

Following commencement of the CPRE Program on February 21, 2018, Duke conducted two procurement solicitations for renewable energy pursuant to N.C.G.S. § 62-110.8 (Tranche 1 and Tranche 2). Petition for Determination of Final CPRE Program Procurement Amount, ¶¶ 5-6 (Dec. 3, 2021) (Dec. 3, 2021 Pet.). On November 21, 2021, the 45-month term concluded. *Id.* at ¶ 7.

As a result of Tranche 1, DEC contracted with 10 projects for a total procurement of 435 MW. *Id.* at ¶ 6; see also CPRE Program Plan Update, Docket No. E-100, Sub 165, 57 (Sept. 1, 2021) (CPRE Program Plan Update). DEP contracted with two projects for a total procurement of 86 MW of new renewable energy capacity. *Id.* In total, the CPRE Program Tranche 1 procurement solicitation resulted in 521 MW of new renewable energy capacity. Dec. 3, 2021 Pet., Figure 1 at 4.

As a result of Tranche 2, DEC contracted with 10 projects for a total procurement of 589 MW. *Id.* at ¶ 6; see also CPRE Program Plan Update at 58. DEP contracted with one project for a total procurement of 75 MW of new renewable energy capacity. *Id.* In total, the CPRE Program Tranche 2 procurement solicitation resulted in 664 MW of new renewable energy capacity. Dec. 3, 2021 Pet., Figure 1 at 4.

In total, DEC and DEP have collectively procured 1,185 MW via CPRE Program Tranches 1 and 2. *Id.* at ¶ 6. Further, during the CPRE Program Procurement Period, Duke procured a total of 4,378 Transition MW: 1,121 Transition MW by DEC and 3,257 Transition MW by DEP. Dec. 3, 2021 Pet. at ¶ 7. Thus, 878 Transition MW have been obtained in excess of the 3,500 MW of Transition MW capacity targeted by HB 589. *Id.* at ¶ 10.

Therefore, pursuant to N.C.G.S. § 62-110.8(b)(1), the Commission determines that it is appropriate to reduce the CPRE Program procurement target to 1,782 MW. Further, as was previously noted herein, to date, DEC and DEP have collectively procured 1,185 MW via CPRE Program Tranches 1 and 2. *Id.* at ¶ 6. As a result, Duke is 596 MW short of the adjusted CPRE Program procurement target. Accordingly, pursuant to N.C.G.S. § 62-110.8(a), the Commission concludes that it is appropriate to require Duke to initiate a third procurement solicitation (Tranche 3) of the CPRE Program to procure the shortfall. The Commission acknowledges that the December 3, 2021 Petition states:

The Companies also note for transparency purposes that the 596 MW Tranche 3 target amount may be reduced as a result the Commission's Order Granting Petition for Relief issued in Docket No. SP-13695, Sub 1 on November 2, 2021. Specifically, the Tranche 3 target may be reduced up to 52.6 MW, the aggregate capacity of Bid A and Bid B, if such projects elect to execute Tranche 1 PPAs pursuant to the Order Granting Petition for Relief.

Id. at ¶ 14. The Commission notes that the Order Granting Petition for Relief stated “[t]hat nothing herein shall be construed to supersede the procurement target prescribed by N.C.G.S. § 62-110.8.” Therefore, the Commission finds that in the event that Duke contracts with either Bid A or Bid B, or both, that it will be appropriate for the CPRE

Program procurement target to be reduced accordingly. Should Duke contract with either Bid A or Bid B, or both, it should file a notice in these dockets advising the Commission of its recommended adjusted CPRE Program procurement target.

RESOURCE SOLICITATION CLUSTER

On June 14, 2019, in Docket No. E-100, Sub 101, the Commission issued its Order Approving Revised Interconnection Standards and Requiring Reports and Testimony. Among other things, that order required:

That the Duke Utilities shall establish a stakeholder process within the first quarter of 2019 to discuss the process of transitioning their North Carolina queues to a grouping study process and that the Duke Utilities shall report to the Commission no later than July 31, 2019, as to the status of that stakeholder process.

After the completion of the stakeholder process, on August 27, 2019, the Commission issued its Order Requiring Queue Reform Proposal and Comments. Following comments and negotiations between Duke and queue reform stakeholders, on October 15, 2020, the Commission issued an Order Approving Queue Reform. Duke then proceeded to seek approval of its queue reform proposal from the South Carolina Public Service Commission and the Federal Energy Regulatory Commission, which it received on June 18, 2021, and August 6, 2021, respectively. On August 19, 2021, the Commission issued an Order Implementing Queue Reform and implementing new North Carolina Interconnection Procedures (NCIP) effective August 20, 2021.

