Id.,* at pp. 47-49.

[97] Rebuttal Testimony of DEP Expert Timothy J. Duff, Docket E-2, Sub 1380 (July 24, 2026), p. 21.

[98] *See* Rebuttal Testimony of DEP Experts Jonathan Byrd and Morgan Beveridge, Docket E-2, Sub 1380 (July 24, 2026), Ex. 1, p. 52. (specifically, noted in the "Reimbursable Advance" section of the DEP's proposed Large Load Tariff).

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significant energy demand, required new infrastructure build-out, and because this demand has the potential to not materialize, data center developers should be required to pay for all utility infrastructure needed for their operations rather than rely on existing ratepayers to potentially carry the burden over the next decade or more.[99]

C. Data Centers And Other Large Load Customers Should Have Their Own Rate Class with a Tailored Tariff.

Data centers are unique in how they "impact load forecasting, system planning, and load consumption"[100] and "will require investments in generation and transmission infrastructure at an unprecedented speed and scale."[101] They also require significant use of water and energy, with facilities that have been proposed in North Carolina using up to several hundred or even thousands of megawatts ("MW") of power and hundreds of thousands to a million gallons of water a day.[102] This can be enough power and water use for hundreds of thousands of homes.[103] Because of this, data centers and other large load customers above a certain threshold of energy demand should be treated differently than other commercial and industrial large load customers.[104] This can be most effectively accomplished by establishing a specific customer class for those data centers with their own individualized tariff "to ensure that long-term planning and cost recovery provide durable solutions…" instead of leaving the risk on existing ratepayers to foot the bill.[105]

Between its initial filing and its rebuttal, DEP's position on how to treat data centers has significantly changed. Initially, Duke was opposed to a large load tariff ("LLT") that included data centers, stating that it intended to wait until "large load customers are materially dissimilar to other customers."[106] At the time it made that recommendation, DEP's own internal projections show that the commercial class (including data centers) is projected to grow significantly and outweigh the residential class in just five years' time.[107] DEP's position changed in its rebuttal to now recommending an LLT that would include data centers.[108] This is an acknowledgement that there has been "unprecedented large load growth" in North Carolina, which has caused DEP over the last seven months to gain "additional operational experience in interconnecting and managing large load customers."[109] Duke's proposed LLT for data centers is a decent start, as it provides an initial framework for regulation, but it should go further to include requirements for data centers over a certain megawatt threshold to have minimum contract terms and an express requirement for ***all*** data centers to pay upfront for any and all infrastructure needed, with no reimbursement, similar to LLTs of Minnesota and proposals in Wisconsin and Oregon.[110]

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[99] *See* Direct Testimony of N.C. Attorney General's Office Expert Justin Brant, Docket E-2, Sub 1380 (July 9, 2026), pp. 33-34.
[100] *See* Joint Direct Testimony of EDF Experts Timothy M. Lenell & Karan Pol, Docket E-2, Sub 1380 (July 9, 2026), p. 34.
[101] *See* Direct Testimony of N.C. Attorney General's Office Expert Justin Brant, Docket E-2, Sub 1380 (July 9, 2026), p. 17.
[102] Guajardo, Celeste, *Data Centers Use a lot of Water: What Does That Mean for NC Water Quality and Availability?*, WUNC News (April 10, 2026), https://www.wunc.org/environment/2026-04-10/data-centers-water-quality-pfas-drought-climate-change.
[103] *Id.*
[104] *See* Direct Testimony of N.C. Attorney General's Office Expert Justin Brant, Docket E-2, Sub 1380 (July 9, 2026), p. 2.
[105] *See* Joint Direct Testimony of EDF Experts Timothy M. Lenell & Karan Pol, Docket E-2, Sub 1380 (July 9, 2026), p. 34.; *see also See* Direct Testimony of N.C. Attorney General's Office Expert Justin Brant, Docket E-2, Sub 1380 (July 9, 2026), pp. 16-19.
[106] *Id.*, at p. 35.
[107] *See Id*., at p. 19.
[108] Rebuttal Testimony of DEP Expert Timothy J. Duff, Docket E-2, Sub 1380 (July 24, 2026), pp. 5, 6, 15-16.
[109] *Id.*, at pp. 15, 31.
[110] *See* Direct Testimony of N.C. Attorney General's Office Expert Justin Brant, Docket E-2, Sub 1380 (July 9, 2026), pp. 26-28.

