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August 16, 2017

VIA ELECTRONIC FILING

Ms. M. Lynn Jarvis, Chief Clerk
North Carolina Utilities Commission
Dobbs Building
430 North Salisbury Street
Raleigh, North Carolina 27603

Re: Docket No. E-100, Sub 150

Dear Ms. Jarvis:

On behalf of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, enclosed for filing in the above-referenced docket is their *Initial Comments and Proposed Rule to Implement N.C. Gen. Stat. § 62-110.8*.

Please do not hesitate to contact me if you have any questions. Thank you for your assistance in this matter.

Very truly yours,

/s/E. Brett Breitschwerdt

EBB:kjg

Enclosures

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 150

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Implement G.S. 62-110.8	)))))	**DUKE ENERGY CAROLINAS, LLC'S AND DUKE ENERGY PROGRESS, LLC'S INITIAL COMMENTS AND PROPOSED RULE TO IMPLEMEMENT N.C. GEN. STAT. § 62-110.8**

NOW COMES Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (collectively, the "Companies") and hereby respectfully submit initial comments to the North Carolina Utilities Commission ("Commission") in the above-captioned proceeding. On July 28, 2017, the Commission issued its *Order Initiating Rulemaking* opening this docket and providing an opportunity for the Companies and other interested parties to file initial comments, suggestions, or proposed rules or rule revisions relating to the implementation of N.C. Gen. Stat. § 62-110.8, as enacted by Session Law 2017-192 ("S.L. 2017-192" or the "Act"). The *Order Initiating Rulemaking* also established DEC and DEP as parties of record for purposes of this proceeding.

BACKGROUND

On July 27, 2017, Governor Roy Cooper signed S.L. 2017-192 into law, thereby enacting a number of amendments to the Public Utilities Act. S.L. 2017-192's titling provision expresses that the purpose of the Act is to reform North Carolina's approach to the integration of renewable electricity generation, as well as to provide for leasing of solar energy facilities through the Distributed Resources Access Act. Through *Part II. Competitive Procurement of Renewable Energy*, which enacted N.C. Gen. Stat. § 62-110.8, the Act mandates that DEC and DEP shall establish and implement competitive

procurement of renewable energy programs ("CPRE Programs") that will provide for more orderly planning, development, procurement, integration, and dispatch of significant additional renewable energy resource capacity – 2,660 megawatts ("MW") in the aggregate between the two Companies over the next approximately four years. In addition to establishing the CPRE Program requirements in Part II, other parts of the Act expand customer opportunities to procure solar energy and evolve the regulatory framework under which renewable energy is integrated into the Companies' systems in North Carolina by: (i) providing express legislative direction regarding the Commission's traditional biennial implementation of Section 210 of the Public Utilities Regulatory Policy Act, 16 U.S. Code § 824a–3 ("PURPA") through amending N.C. Gen. Stat. § 62-156; (ii) directing the establishment of a "green source" program to allow major military installations, the University of North Carolina, and other large commercial and industrial customers to procure 100% of their energy requirements from renewable generating facilities; (iii) enacting a program for the leasing of distributed solar energy facilities by residential and non-residential customers through the Distributed Resources Access Act; (iv) mandating development of community solar energy programs allowing "first come, first served" participation up to 20 MW each in DEC and DEP; (v) providing for the establishment of a residential and non-residential solar rebate program for customers that own or lease renewable energy facilities and are participating in DEC's and DEP's net metering tariffs, as well as directing Commission review of current net metering rates to ensure they are nondiscriminatory between participating and non-participating customers; (vi) providing the Companies with more timely cost recovery mechanisms to support implementation of these significant new renewable energy procurement mandates; and

(vii) enacting other programs, studies, and requirements to inform and develop the framework for North Carolina's long term energy future.