In Duke's CPRE Program Plan Update it stated that the implementation of queue reform introduces an additional layer of complexity regarding the timing of the CPRE Program Tranche 3 procurement solicitation. *Id.* at 58. Duke's CPRE Program Plan Update further proposed two potential options for integrating Tranche 3 with queue reform cluster studies: (1) by implementing Tranche 3 as part of the initial Transitional Cluster Study, or (2) by implementing Tranche 3 as part of the first Definitive Interconnection System Impact Study Clusters. *Id.*

On October 5, 2021, in these dockets, the Carolinas Clean Energy Business Association (CCEBA) filed a Petition to Initiate Resource Solicitation Cluster for CPRE Program Tranche 3 (CCEBA Petition). In short, the CCEBA Petition proposes an alternative mechanism for implementing the Tranche 3 procurement solicitation pursuant to the newly revised NCIP. Particularly, CCEBA requests that the Commission order Duke and the CPRE Program Independent Administrator (IA)¹ to conduct the Tranche 3 procurement solicitation via a Resource Solicitation Cluster (RSC) in accordance with NCIP Section 4.4.2.

¹ Pursuant to N.C.G.S. § 62-110.8(d) the CPRE Program must be administered by an independent, third-party administrator (Independent Administrator or IA).

Following negotiations between CCEBA and Duke, as well as consultation with other stakeholders including the North Carolina Sustainable Energy Association (NCSEA), the Public Staff, and the IA, on November 24, 2021, Duke filed a request seeking Commission approval of a DEC-only RSC (RSC Request), which is further detailed in an attachment to the filing identified as “Appendix H – CPRE Tranche 3 Resource Solicitation Cluster” (App. H).

Duke first brought the concept of a DEC-only RSC to the Commission’s attention in its October 18, 2021 Reply Comments regarding the CCEBA Petition (Duke Reply Comments). The Duke Reply Comments state that Duke presented the comments to CCEBA and other stakeholders during an IA-led CPRE stakeholder meeting on October 14, 2021. Duke explained that a “targeted Resource Solicitation Cluster approach is both responsive to CCEBA’s feedback as well as executable by the Companies from a DEC study perspective in a manner that mitigates potential risks of delay and uncertainty . . .” Duke Reply Comments at 2. Duke further states that “[t]he DEC-only Resource Solicitation Cluster would be modeled based upon the DEC Transitional Cluster Phase 2 power flow restudy. This targeted approach avoids the complexity of integrating a Resource Solicitation Cluster in DEP, while meeting CCEBA’s objective of more expeditiously completing the Tranche 3 procurement in 2022.” *Id.* at 6-7. Also, Duke states that “this approach generally aligns with the Companies’ prior CPRE Program Plans and Tranche 1 and Tranche 2 procurements where approximately 90% of the targeted procurement amounts were in DEC.” *Id.* at 6, n.10. Finally, in support of a DEC-only procurement, Duke states “[b]ased upon DEC’s experience and information known today, the proposed DEC-only framework and procurement schedule presented to stakeholders on October 14 is anticipated to be feasible to achieve the goals of Tranche 3 while also integrating between Transitional Cluster and DISIS Cluster 1.” *Id.* at 8-9.

Also on October 18, 2021, the Public Staff filed a letter in these dockets which states:

The Public Staff is encouraged by Duke’s attempt to find common ground by proposing the RSC. The feedback from stakeholders during the webinar on the process and proposed timeline was positive overall, though the market participants seemed concerned that the RSC proposed would exclude bids in DEP. Duke stated that a DEP study process would necessarily be more complex due to the existing transmission constraints, and therefore, more difficult to implement within a timeframe before the start of the Definitive Interconnection System Impact Study (DISIS) Cluster 1. The Public Staff agrees that limiting the RSC to projects in the DEC territory will simplify the study process and allow Duke to meet the timelines necessary to implement a separate solicitation cluster.

Public Staff Letter in Lieu of Comments at 2 (Oct. 18, 2021).

On October 22, 2021, CCEBA filed a letter stating that it “. . . agrees that limiting Tranche 3 to projects located in the DEC territories is workable and would reduce the complexity of the study process.” CCEBA Letter in Lieu of Comments at 2 (pages unnumbered) (Oct. 22, 2021).

Duke's RSC Request also sets out an approximate timeline for the implementation of the Tranche 3 procurement solicitation and seeks to issue a Request for Proposals (RFP) on January 5, 2022, which initiates the timeframe in which developers may submit bids. Duke explains that the RSC for Tranche 3 would occur after the transitional cluster (which is underway) and would use the results of the transitional cluster study as its base case. In support of its RSC Request, Duke states that, if the Commission approves the RSC, CCEBA agrees to withdraw its petition as satisfied.

