

**R8-69 COST RECOVERY FOR DEMAND-SIDE MANAGEMENT AND ENERGY EFFICIENCY
MEASURES OF ELECTRIC PUBLIC UTILITIES**

(a) Definitions.

- (1) Unless listed below, the definitions of all terms used in this rule shall be as set forth in Rules R8-67 and R8-68, or if not defined therein, then as set forth in G.S. 62-133.8(a) and G.S. 62-133.9(a).
- (2) "DSM/EE rider" means a charge or rate established by the Commission annually pursuant to G.S. 62-133.9(d) to allow the electric public utility to recover all reasonable and prudent costs incurred in adopting and implementing new demand-side management and energy efficiency measures after August 20, 2007, as well as, if appropriate, utility incentives, including net lost revenues.
- (3) "Large commercial customer" means any commercial customer that has an annual energy usage of not less than 1,000,000 kilowatt-hours (kWh), measured in the same manner as the electric public utility that serves the commercial customer measures energy for billing purposes.
- (4) "Rate period" means the period during which the DSM/EE rider established under this rule will be in effect. For each electric public utility, this period will be the same as the period during which the rider established under Rule R8-55 is in effect.
- (5) "Test period" shall be the same for each public utility as its test period for purposes of Rule R8-55, unless otherwise ordered by the Commission.

(b) Recovery of Costs.

- (1) Each year the Commission shall conduct a proceeding for each electric public utility to establish an annual DSM/EE rider. The DSM/EE rider shall consist of a reasonable and appropriate estimate of the expenses expected to be incurred by the electric public utility, during the rate period, for the purpose of adopting and implementing new demand-side management and energy efficiency measures previously approved pursuant to Rule R8-68. The expenses will be further modified through the use of a DSM/EE experience modification factor (DSM/EE EMF) rider. The DSM/EE EMF rider will reflect the difference between the reasonable expenses prudently incurred by the electric public utility during the test period for that purpose and the revenues that were actually realized during the test period under the DSM/EE rider then in effect. Those expenses approved for recovery shall be allocated to the North Carolina retail jurisdiction consistent with the system benefits provided by the new demand-side management and energy efficiency measures and shall be assigned to customer classes in accordance with G.S. 62-133.9(e) and (f).
- (2) Upon the request of the electric public utility, the Commission shall also incorporate the experienced over-recovery or under-recovery of costs up to thirty (30) days prior to the date of the hearing in its determination of the DSM/EE EMF rider, provided that the reasonableness and prudence of these costs shall be subject to review in the utility's next annual DSM/EE rider hearing.
- (3) Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently incurred costs to be refunded to an electric public utility's customers through operation of the DSM/EE EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.
- (4) The burden of proof as to whether the costs were reasonably and prudently incurred shall be on the electric public utility.
- (5) Any costs incurred for adopting and implementing measures that do not constitute new demand-side management or energy efficiency measures are ineligible for recovery through the annual rider established in G.S. 62-133.9.
- (6) Except as provided in (c)(3) of this rule, each electric public utility may implement deferral accounting for costs considered for recovery through the annual rider. At the time the Commission approves a new demand-side management or energy efficiency measure under Rule R8-68, the electric public utility may defer costs of adopting and implementing the new measure in accordance with the Commission's approval order under Rule R8-68. Subject to the Commission's review, the electric public utility may begin deferring the costs of adopting and implementing new demand-side management or energy efficiency measures six (6) months prior to the filing of its application for approval under Rule R8-68, except that the Commission may consider earlier deferral of development costs in exceptional cases, where such deferral is necessary to develop an energy efficiency measure. Deferral accounting, however, for any administrative costs, general costs, or other costs not directly related to a new demand-side management or energy efficiency measure must be approved prior to deferral. The balance in the deferral account, net of deferred income taxes, may accrue a return at the net-of-tax rate

of return approved in the electric public utility's most recent general rate proceeding. The return so calculated will be adjusted in any rider calculation to reflect necessary recoveries of income taxes. This return is not subject to compounding. However, deferral accounting of costs shall not affect the Commission's authority under this rule to determine whether the deferred costs may be recovered.