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Additionally, just as DEP acknowledged, they have learned a lot about how data centers operate and their energy needs over the last seven months.[111] With additional time, the Commission, the Public Staff, the general ratepaying public, and DEP will continue to learn more about these unprecedented facilities. This knowledge should be used to find further and more effective ways to regulate their energy use, but that should not stop the Commission from placing some regulatory framework in place now. Similar to EDF and the N.C. Attorney General's initial recommendation, NCEJN and EJCAN request that the Commission require DEP to establish a customer class with a "tailored tariff" for data centers (and other large loads customers).[112] And if the Commission decides to create a separate docket for these large loads, then NCEJN and EJCAN request that docket to be expedited and involve significant public participation.

D. Data Centers and Other Large Load Customers Need Their Own Expedited Docket.

As noted throughout this Section, how best to address data centers and other large loads substantively and procedurally has been a developing issue in this docket. In DEP's initial November 20, 2025 application, it did not propose an LLT or an individual rate class for data centers and other large loads.[113] Instead, DEP was opposed to an LLT and even suggested using inadequate prior existing tariffs.[114] Then, in its July 24, 2026 rebuttals, DEP first put North Carolinians on notice that it was planning to address data centers and other large loads through an underdeveloped individualized tariff.[115] All the while, on a different ratemaking docket with DEP's sister-company DEC, a motion requesting the Commission to establish a separate docket for these considerations has been pending.[116] As the motion for a separate LLT docket directly implicates DEP due to DEC and DEP's future merger, DEP, along with the Public Staff, Carolina Industrial Group for Fair Utility Rates ("CIGFUR"), NCSEA, Carolina Utility Customers Association, U.S. Department of Defense and other Federal Executive Agencies, and EDF filed a collective motion on this docket referencing the motion for a separate LLT docket filed before DEC and stating that they do not oppose a separate docket so long as these issues "can be resolved prior to implementation of new rates orders in this proceeding."[117] Across the spectrum of views involved on this docket, there is clear consensus.

However, in its August 14, 2026, Order Requesting Comments (the "Order"), the Commission established a "comment and reply comment" procedure in this current DEP ratemaking docket for considering a large load and rate class for data centers and other large load customers.[118] Initial comments for the parties on the current docket are due on September 9, 2026 with reply comments due on September 25, 2026.[119] This 16-day comment procedure is deficient for adequately addressing how data centers and other large loads will impact North Carolina's

[111] Rebuttal Testimony of DEP Expert Timothy J. Duff, Docket E-2, Sub 1380 (July 24, 2026), pp. 15, 31.
[112] Direct Testimony of EDF Expert Timothy M. Lenell, Docket E-2, Sub 1380 (July 9, 2026), pp. 6-7; *see also* Direct Testimony of N.C. Attorney General's Office Expert Justin Brant, Docket E-2, Sub 1380 (July 9, 2026), p. 4.
[113] *See* DEP's Application to Adjust Retail Base Rates, Docket E-2, Sub 1380
[114] *See* Joint Direct Testimony of EDF Experts Timothy M. Lenell & Karan Pol, Docket E-2, Sub 1380 (July 9, 2026), p. 34.
[115] Rebuttal Testimony of DEP Expert Timothy J. Duff, Docket E-2, Sub 1380 (July 24, 2026), pp. 5, 6, 15-16; *see also* Direct Testimony of N.C. Attorney General's Office Expert Justin Brant, Docket E-2, Sub 1380 (July 9, 2026), pp. 26-28.
[116] N.C.U.C. Order Requesting Comments (August 14, 2026), p. 2.
[117] *See* Third Amended Comprehensive Revenue Requirement Agreement and Stipulation of Settlement, Docket BE-2, Sub 1380, p. 15.
[118] N.C.U.C. Order Requesting Comments (August 14, 2026), p. 2.
[119] *Id.*