The Companies appreciate the significant work ahead for the Commission, the Public Staff-North Carolina Utilities Commission ("Public Staff"), and other stakeholders to implement the numerous programs and requirements provided for by the Act. The Companies also recognize the expedited timeframe imposed by the Act for CPRE Program development, Commission review and, ultimately, for deployment over the next 45-month period ("CPRE Procurement Period") after Commission approval. Consistent with the Commission's *Order Initiating Rulemaking*, the Companies focus these comments and the proposed draft rule ("CPRE Program Rule") included herein as Attachment A on the rules required to implement Part II of the Act and, specifically, to meet the express requirements of N.C. Gen. Stat. § 62-110.8(h). In addition to proposing the draft CPRE Program Rule for Commission oversight of the CPRE Program in this proceeding, the Companies are also working diligently to develop a CPRE Program framework and guidelines to be filed with the Commission on or before November 27, 2017 ("November CPRE Program Filing"). The Companies are committed to working with the Commission, the Public Staff, the solar development industry, and other stakeholders to ensure the requirements of N.C. Gen. Stat. § 62-110.8 are fully met through the November CPRE Program Filing and to achieve the benefits of the new CPRE Program in a reasonable manner that allows DEC and DEP to continue to reliably and cost-effectively serve customers' future energy needs throughout the State.

THE COMPANIES' INITIAL COMMENTS ON N.C. GEN. STAT. § 62-110.8(h)

As directed in the *Order Initiating Rulemaking*, the Companies' initial comments specifically address, and the proposed CPRE Program Rule is specifically designed to implement, N.C. Gen. Stat.§ 62-110.8(h), which requires the Commission to establish rules to accomplish the following:

> (1) Oversight of the competitive procurement program.
> (2) To provide for a waiver of regulatory conditions or Code of Conduct requirements that would unreasonably restrict a public utility or its affiliates from participating in the competitive procurement process, unless the Commission finds that such a waiver would not hold the public utility's customers harmless.
> (3) Establishment of a procedure for expedited review and approval of certificates of public convenience and necessity, or the transfer thereof, for renewable energy facilities owned by the public utility and procured pursuant to this section. The Commission shall issue an order not later than 30 days after a petition for a certificate is filed by the public utility.
> (4) Establishment of a methodology to allow an electric public utility to recover its costs pursuant to subsection (g) of this section.
> (5) Establishment of a procedure for the Commission to modify or delay implementation of the provisions of this section in whole or in part if the Commission determines that it is in the public interest to do so.

Other CPRE Program requirements enacted in N.C. Gen. Stat. § 62-110.8 or that are otherwise incidental to the development and implementation of the CPRE Program will be more fully addressed in the Companies' CPRE Program framework and guidelines to be filed with the Commission in the November CPRE Program Filing.

I. Commission Oversight of CPRE Program

The Companies' proposed CPRE Program Rule provides for Commission oversight of CPRE Program deployment by requiring DEC and DEP to each annually file CPRE Program plans and then to report on CPRE Program implementation through an annual CPRE Program compliance report. This approach to Commission oversight through annual planning and reporting on CPRE Program implementation is similar to the existing

North Carolina Renewable Energy and Energy Efficiency Portfolio Standard ("REPS") rule design. *See* NCUC Rule R8-67(b) and (c).

This approach to Commission oversight is most appropriate based upon the CPRE Program framework established in N.C. Gen. Stat. § 62-110.8, which imposes prescriptive requirements on the Companies in terms of the amount of renewable energy resource capacity to be procured under the CPRE Program, but also provides broad flexibility for the Companies to develop CPRE Programs that meets the overall objectives of this Section and the Public Utilities Act. For example, the Companies are obligated to procure an aggregate 2,660 MW total CPRE Program procurement amount reasonably allocated over the CPRE Procurement Period (the "CPRE Total Obligation"), but, unlike REPS, no annual targets or mandatory procurement amounts are identified by the General Assembly. N.C. Gen. Stat. § 62-110.8 also provides that the Companies may jointly or individually implement the aggregate CPRE Total Obligation through acquisition or self-development of renewable energy facilities or by entering into third-party power purchase agreements ("PPA") where the utility acquires rights to dispatch, operate, and control the solicited renewable energy facilities in the same manner as the utility's own generating resources. The filing of an annual CPRE Program plan will allow the Companies to refine their individual or aggregate procurement strategies each year during the 45-month CPRE Procurement Period and to provide updated information to the Commission, Public Staff, and market participants regarding the timing and procurement amounts of planned future CPRE Program solicitations. Updating the utility's CPRE Program plan annually will also allow the Commission to monitor overall progress towards meeting the CPRE Total Obligation, while also assuring that the Commission can monitor the statutorily-imposed