- (7) In approving the first annual rider pursuant to G.S. 62-133.9 for Duke Energy Carolinas, LLC, the Commission shall consider the treatment it approved in Docket No. E-7, Sub 828, of the revenues and costs related to Duke Energy Carolinas' existing demand-side management and energy efficiency measures or programs.

(c) Utility Incentives.

- (1) With respect to a new demand-side management or energy efficiency measure previously approved under Rule R8-68, the electric public utility may, in its annual filing, apply for recovery of any utility incentives, including, if appropriate, net lost revenues, identified in its application for approval of the measure. The Commission shall determine the appropriate ratemaking treatment for any such utility incentives.
- (2) When requesting inclusion of a utility incentive in the annual rider, the electric public utility bears the burden of proving its calculations of those utility incentives and the justification for including them in the annual rider, either through its measurement and verification reporting plan or through other relevant evidence.
- (3) An electric public utility shall not be permitted to implement deferral accounting or the accrual of a return for utility incentives unless the Commission approves an annual rider that provides for recovery of an integrated amount of costs and utility incentives. In that instance, the Commission shall determine the extent to which deferral accounting and the accrual of a return will be allowed.

(d) Special Provisions for Industrial or Large Commercial Customers.

- (1) Pursuant to G.S. 62-133.9(f), any industrial customer or large commercial customer may notify its electric power supplier that it has implemented or, in accordance with stated, quantifiable goals, will implement alternative demand-side management or energy efficiency measures. Any such customer may elect not to participate in new demand-side management and energy efficiency measures under G.S. 62-133.9(f). Any customer that elects this option and notifies its electric public utility will, after the date of notification, be exempt from any annual rider established pursuant to this rule.
- (2) At the time the electric public utility petitions for the annual rider, it shall provide the Commission with a list of those industrial or large commercial customers that have opted out of participation in the new demand-side management or energy efficiency measures.
- (3) Any customer that opts out but subsequently elects to participate in a new demand-side management or energy efficiency measure or program loses the right to be exempt from payment of the rider for five years or the life of the measure or program, whichever is longer. For the purposes of this subsection, "life of the measure or program" means the capitalization period approved by the Commission to allow the utility to recover all costs or those portions of the costs associated with a program or measure to the extent that those costs are intended to produce future benefits as provided in G.S. 62-133.9(d)(1). Within 30 days of the customer's election, the electric public utility shall notify the Commission of an industrial or large commercial customer that elects to participate in a new measure after having initially notified the electric public utility that it declined to participate.

(e) Annual Proceeding.

- (1) For each electric public utility, the Commission shall schedule an annual rider hearing pursuant to G.S. 62-133.9(d) to review the costs incurred by the electric public utility in the adoption and implementation of new demand-side management and energy efficiency measures during the test period, the revenues realized during the test period through the operation of the annual rider, and the costs expected to be incurred during the rate period and shall establish annual DSM/EE and DSM/EE EMF riders to allow the electric public utility to recover all costs found by the Commission to be recoverable. The Commission may also approve, if appropriate, the recovery of utility incentives, including net lost revenues, pursuant to G.S. 62-133.9(d)(2) in the rider.
- (2) The annual rider hearing for each electric public utility will be scheduled as soon as practicable after the hearing held by the Commission for the electric public utility under Rule R8-55. Each electric public utility shall file its application for recovery of costs and appropriate utility incentives at the same time that it files the information required by Rule R8-55.