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residential rate increases, energy use allocation, and costs for utility infrastructure upgrades. Additionally, Commissioner Donald R. van der Vaart included a dissent to the Order that addresses the significant procedural due process concerns with the Commission's chosen path forward. Importantly, he acknowledges the seriousness of the Commission's pursuit when he states:

> These are not simply questions of tariff wording. They are questions of who pays, how much, and who bears the risk if projected load fails to materialize or disappears after substantial investment has been made. ***Those questions can involve hundreds of millions or billions of dollars and can affect every other customer class***.[120]

He also notes that Duke Energy has joined the "Ratepayer Protection Pledge," which is based on the principle that "data centers should pay the full cost of the additional generation and delivery infrastructure required to serve them and should pay for power and infrastructure brought online for them whether they ultimately use it or not."[121] However, this is not a "self-executing" pledge, and it is the Commission's responsibility to ensure that DEP complies with it through "rates, cost allocation mechanisms, and contractual protections…"[122]

Commissioner van der Vaart states that a process that only includes comments followed by reply comments is inadequate for addressing these concerns.[123] In order to most effectively address them, data centers and other large loads need their own expedited docket in order to receive specific "cost studies, supporting paperwork, testimony, discovery, and cross-examination…"[124] On top of that, DEP's initial application did not include notice regarding the potential that a large load tariff or individual rate class might be discussed on this docket, leaving the general ratepaying public still not on notice that this issue will be decided on this docket.[125] Commissioner van der Vaart argues this point even further stating: "[a] separately noticed expedited docket would allow every affected interest to decide, with full knowledge of the issues presented, whether formal participation is warranted."[126] He even notes that a separate docket was not a controversial issue among the parties, with two major data center developers, Microsoft and Google, as well as the N.C. Attorney General's Office and the CIGFUR in favor of a separate expedited docket.[127]

Therefore, the Commission should reconsider its August 14, 2026 Order and require a separate expedited docket for establishing an individual rate class and tailored tariff for data centers and other large loads because of the seriousness of how data centers will impact North Carolina's residential rate increases, energy use allocation, and costs for utility infrastructure upgrades, and due to the significant due process deficiencies that Commissioner van der Vaart mentions in his dissent.

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[120] *Id*., at p. 4.
[121] *See* Id., at p. 3.
[122] *Id*.
[123] *See Id*., at p. 4.
[124] *Id*.
[125] *See Id.* ("An entity deciding at the outset whether intervention was necessary therefore had no notice that this docket might establish a new mandatory rate schedule, a new customer classification, or potentially very substantial financial obligations for computational-load customers. That is materially different from a separately noticed proceeding in which the subject of the case is clear from the beginning.")
[126] *Id*., at 5.
[127] *Id*. ("Thus, there appears to be substantial common ground: act quickly, but develop the issue in a proceeding designed for it.").

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IV. The Commission Should Require Public Transparency in DEP's Business Practices with Large Load Customers Including Data Centers.

As previously discussed, DEP predicts substantial growth of large loads in the near future,[128] particularly from data centers.[129] If risks associated with that load growth are not managed appropriately, then infrastructure costs may be shifted to current ratepayers, including residential customers.[130] Due to this potential, existing ratepayers should have access to the information underlying how, where, and why this growth is occurring. Because of this and the other concerns previously discussed, the Commission should require DEP to take additional steps to create greater transparency in the processes that it uses to recruit, regulate, and interact with large load customers, including data centers.

A. DEP's Large Load/Data Center Business Strategy Requires More Transparency.

Duke Energy's North Carolina State President recently affirmed that the company has a dedicated team actively working to sign ESAs more quickly with large load customers, including data centers.[131] Initially, the public was given the impression that, when it came to new large load customers and data center developers, Duke Energy's approach was simply not to "refuse to serve a qualified customer…merely because the customer's load is large."[132] However, Duke Energy's statement on its business strategy for large load customers shows an aggressive strategy to bring large load customers and data centers to North Carolina. [133] Such efforts to expedite the signing of ESAs and provision of service to large load customers raise questions about the thoroughness of Duke's due diligence, especially during a time when there is effectively little to no regulation of these unprecedented facilities. Duke Energy states that its goal is "maintaining the reliability and value for all our customers."[134] But if Duke bases its growth strategy merely on maximizing its new load in the shortest amount of time, it might entice developers of riskier projects to North Carolina, burdening ratepayers if the large loads have lifespans insufficient to recover infrastructure buildout costs.