The Commission notes that Appendix H states that each RSC project that is contingent upon upgrades that are identified and assigned to customers in the transitional cluster study's phase 2 power flow study would have those costs included in their RSC Phase 1 system upgrade cost estimate. However, during phase 2 of the RSC study, such an assumption will no longer be made. App. H at Section VI.d and IX.c. In addition, the RSC provides that projects that are contingent on Affected System studies that cannot be timely completed would be subject to being removed from evaluation. App. H at Section VII.

Finally, the Commission notes that the Public Staff, NCSEA, and the IA all support implementation of a DEC-only RSC for Tranche 3 as described in Appendix H and the Commission is unaware of any opposition to this proposal.

In light of the entire record and the consensus that has been reached with stakeholders, the Commission concludes that the proposal to implement a DEC-only solicitation for Tranche 3 of the CPRE Program through an RSC pursuant to NCIP Section 4.4.2, including the additional evaluation process described in Appendix H, is reasonable and, therefore, finds good cause to approve Duke's RSC Request.

PRO FORMA PPA

Section 62-110.8(b)(3) requires that 30 days prior to each competitive procurement solicitation the soliciting utility must file a pro forma contract with the Commission. On December 2, 2021, Duke filed its pro forma CPRE Tranche 3 "Renewable Power Purchase Agreement" (Pro Forma PPA) which it states was developed with market participant feedback and input from the IA. Duke opines that the Pro Forma PPA is "commercially reasonable and will allow the Companies to meet the CPRE Program's goals of reliably and cost-effectively procuring new renewable energy resources through the Tranche 3 RFP." Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Pro Forma CPRE Tranche 3 PPA, Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 at 3 (pages unnumbered) (Dec. 2, 2021).

Also, on December 2, 2021, the IA filed a Report of the Independent Administrator. The IA opines therein that:

[T]he RFP documents accurately describe the scope of the RFP, the evaluation methodology to be employed, and the requirements to be met by qualifying bids. Also, the IA believes the revisions of the CPRE methodology

to accommodate the transmission queue reforms are appropriate, while providing the process for completing the CPRE program goals.

Report of the Independent Administrator, Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 at 1 (Dec. 2, 2021). The IA further describes a new condition that was not previously employed in Tranches 1 and 2:

The bidder is advised of Duke's Limited Termination Right (RPPA Section 20.1.2) if the Facility Study Report establishes that the final expected cost of system upgrades is sufficiently greater than the cost imputed to the bid by the IA in Step 2 . . . so that the bid would be above Avoided Cost. This provision recognizes that the full system impact, and therefore a determination of whether a bid remains at or below Avoided Cost, will only be known when the Facility Study is completed. However, the intent of all parties is to have the CPRE RPPAs executed during the second quarter of 2022, notwithstanding the Facility Study for each project may not be completed until early 2023. This provision permits Duke to confirm that all CPRE RPPAs are at or below Avoided Cost.

Should the Facility Study for a project find that the associated bid would be above Avoided Cost, as addressed in RPPA section 20.1.2, the bidder would have a Right to Cure (RPPA Section 20.1.3) by paying for the system upgrades that result in the bid remaining below Avoided Cost.

Report of the Independent Administrator at 2. The IA also states that it "proposed this solution during the Stakeholder Sessions as a way to move forward without delay, while providing an avenue to confirm bids remain below Avoided Cost. Duke and the parties in interest agreed that this was a reasonable way to proceed." *Id.* The Report of the Independent Administrator concludes:

The IA believes the RFP documents are thorough, detailed, and absent of bias for or against any bidder or acceptable technology. As noted above, the RPPA balances the desire for expedited completion of Tranche 3, with the reality that the full system impact of a project will only be determined by the Facility Study, many months after the CPRE PPAs. Should the Facility Study establish that a project would be above avoided cost, Duke may terminate the RPPA, or the bidder may pay the amount of the system upgrade costs necessary for the project to remain at or below Avoided Cost. Either way Duke's customers will not be paying for energy above Avoided Cost.

Id. at 5.