- (3) The DSM/EE EMF rider will remain in effect for a fixed 12-month period following establishment and will continue as a rider to rates established in any intervening general rate case proceeding.
- (f) Filing Requirements and Procedure.
- (1) Each electric public utility shall submit to the Commission all of the following information and data in its application:
 - (i) Projected North Carolina retail monthly kWh sales for the rate period.
 - (ii) For each measure for which cost recovery is requested through the DSM/EE rider:
 - a. total expenses expected to be incurred during the rate period in the aggregate and broken down by type of expenditure, per appropriate capacity, energy and measure unit metric and the proposed jurisdictional allocation factors;
 - b. total costs that the utility does not expect to incur during the rate period as a direct result of the measure in the aggregate and broken down by type of cost, per appropriate capacity, energy and measure unit metric, and the proposed jurisdictional allocation factors, as well as any changes in the estimated future amounts since last filed with the Commission;
 - c. a description of the measurement and verification activities to be conducted during the rate period, including their estimated costs;
 - d. total expected summer and winter peak demand reduction per appropriate capacity, energy, and measure unit metric and in the aggregate; and
 - e. total expected energy reduction in the aggregate and per appropriate capacity, energy and measure unit metric.
 - (iii) For each measure for which cost recovery is requested through the DSM/EE EMF rider:
 - a. total expenses for the test period in the aggregate and broken down by type of expenditure, per appropriate capacity, energy and measure unit metric and the proposed jurisdictional allocation factors;
 - b. total costs that the utility did not incur for the test period as a direct result of the measure in the aggregate and broken down by type of cost, per appropriate capacity, energy and measure unit metric, and the proposed jurisdictional allocation factors, as well as any changes in the estimated future amounts since last filed with the Commission;
 - c. a description of, the results of, and the costs of all measurement and verification activities conducted in the test period;
 - d. total summer and winter peak demand reduction per appropriate capacity, energy, and measure unit metric and in the aggregate, as well as any changes in estimated future amounts;
 - e. total energy reduction in the aggregate and per appropriate capacity, energy and measure unit metric, as well as any changes in the estimated future amounts since last filed with the Commission;
 - f. a discussion of the findings and the results of the program or measure;
 - g. evaluations of event-based programs including the date, weather conditions, event trigger, number of customers notified and number of customers enrolled; and
 - h. a comparison of impact estimates presented in the measure application from the previous year, those used in reporting for previous measure years, and an explanation of significant differences in the impacts reported and those previously found or used.
 - (iv) For each measure for which recovery of utility incentives is requested, a detailed explanation of the method proposed for calculating those utility incentives, the actual calculation of the proposed utility incentives, and the proposed method of providing for their recovery and true-up through the annual rider. If recovery of net lost revenues is requested, the total net lost kWh sales and net lost revenues per appropriate capacity, energy, and program unit metric and in the aggregate for the test period, and the proposed jurisdictional allocation factors, as well as any changes in estimated future amounts since last filed with the Commission.
 - (v) Actual revenues produced by the DSM/EE rider and the DSM/EE EMF rider established by the Commission during the test period and for all available months immediately preceding the rate period.

- (vi) The requested DSM/EE rider and DSM/EE EMF rider and the basis for their determination.
- (vii) Projected North Carolina retail monthly kWh sales for the rate period for all industrial and large commercial accounts, in the aggregate, that are not assessed the rider charges as provided in this rule.
- (viii) All workpapers supporting the calculations and adjustments described above.
- (2) Each electric public utility shall file the information required under this rule, accompanied by workpapers and direct testimony and exhibits of expert witnesses supporting the information filed in this proceeding, and any change in rates proposed by the electric utility, by the date specified in subdivision (e)(2) of this rule. An electric public utility may request a rider lower than that to which its filed information suggests that it is entitled.
- (3) The electric public utility shall publish a notice of the annual hearing for two (2) successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least thirty (30) days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-133.9(d) and setting forth the time and the place of the hearing.
- (4) Persons having an interest in any hearing may file a petition to intervene at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed in the discretion of the Commission for good cause shown.
- (5) The Public Staff and other intervenors shall file direct testimony and exhibits of expert witnesses at least 15 days prior to the hearing date. If a petition to intervene is filed less than 15 days prior to the hearing date, it shall be accompanied by any direct testimony and exhibits of expert witnesses the intervenor intends to offer at the hearing.
- (6) The electric public utility may file rebuttal testimony and exhibits of expert witnesses no later than 5 days prior to the hearing date.

(NCUC Docket No. E-100, Sub 113, 2/29/08; NCUC Docket No. E-100, Sub 113, 3/13/08.)