limits on CPRE Program deployment. Specifically, the CPRE Total Obligation shall be reduced if the ongoing development of non-CPRE renewable energy resources not subject to economic dispatch or curtailment exceeds 3,500 MW in aggregate between the Companies' balancing authority areas during the CPRE Procurement Period. *See* N.C. Gen. Stat. § 62-110.8(b)(1).

The annual CPRE Program compliance report will similarly allow the Commission to oversee CPRE Program implementation and require the Companies to provide information on the sources, amounts, and costs of renewable energy facilities and/or proposed "authorized revenues" of utility-owned renewable energy facilities procured during the CPRE Program solicitation(s) completed during a given reporting year. The compliance report would be filed contemporaneously with the annual cost recovery filing, as discussed below, and the information regarding the cost incurred by the electric public utility during the reporting year to procure renewable energy facilities would also be used to support the Companies' CPRE Program cost recovery request similar to the REPS reporting and cost recovery procedure in place today. *See* NCUC Rule R8-67(c) and (e).

The CPRE Program report would also allow the Commission to review and assure that the prescriptive requirements of N.C. Gen. Stat. § 62-110.8 are being met. For example, the Companies' draft proposed CPRE Program Rule will require DEC and DEP to report their avoided cost rates applicable to each CPRE Program solicitation(s) undertaken during the reporting year and confirm in the report that all renewable energy facilities procured through a CPRE Program solicitation are priced at or below the electric public utility's avoided cost. Similarly, the annual CPRE Program report would require certification by the third party entity selected to administer the procurement that all public

utility and third party bid responses were evaluated under the published CPRE Program methodology and that all bids were treated equitably through each CPRE Program solicitations occurring during the reporting year. *See* N.C. Gen. Stat. § 62-110.8(d). The CPRE Program report will also allow the utility to verify to the Commission that any non-publicly available transmission or distribution system information used in preparing a utility self-developed proposal was also made available to third parties that notified the utility of their intention to submit a proposal in the same CPRE Program solicitation.

II. Provision for Waiver of Regulatory Conditions or Code of Conduct Requirements

S.L. 2017-192 also includes provisions that are aimed at allowing the affiliates of an electric public utility to participate in the CPRE Program process on virtually equal terms with non-affiliated third parties developers of renewable energy facilities. To that end, S.L. 2017-192 eases certain procedural hurdles that apply specifically to transactions between an electric public utility and its affiliates. First, the General Assembly excluded PPAs between electric public utilities and their affiliates entered into under a CPRE Program solicitation from N.C. Gen. Stat. § 62-153(b)'s requirement that an electric public utility file for Commission approval of any affiliate agreement requiring the electric public utility to pay compensation of any kind to an affiliate or subsidiary for services rendered or to be rendered. Second, through N.C. Gen. Stat. § 62-110.8(h)(2), the General Assembly required the Commission to adopt rules to provide for a waiver of regulatory conditions or Code of Conduct requirements that would unreasonably restrict a public utility or its affiliates from participating in the competitive procurement process, unless the Commission finds that such a waiver would not hold the public utility's customer harmless. To effectuate these new provisions of the Public Utilities Act and to facilitate equitable

participation in the CPRE Program by the Companies' affiliates, subsection (i) of the Companies' proposed rule provides for both the waiver of regulatory conditions and Code of Conduct requirements related to CPRE Program participation by the Companies and their affiliates, as well as establishes a process by which the Commission may review objections to the waivers.