B. DEP's Current Reliance on Electric Service Agreements with Large Load Customers Undermines Transparency.

The Commission should require DEP to include widely applicable provisions in a publicly viewable tariff for large loads, including data centers, and also require ESAs for loads exceeding

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[128] Rebuttal Testimony of DEP Expert Timothy J. Duff, Docket E-2, Sub 1380 (July 24, 2026), pp. 8-9 (citing *Semi-Annual Economic Development Report on Large Load Additions in Advanced Stages of Development – Spring 2026*, Docket No. E-100, Sub 208A (Apr. 15, 2026), p. 3).
[129] Turner, Zachary, *At State Hearing, Duke Energy Faces Questions Over Its Role in Attracting New Data Centers to NC*, WFAE (June 10, 2026), https://www.wfae.org/energy-environment/2026-06-10/at-state-hearing-duke-energy-faces-questions-over-its-role-in-attracting-new-data-centers-to-nc (reporting that Duke projects two-thirds of its new demand to come largely from data centers).
[130] Joint Direct Testimony of Environmental Defense Fund Experts Timothy M. Lenell and Karan Pol, Docket E-7, Sub 1329 (May 29, 2026), pp. 34-35.
[131] Cross Examination of Kendal C. Bowman for DEC by Tom Felling for N.C. Public Staff, Docket E-7, Sub 1329 (May 29, 2026), pp. 93 & 95.
[132] Rebuttal Testimony of DEP Expert Timothy J. Duff, Docket E-2, Sub 1380 (July 24, 2026),p. 17.
[133] Cross Examination of Kendal C. Bowman, Carbon Plan and Integrated Resource Plan, Docket E-100, Sub 207 (June 9, 2026).
[134] *Id.*, at 93.

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a certain threshold (e.g., 100 MW) to receive approval from the Commission.[135] NCEJN and EJCAN appreciate DEP's recently updated decision to propose a new LLT to formalize protections for ratepayers against risks that new large load customers pose.[136] However, the proposed tariff does not go far enough and should include additional criteria as discussed in this Statement. Should the Commission establish these criteria for large loads, it will increase transparency by improving all parties' baseline knowledge of DEP's existing large load regulatory framework, which will enhance public collaboration and facilitate the proposal of more effective revisions in future developments of the large load tariff.

The public is now aware that Duke Energy is signing ESAs for large load customers at a breakneck pace. However, under Duke Energy's current business practices for large loads, ratepayers are unable to view these agreements or see what Duke Energy has agreed to, because Duke has filed them confidentially under seal.[137] Additionally, these agreements inherently lack transparency because they are negotiated privately between Duke Energy and developers, which undermines the predictability and uniformity that tariffs are designed to protect, as discussed in Section III(C) above.[138] DEP witness Duff's suggestion that many consumer protections are already incorporated into ESAs executed after January 2024[139] is further evidence in favor of bolstering the transparency of these agreements, as it's clear that DEP is internally seeing that it needs new and additional ways to regulate its large load customers. However, the public is unable to see or understand how this transition is taking place.

Existing ratepayers, the North Carolina Attorney General's Office, and the Public Staff cannot effectively hold DEP accountable for maintaining an equitable distribution of costs across its network when they do not know what conditions apply to certain ratepayers. While it may be reasonable for certain site-specific parameters like service voltage and equipment location to be memorialized case-by-case in an ESA, the same is not true for consumer protections. DEP's reliance on ESAs to silo provisions unique to large loads prevents the public from verifying corporate claims about cost allocation.[140] Without a revised LLT, ratepayers may be left to watch their monthly bills climb unchecked. Therefore, the Commission should require DEP to make all ESAs of large load customers, including data centers, publicly available and require approval from the Commission for any ESA with a large load customer requesting a load exceeding a certain threshold (e.g., 100 or 200 MW).