The Commission notes that pursuant to N.C.G.S. § 62-110.8(d) the IA's "reasonable and prudent administrative and related expenses incurred to implement [the CPRE Program] shall be recovered from market participants through administrative fees levied

upon those that participate in the competitive bidding process, as approved by the Commission.” Further, Commission Rule R8-71(d)(10) provides that:

The Independent Administrator’s fees shall be funded through reasonable proposal fees collected by the electric public utility. The electric public utility shall be authorized to collect proposal fees up to \$10,000 per proposal to defray its costs of evaluating the proposals. In addition, the electric public utility may charge each participant an amount equal to the estimated total cost of retaining the Independent Administrator divided by the reasonably anticipated number of proposals. To the extent that insufficient funds are collected through these methods to pay of the total cost of retaining the Independent Administrator, the electric public utility shall pay the balance and subsequently charge the winning participants in the CPRE RFP Solicitation.

For the Tranche 3 CPRE Program procurement solicitation, Duke proposes to recover the IA’s costs similar to prior RFP Tranches, through a combination of Proposal Fees and Winners’ Fees. CPRE Tranche 3 IA Scope of Work, Docket Nos. E-2, Sub 1159 and E-7, Sub 1156, 2 (pages unnumbered) (Dec. 2, 2021).

The Proposal Fee is required to be submitted with each Market Participant’s Proposal and is a non-refundable amount of \$500/MW, based on the Facility’s nameplate capacity, up to a maximum of ten thousand dollars (\$10,000). The Winner Fee is an amount determined upon the conclusion of the RFP to recover any remaining IA costs not previously recovered by the Proposal Fee. Only successful market participants selected through the RFP will be responsible for Winners’ Fees, and the fee will be allocated on a pro-rata basis on a per MW basis to each successful market participant. The RFP provides that total of the Winners’ Fees shall not exceed \$1.5 million which reflects an increase over the \$1 million not-to-exceed amount used for Tranches 1 and 2². . . Assuming the IA’s scope of work and fee estimates are reasonably accurate and there are no significant post-solicitation expenses (identified as Exclusions in the IA’s scope of work), the Tranche 3 program fee structure of Proposal Fees and Winners Fees is reasonably designed to recover all Tranche 3-related IA fees from Tranche 3 market participants.

Id.

In reviewing the Pro Forma PPA the Commission is unclear as to whether, in the event of a PPA termination pursuant to Section 20.1.2, the Winners’ Fees paid by the terminated market participant are subject to refund, and if so, how this impacts whether the Tranche 3 program fee structure is designed to ensure recovery of all Tranche 3 related IA fees from Tranche 3 market participants. For this reason, the Commission

² The Commission notes that in Tranche 1 Winners’ Fees were capped at \$500,000. See Direct Testimony of Phillip H. Cathcart, Docket No. E-7, Sub 1247, 12 (Feb. 23, 2021).

requires additional information from Duke as to how Section 20.1.2 will impact Winners' Fees before it can reach a final conclusion on Duke's request for approval of the Pro Forma PPA. Finally, to further aid in the review of the Pro Forma PPA the Commission finds good cause to require Duke to file a copy of the Tranche 3 RFP with the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That the CPRE Program procurement target is 1,782 MW as reduced in accordance with N.C.G.S. § 62-110.8(b)(1);
2. That, pursuant to N.C.G.S. § 62-110.8(a), consistent with the other directives made herein, and pending Commission approval of the Pro Forma PPA, Duke shall initiate a Tranche 3 CPRE Program procurement solicitation seeking to procure 596 MW;
3. That prior to the conclusion of Step 2 of the Tranche 3 CPRE Program procurement solicitation, Duke shall notify the Commission of whether it has contracted with Bid A or Bid B³, or both, so that the Commission may accordingly reduce the CPRE Program procurement target in accordance with N.C.G.S. § 62-110.8(b)(1);
4. That DEC is hereby authorized to implement Tranche 3 of the CPRE Program through an RSC consistent with Appendix H and the timeline provided in the RSC Request;
5. That Duke shall file the proposed CPRE Program Tranche 3 RFP in these dockets by December 28, 2021; and
6. That Duke shall file a verified response to the questions set forth in the Appendix hereto by December 28, 2021.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of December, 2021.

NORTH CAROLINA UTILITIES COMMISSION



Erica N. Green, Deputy Clerk

³ As further identified in the Commission's Order Granting Petition for Relief issued in Docket No. SP-13695, Sub 1 on November 2, 2021.

Commission Questions

1. In the event that DEC exercises its Limited Termination Right pursuant to Section 20.1.2 of the Renewable Power Purchase Agreement, are the Winner's Fees subject to refund if Duke and the seller fail to reach an agreement on the seller's payment obligation for the Excess Network Upgrades?

2. If the Winner's Fees are subject to refund, does the Tranche 3 program fee structure ensure that all Tranche 3-related IA fees will be recovered from Tranche 3 Market Participants?