A. Waiver of Regulatory Conditions and Code of Conduct Requirements

After the Commission's approval of Duke Energy Corporation's 2016 merger with Piedmont Natural Gas Company, Inc., DEC, DEP, and, in many instances, their affiliates, are subject to numerous regulatory conditions and Code of Conduct requirements.[1] With this proposed rule, the Companies recommend that the regulatory conditions and Code of Conduct requirements that unreasonably restrict their participation or their affiliates' participation in the CPRE Program be deemed waived. These regulatory conditions and Code of Conduct requirements generally pertain to: (i) the filing and content of affiliate agreements; (ii) the prescriptive pricing of transactions between and among DEC, DEP, and their affiliates; and (iii) the conditions for transfer of certain non-public information from DEC or DEP to their affiliates. These regulatory conditions and Code of Conduct requirements are generally described below.

Section III of the Companies' regulatory conditions includes conditions that impose specific procedures and requirements on DEC's and DEP's ability to enter into contracts with their affiliates.[2] For example, Regulatory Condition Number ("Reg. Con. No.") 3.1(a) requires that before DEC and DEP transact with an affiliate, they must provide the

[1] *Order Approving Merger Subject to Regulatory Conditions and Code of Conduct*, Docket No. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682, issued Sept. 29, 2016 ("Merger Order").
[2] Merger Order, Appendix A at 5-16.

proposed, unexecuted affiliate contract to the Public Staff for a 15-day informal review before filing it under N.C. Gen. Stat. § 62-153.[3] Reg. Con. No. 3.1(c) requires that DEC and DEP file a 30–day advance notice of any affiliate PPA before filing the affiliate PPA at the Federal Energy Regulatory Commission ("FERC").[4] Both requirements result in additional complexity and prevent expeditious execution of an affiliate PPA under N.C. Gen. Stat. § 62-110.8. Moreover, one purpose of these review periods has been for the Public Staff to ensure that the electric public utility had complied with Reg. Con. No. 3.1(b), which requires that the Companies' affiliate contracts contain specific language preserving the Commission's authority to oversee cost recovery and ratemaking under the contract.[5] N.C. Gen. Stat. § 62-110.8(g), however, expressly provides that cost recovery for the electric public utility for the PPAs entered into through implementation of the CPRE Program is subject to annual review and approval by the Commission. Therefore, the regulatory conditions pertaining to the filing and review of affiliate PPAs that impose restrictions and procedures beyond those contained in N. C. Gen. Stat. § 62-153(a) are unnecessary and should be deemed waived.

Certain regulatory conditions and Code of Conduct requirements also restrict the pricing of transfers between affiliates. Reg. Con. No. 3.4 governs the purchase and sale of electricity between DEC, DEP, and their affiliates, which is also "subject to additional restrictions set forth in the Code of Conduct."[6] Reg. Con. 3.4 provides that DEC and DEP shall not purchase electricity from an affiliate under circumstances where the total all-in

[3] *Id*. at 5-6.
[4] The Federal Power Act requires the filing of certain PPAs between affiliate QFs and electric public utilities.
[5] Merger Order, Appendix A at 6-7.
[6] *Id*. at 9.

costs exceed fair market value for comparable service.[7] Section III, D. of the Code of Conduct governs the transfer of goods and services, transfer pricing and cost allocation with respect to DEC, DEP, and its affiliates. Section III, D.3. of the Code of Conduct provides that transfers of goods and services between DEC and DEP and their Non-Utility Affiliates shall be priced "asymmetrically."[8] For example, goods and services provided by a Non-Utility Affiliate to DEC and DEP shall be priced at the lower of market value or the Non-Utility Affiliate's fully distributed cost. Although it is not clear that these Code of Conduct provisions regulating the pricing for transfers of "goods and services" directly apply to the purchase of energy, capacity, and environmental and renewable attributes from affiliates, these provisions should be deemed waived consistent with N.C. Gen. Stat. § 62-110.8 so that DEC and DEP's affiliates may participate in the CPRE Program solicitation without jeopardizing DEC's and DEP's compliance with their regulatory conditions and the Code of Conduct.