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[135] Direct Testimony of N.C. Attorney General's Office Expert Justin Brant, Docket E-2, Sub 1380 (July 9, 2026), Tbl. 1, p. 46-48.
[136] Rebuttal Testimony of DEP Expert Timothy J. Duff, Docket E-2, Sub 1380 (July 24, 2026), pp. 5, 6, 15-16.
[137] *See*, *e.g.*, Duke Energy, *Semi-Annual Economic Development Report on Large Load Additions in Advanced Stages of Development – Spring 2026*, Docket E-100, Sub 208A (April 15, 2026), p. 8.
[138] Joint Direct Testimony of EDF Experts Timothy M. Lenell & Karan Pol, Docket E-2, Sub 1380 (July 9, 2026),pp. 38-40; *see also* Direct Testimony of N.C. Attorney General's Office Expert Justin Brant, Docket E-2, Sub 1380 (July 9, 2026), p. 35 ("[T]here is limited transparency and Commission oversight. Individual ESAs negotiated under DEP's Service Regulation provisions are not subject to advance Commission review and are not publicly available to intervenors or other stakeholders in real time. A tariff is a publicly filed, Commission-approved document that creates a consistent and auditable record.").
[139] Rebuttal Testimony of DEP Expert Timothy J. Duff, Docket E-2, Sub 1380 (July 24, 2026), 20-21.
[140] Direct Testimony of N.C. Attorney General's Office Expert Justin Brant, Docket E-2, Sub 1380 (July 9, 2026), pp. 36-37 ("A tariff establishes a minimum non-negotiable floor that applies consistently to every customer in the class, regardless of how individual negotiations proceed. It is publicly filed and subject to Commission approval, providing the transparency and oversight that individual ESAs lack. It reduces speculative participation and produces a more reliable load signal for resource planning at earlier stages of the process because it establishes binding financial commitments, in the form of collateral, refundable advances, and minimum contract terms.").

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CONCLUSION

The proposed settlement between DEP and the Public Staff that would lower the overall residential rate increase to approximately 9.3% is a step in the right direction,[141] especially compared to DEP's initial request for an 18.1% rate increase for residential ratepayers.[142] However, DEP can and should still go further to protect all North Carolina ratepayers, especially those in low-income households and communities already struggling with rising utility bills. The Commission can do this by critically examining whether DEP's increased rates and ROE equate to noticeable improvements in reliability, requiring DEP to minimize the impacts of fuel costs on all ratepayers through renewable generation and a fuel-cost-sharing mechanism, requiring DEP to include a specific rate class and tailored tariff for data centers (and other large loads), and requiring public transparency in DEP's business practices with those large load customers.

At this moment, the Commission has an opportunity to make clear that affordability, fairness, and energy equity are priorities in establishing rates that are "...fair to the public utilities and to the consumer" while ensuring a true least-cost, reliable, and reasonable path for customers.[143] Therefore, NCEJN and EJCAN respectfully request that the Commission reject or further reduce DEP's proposed increase in retail electric base rates in accordance with this Statement.

Respectfully submitted this 9th day of September 2026.

[Signatures on the following page]

[141] Zhu, Christian, *NC AG Jackson: Duke Energy Gave Wrong Info About Rate Hike Under Oath*, Queen City Nerve (Aug. 14, 2026), https://qcnerve.com/jeff-jackson-duke-energy/ .
[142] *Id.*
[143] N.C.G.S. § 62-133(a); *see* N.C.G.S. § 62-2(3a); *see also* N.C.G.S. §§ 62-2 and 62-110.9 (which emphasize adequate, reliable, and economical service with just and reasonable rates); *and State ex rel. Utils. Comm'n v. Carolina Power & Light Co.*, 359 N.C. 516, 521-22, 614 S.E.2d 281, 285 (2005) (noting "...NCUC is responsible for ensuring that, in exchange for having a monopoly in its franchise area, a public utility provides adequate and reliable service to North Carolina citizens at reasonable rates." (internal citations omitted)).

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