

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1159
DOCKET NO. E-7, SUB 1156

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Duke Energy Progress, LLC, and Duke Energy)	
Carolinas, LLC, Joint Petition for Approval of)	COMMENTS OF
Competitive Procurement of Renewable)	THE PUBLIC STAFF
Energy Program)	

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission, by and through its Executive Director, Christopher J. Ayers, and respectfully submits the following comments on the Final Competitive Procurement of Renewable Energy (CPRE) Program Plan (CPRE Program Plan) and response to the Motion to Conclude CPRE Program and Discontinue Program Planning and Reporting Requirements (Motion) filed by Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP) (together, the Companies or Duke) on September 1, 2023, in the above-captioned dockets.

CPRE Plan compliance with Commission Rule R8-71

The Public Staff has reviewed Duke’s September 1, 2023, CPRE Program Plan filing and agrees that the filing generally adheres to the requirements of Commission Rule R8-71. With the conclusion of the contracting period for the 2022 Solar Procurement which included the last procurement of CPRE projects (Tranche 4) occurring on June 19, 2023, many of the reporting requirements in Commission Rule R8-71(g) are now irrelevant, as noted by Duke’s Motion. Motion,

at 7-10. The CPRE Program Plan filed by Duke details the results of Tranches 1 through 4, providing information regarding the target capacity sought and how it was allocated between DEC and DEP, the amount contracted, and the amount that has achieved commercial operation. A summary of the current CPRE projects is shown in the table below, with updates as of October 18, 2023. The percentage terminated and percentage operational figures are based on the amount of capacity contracted.

Table 1: CPRE Program Summary, as of October 2023.

Tranche	Request	Bid	Contracted	Terminated	Active	Operational	% Terminated	% Operational
1	680	3,964	552	145	50	357	26%	65%
2	680	2,151	664	365	249	50	55%	8%
3	596	520	155	75	80	0	48%	0%
4	441	2,570	286	0	286	0	0%	0%
Total	2,397	9,205	1,657	585	665	407	35%	25%

Motion to Conclude CPRE Program and Discontinue Program Planning and Reporting Requirements

Duke's Motion requests to conclude the CPRE Program and discontinue the applicability of the requirements of Commission Rule R8-71(g) and (h), in accordance with Commission Rule R8-71(g)(4), which states:

In any year in which an electric public utility determines that it has fully complied with the CPRE Program requirements set forth in G.S. 62-110.8(a), the electric public utility shall notify the Commission in its CPRE Program Plan, and may petition the Commission to discontinue the CPRE Program Plan filing requirements beginning in the subsequent calendar year.

As noted in Duke’s Motion, on November 1, 2022, the Commission issued its Order Permitting Additional CPRE Program Procurement And Establishing Target Procurement Volume For The 2022 Solar Procurement (November 1 Order), in which the Commission concluded that “regardless of whether the CPRE MW shortfall is procured in total through the 2022 Solar Procurement, the CPRE Program will be closed out upon the conclusion of the 2022 Solar Procurement.” (November 1 Order, at 7). As noted in the Motion, the 2022 Solar Procurement sought 441 MW of CPRE projects, and eventually offered Power Purchase Agreements (PPAs) to 439.9 MW of solar capacity.¹ As noted in the final CPRE Program Plan, only 286 MW of these projects executed the offered PPA.

Given the Commission’s November 1 Order and the results of the 2022 Solar Procurement, the Public Staff agrees that the CPRE Program has concluded. In order to evaluate Duke’s request to discontinue the applicability of the CPRE reporting requirements, the Public Staff closely reviewed the relevant Commission Rules to determine if there is any value in continuing to file some or all of the CPRE Program Plan (Commission Rule R8-71(g)) or CPRE Compliance Report (Commission Rule R8-71(h)) information. Based on this review, the Public Staff agrees that no reporting requirements contained in the CPRE Program Plan should continue.

Regarding the CPRE Compliance Report, the Public Staff believes that there is value in continuing to receive the information requested in Commission

¹ See DEC DEP 2022 RFP Post-Solicitation Report on Behalf of CRA, filed July 31, 2023, at 16.