With respect to the potential transfer of non-public information from DEC or DEP to an affiliate, the Companies note that N.C. Gen. Stat. § 62-110.8(e) provides that "[i]f the public utility uses non-publicly available information concerning its distribution or transmission system in preparing a proposal to a competitive procurement, the public utility shall make such information available *to third parties* that have notified the public utility of their intention to submit a proposal to the same requests for proposals." (Emphasis added). This requirement contemplates the electric public utility potentially providing

[7] *Id*.

[8] The Code of Conduct defines Non-Utility Affiliate as any affiliate of DEC, DEP, or Piedmont Natural Gas that is not the service company or the regulated public utility operations of Duke Energy Indiana, LLC, Duke Energy Kentucky, Inc., Florida Power Corporation, d/b/a/ Progress Energy Florida, LLC, and Duke Energy Ohio, Inc. Merger Order, Appendix A at 46-47.

nonpublic information to third parties, which may include affiliates of the electric public utility. Because it provides for the disclosure of the nonpublic information to both affiliates and non-affiliates alike, the Companies believe this requirement is generally consistent with their Code of Conduct restrictions on the sharing of non-public information. To the extent, however, that the nonpublic information to be made available to third parties could be considered a "trade secret," the Companies believe that, in an abundance of caution, Section III, D. 8 of the Code of Conduct should be deemed waived.[9] This provision essentially requires that DEC and DEP provide a 60-day advance notice to the Commission prior to the transfer of "trade secrets" to an affiliate.[10] Without a waiver of this provision, the electric public utility would have to potentially await expiration of the 60-day notice period prior to making nonpublic information available to third parties as contemplated by N.C. Gen. Stat. § 62-110.8(e), if an affiliate were one of the third parties.

B. Procedure for Filing an Affiliate PPA and Objections to an Affiliate PPA

Subsection (i)(2) of the Companies' proposed rule sets forth the procedure for filing an affiliate PPA under the CPRE Program as required by N.C. Gen. Stat. § 62-153(a), which requires the filing of all contracts entered into between an electric public utility and affiliated companies. Interested parties, including the Public Staff, would then have 30 days to review the PPA and to file an objection on the ground that the waivers of the regulatory conditions and of Conduct did not hold the electric public utility's customers

[9] A "trade secret" is defined in N.C. Gen. Stat. § 66-152(3) as business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that derives independent actual or potential commercial value from not being generally known or readily accessible through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

[10] Merger Order, Appendix A at 58.

harmless[11] or that the affiliate PPA was "unjust, or unreasonable and made for the purpose or with the effect of concealing, transferring, or dissipating the earnings of the public utility."[12] Consistent with the intent of the General Assembly in expressly providing for a waiver of certain regulatory conditions and Code of Conduct requirements, the party objecting to the waiver bears the burden of proof in demonstrating that it does not hold the electric public utility's customers harmless.

III. Expedited Review and Approval of Certificates of Public Convenience and Necessity for Renewable Energy Facilities Procured through the CPRE Program

As provided for by N.C. Gen. Stat. § 62-110.8(h)(3), subsection (h) of the Companies' proposed rule addresses expedited review and approval of new certificates of public convenience and necessity ("CPCN") or the transfer of an existing CPCN to the electric public utility for renewable energy facilities procured through a CPRE Program solicitation. This subsection establishes both filing requirements and procedures for reviewing new CPCN applications and the transfer of existing CPCNs to expedite the Commission's CPCN review. The proposed CPRE Program CPCN review procedure generally aligns with existing procedure for Commission review of small power producer CPCNs under NCUC Rule R8-64. This consistency is appropriate in light of the similarities in renewable generating technology and limitations on the size of proposed renewable energy facilities eligible for CPRE Program solicitations and facilities eligible for a CPCN under NCUC Rule R8-64. The proposed CPCN review procedure also provides for the publication of notice, as required by N.C. Gen. Stat. § 62-82(a), while allowing a CPCN to be issued without a hearing within 10 days after the last date of

[11] N.C. Gen. Stat. § 62-110.8(h)(2).
[12] N.C. Gen. Stat. § 62-153(a).

publication of the notice unless a complaint is filed with the Commission or the Commission determines a hearing is required upon its own initiative. This proposed review procedure is similar to the current review and public notice process for non-utility solar CPCNs under NCUC Rule R8-64(c).

Applications for transfer of a CPCN would advise the Commission that the proposed renewable energy facility was procured through a CPRE Program solicitation and identify any significant changes to the information previously filed by the prior third party developer with regard to the facility's CPCN. The proposed rule also provides that the Commission would issue an order within 30 days of the electric public utility's CPCN transfer application, either approving the transfer of the CPCN or directing further review of the CPCN transfer application if circumstances so require.

Finally, subsection (h) of the proposed rule addresses the potential circumstance where an electric public utility acquires "project development assets" from a non-utility renewable energy facility developer after a CPCN has been obtained. In such circumstances, the electric public utility would notify the Commission of the acquisition and must subsequently request Commission approval to transfer the CPCN pursuant to N.C. Gen. Stat. § 62-110.1 prior to commencing construction of the potential renewable energy facility. However, this provision recognizes that the electric public utility may desire to further develop the project development assets prior to submitting the project into a CPRE Program solicitation and, therefore, may elect to delay formally requesting the CPCN transfer unless and until the project is selected through the CPRE Program process or the utility otherwise elects to proceed with construction of the renewable energy facility.

Commission approval to transfer the CPCN would still be required prior to the electric public utility commencing the construction of any renewable energy facility.

IV. CPRE Cost Recovery Mechanism

Subsection (f) of the Companies' proposed rule presents the mechanism for DEC and DEP to each recover their costs of CPRE Program implementation as provided for in N.C. Gen. Stat. § 62-110.8(g). This section is generally modeled on existing annual rider mechanisms, such as the REPS cost recovery rider established in NCUC Rule R8-67(e), where the electric public utility projects its eligible cost to be incurred during a future fixed 12-month billing period and then trues up its costs based upon actual, historical test period experience through an experience modification factor. Applications for CPRE Program cost recovery would be made contemporaneously with each electric public utility's annual fuel factor application and a hearing would be held on the cost recovery application and CPRE Program compliance report as soon as practicable after the annual fuel factor hearing held by the Commission under Rule R8-55.

The proposed rule also provides a general methodology for development of the "market price" to be used to establish the "authorized revenue" that an electric public utility may propose to recover for utility-owned renewable energy facility assets procured through a CPRE Program solicitation, as contemplated in N.C. Gen. Stat. § 62-110.8(g). Specific to the "market price," the Companies propose that this price should be based upon an evaluation of the third party bid prices selected through the same CPRE Program solicitation and that are of the same "product," discussed further below, as the DEC or DEP facility – whether self-developed or third party-bid to be owned and operated by the

Companies under N.C. Gen. Stat. § 62-110.8(b). Only winning bids actually procured through a CPRE Program solicitation would be used in deriving the market price.

Use of the term "product" in the proposed rule refers to the electric public utility's contractual PPA rights to dispatch, operate, and control procured renewable energy facilities owned by third parties, as provided for in N.C. Gen. Stat. § 62-110.8(b), and, in relation, the "define[d] limits and compensation for resource dispatch and curtailments" to be included in the PPA as required by N.C. Gen. Stat. § 62-110.8(b)(3). A market price should be correlated to the contractual rights afforded to the public utility buyer and the payments, risks, and performance obligations accepted by a third-party seller in an arm's length transaction under a specific PPA, *i.e.*, the product. Notably, however, the product solicited may be designed differently between CPRE Program solicitations or the Companies may elect to solicit multiple products within the same solicitation; therefore, the market price definition retains some flexibility (i.e., is not specifically based on an energy production-based revenue stream in dollars per megawatt-hour ($/MWH)) in order to accommodate future product designs in future CPRE program solicitations.