Rule R8-71(h)(2)(iii) (“the forecasted nameplate capacity and megawatt-hours of renewable energy and the number of renewable energy certificates obtained through the CPRE Program during the reporting year”) and R8-71(h)(2)(vi) (“the actual total costs and authorized revenues incurred by the electric public utility during the calendar year to comply with G.S. 62-110.8”). However, both pieces of information are provided as part of each Companies’ CPRE rider proceedings.²

Other comments of the Public Staff

As noted in Table 1 above, as of October 2023, approximately 35% of the total CPRE capacity that had an executed contract has terminated its PPA. A PPA termination occurs either because the developer has not met milestones set in their Interconnection Agreement (IA) and/or the PPA and is found to be in default of the PPA terms, or because the developer has notified the utility that it is voluntarily terminating its PPA. In almost all cases, a termination of the PPA has resulted in liquidated damages that have been refunded to customers via the CPRE rider. Over half of Tranche 2 projects have terminated their PPAs, as shown in Table 1.

It is the Public Staff’s understanding that the significant shortfall between the CPRE capacity that executed PPAs and the amount that is either operational or actively proceeding with development was likely caused by unique market disruptions occurring between when bids were submitted and when developers

² The actual and forecasted MWh from each facility, as well as the detailed breakdown of the program implementation costs, are filed confidentially with each Company’s annual rider filing.

were to actually start construction. For example, the bidding window for Tranche 2 opened in October 2019 and closed in November 2019. Since that time, global supply disruptions caused by the COVID-19 pandemic and global inflation have greatly increased costs, particularly in the construction sector.³ This likely led to an untenable position for many developers, who did not factor these significant cost increases into their Tranche 2 bids. In the CPRE program, this issue has been particularly challenging, as there is no mechanism to adjust a bid price once a project has been selected.

Overall, despite the challenges in procuring the target capacity, assuming all projects still active achieve commercial operation, the program will have resulted in the procurement of over 1,000 MW of solar capacity below avoided costs. In addition, the CPRE program served as a well-developed and tested procurement and evaluation process for the Companies, developers, and the Public Staff, which provided a starting point for the development of the 2022 and 2023 Solar Procurements. The process of developing the CPRE program also resolved many complex issues, with the Commission issuing decisions on how network upgrades would be paid for and incorporated into the evaluation process, how bid evaluation would proceed to ensure equal treatment of utility self-developed and third-party proposals, and the format of the *pro forma* PPA.

³ The Associated General Contractors of America estimated that between March 2020 and March 2021, construction costs increased by 12.4%, compared to the Bureau of Labor Statistics' estimated consumer price index of 2.6% during the same period. See https://www.agc.org/sites/default/files/AGC%202021%20Inflation%20Alert_Version2_0.pdf, at 2, and https://www.bls.gov/news.release/archives/cpi_04132021.pdf, at 1.

It remains to be seen whether the ongoing procurements associated with the Companies' Carbon Plan will see similarly high levels of project withdrawals. Solar projects selected in the CPRE and Solar Procurement processes also face additional risk in potential "contract shopping", where solar developers may execute a PPA after winning the competitive procurement but later decide to instead sell power to a large customer under a voluntary renewable energy purchase program, such as Green Source Advantage Bridge⁴ or Green Source Advantage Choice.⁵ The Public Staff is working with the Companies and market participants to minimize such withdrawals in future procurements through Request for Proposal design and the associated PPA terms and conditions. The Public Staff views the successful commercial operation of competitively procured renewable energy resources as a key factor in enabling the Companies to meet their statutorily required carbon dioxide emission reduction targets. The Public Staff intends to monitor the remaining CPRE projects, and the projects selected in the 2022 and 2023 Solar Procurements, to understand the potential magnitude of the execution risk caused by contracted project owners terminating their PPAs. In future competitive procurements, the target quantity might need to be adjusted upward to account for the likelihood of projects withdrawing after executing a PPA or asset transfer agreement, but additional ratepayer guardrails may have to be incorporated to prevent under-procurement or over-procurement.

⁴ Approved by the Commission on November 4, 2022, in Docket Nos. E-2, Sub 1306 and E-7, Sub 1277.

⁵ The Companies filed for approval for this program on January 27, 2023, in Docket Nos. E-2, Sub 1314, and E-7, Sub 1289.

Summary

In conclusion, based on its review of Duke's CPRE Program filing, the Public Staff believes that the final CPRE Plan filing complies with the requirements of Commission Rule R8-71 and recommends that the Commission accept the final CPRE Program Plan. The Public Staff also recommends that the Commission grant Duke's Motion as being in the public interest and discontinue the applicability of Commission Rules R8-71(g) and (h).

Respectfully submitted this the 18th day of October, 2023.

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Electronically submitted
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served on all parties of record or their attorneys, or both, by United States mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 18th day of October, 2023.

Electronically submitted
/s/ Robert B. Josey