Subsection (f)(2) of the proposed rule specifically addresses the process for calculating authorized revenue, which is derived by multiplying the market price discussed above by the appropriate unit procured in terms of energy production (MWh) or capacity made contractually available for operation and control by the electric public utility, forecasted over the equivalent term as the third-party pro forma PPA product procured in the CPRE Program solicitation. Put another way, the authorized revenue to be recovered for utility-owned projects is intended to be fixed as of the time of the CPRE program solicitation and would be based upon the forecasted energy production or capacity made

available over an equivalent to the term solicited for third-party PPAs (i.e., initially 20 years per N.C. Gen. Stat. § 62-110.8(b)(3)).

Finally, subsection (f)(2) of the proposed rule recognizes that the recovery of authorized revenue for utility-owned renewable energy facilities based upon the market price of renewable energy resources procured through a CPRE solicitation would be subject to approval by the Commission upon finding that such recovery is in the public interest.

V. Procedure to Modify or Delay CPRE Program Requirements

Pursuant to N.C. Gen. Stat. § 62-110.8(h)(5), the Companies have included subsection (e)(2) in the proposed rule providing that an electric public utility or other interested party may petition the Commission to modify or delay the requirements of N.C. Gen. Stat. § 62-110.8, in whole or in part, upon a finding that it is in the public interest to do so.

WHEREFORE, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC respectfully submit these initial comments and the proposed CPRE Program Rule set forth in Attachment A for the Commission's consideration.

Respectfully submitted, this the 16th day of August, 2017.

/s/E. Brett Breitschwerdt

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R8-XX COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY

(a) Purpose. The purpose of this rule is to implement the provisions of G.S. 62-110.8, and to provide for Commission oversight of the CPRE Program(s) designed by the electric public utilities subject to G.S. 62-110.8 for the competitive procurement and development of renewable energy facilities in a manner that ensures continued reliable and cost-effective electric service to customers in North Carolina. Each electric public utility subject to this rule shall annually file a CPRE procurement plan, as required by subsection (c) of this rule, and shall report to the Commission on their procurement of renewable energy resources as required by subsection (d) of this rule.

(b) Definitions. Unless listed below, the definitions of all terms used in this rule shall be as set forth in G.S. 62-110.8. The following terms shall be defined as:

(1) "Affiliate" – is defined as provided in G.S. 62-126.3(1).

(2) "Avoided cost rates" – means an electric public utility's calculation of its avoided costs based upon the methodology most recently approved or established by the Commission as of 30 days prior to the date of the upcoming CPRE solicitation for purchases of electricity from qualifying facilities pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978, as amended. The electric public utility's avoided cost rates shall be used for purposes of determining the cost effectiveness of renewable energy resources procured through a CPRE solicitation. For example, where an electric public utility solicits a pro forma CPRE contract offering a term of 20 years, the avoided cost rate applicable to that contract would be a 20-year, levelized long-term rate calculated based upon the Commission's approved avoided cost methodology in effect at the time the competitive solicitation is held.

(3) "Competitive Procurement of Renewable Energy (CPRE) Program" – Program(s) established by G.S. 62-110.8 requiring Duke Energy Carolinas, LLC and Duke Energy Progress, LLC to jointly or individually procure an aggregate 2,660 megawatts (MW) of renewable energy resource nameplate capacity subject to the requirements and limitations established therein.

(4) "Market price" – The price offered by third parties at which an electric public utility elects to procure renewable energy, capacity and environmental and renewable attributes through a CPRE Program solicitation administered under this section. The market price may be used to derive authorized revenues to be recovered by the electric public utility for any utility-owned assets procured in the same CPRE Program solicitation where the product offered and procured by the electric public utility is the same as the product procured from the third parties and the CPRE Program solicitation is determined to be based on an arm's length transaction between a buyer and a seller having a reasonable knowledge of the relevant facts.

(5) "Renewable energy certificates" are defined as provided in G.S. 62-133.8(a)(6).

(6) "Renewable energy facilities" are as defined in G.S. 62-133.8(a)(7), but as used in this Rule and the CPRE Program, shall be limited to renewable energy facilities with a nameplate capacity rating of 80 "MW" or less that have obtained Qualified Facility

status, if required, under 18 C.F.R. 292.207, and that are placed in service after the date of the electric public utility's initial competitive procurement.

(7) "Renewable energy resources" are as identified in G.S. 62-133.8(a)(8).

(c) CPRE Program Plan.

(1) Each electric public utility shall file its CPRE Program plan with the Commission on or before September 1 of each year, and may file its compliance plan as part of its integrated resource plan filing. The CPRE Program plan filed pursuant to this rule will be reviewed in the same docket as the electric public utility's biennial integrated resource plan filing.

(2) Each year, beginning in 2018, each electric public utility subject to this rule shall file with the Commission a CPRE Program plan covering the calendar year in which the plan is filed and the immediately subsequent calendar year. At a minimum, the plan shall include the following information:

(i) an explanation of whether the electric public utility is jointly or individually implementing the aggregate CPRE Program requirements mandated by G.S. 62-110.8(a);

(ii) a description of the electric public utility's planned CPRE Program solicitations and specific actions planned to procure renewable energy resources during the CPRE Program planning period;

(iii) an explanation of how the electric public utility has allocated the amount of CPRE resources projected to be procured during the CPRE planning period relative to the aggregate CPRE Program requirements;

(iv) if designated by location, an explanation of how the electric public utility has determined the locational allocation within its balancing authority area;

(v) an estimate of renewable energy generating capacity that is not subject to economic dispatch or economic curtailment that is under development and projected to have executed power purchase agreements and interconnection agreements with the electric public utility or that is otherwise projected to be installed in the electric public utility's balancing authority area within the CPRE Program planning period;

(vi) the current and projected levelized avoided cost rates for 20 year or other term, as determined by the Commission, for each year for solar and non-solar renewable energy facilities; and

(vii) a copy of the electric public utility's CPRE Program guidelines then in effect as well as pro forma power purchase agreement used in its most recent CPRE solicitation.

(d) CPRE Program Compliance Report.

(1) Each electric public utility shall file its annual CPRE Program compliance report, together with direct testimony and exhibits of expert witnesses, on the same date that it files its cost recovery request under subsection (f) of this rule, which shall also be the filing date for the information required by Rule R8-55. The Commission shall consider each electric public utility's CPRE Program compliance report at the hearing provided for in subsection (f) of this rule and shall determine whether the electric public utility is in compliance with the CPRE Program

requirements of G.S. 62-110.8. Public notice and deadlines for intervention and filing of additional direct and rebuttal testimony and exhibits shall be as provided for in subsection (f) of this rule.

(2) Each year, beginning in 2019, each electric public utility subject to this rule shall file with the Commission a report describing the electric public utility's competitive procurement of renewable energy resources under its CPRE Program and ongoing actions to comply with the requirements of G.S. 62-110.8 during the previous calendar year, which shall be the "reporting year." The report shall include the following information, including supporting documentation:

(i) a description of CPRE Program solicitation(s) undertaken by the electric public utility during the reporting year;

(ii) a description of the sources, amounts, and costs of third party power purchase agreements and proposed authorized revenues for utility-owned assets for renewable energy resources procured during the CPRE Program solicitation(s) during the reporting year, including the dates of all CPRE Program contracts or utility commitments to procure renewable energy resources during the reporting year;

(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;

(iv) identification of all proposed renewable energy facilities under development by the electric public utility that were bid into a CPRE Program solicitation during the reporting year, including whether any non-publicly available transmission or distribution system operations information was used in preparing the proposal, and, if so, an explanation of how such information was made available to third parties that notified the utility of their intention to submit a proposal in the same CPRE Program solicitation;

(v) the electric public utility's avoided cost rates applicable to the CPRE Program solicitation(s) undertaken during the reporting year and confirmation that all renewable energy resources procured through a CPRE Program solicitation are priced at or below the electric public utility's avoided cost rates;

(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;

(vii) the status of the electric public utility's compliance with the aggregate CPRE Program procurement requirements set forth in G.S. 62-110.8(a);

(viii) information regarding the cost incurred by the electric public utility during the reporting year related to the third-party entity hired to administer the CPRE Program solicitations; and

(ix) Certification by the CPRE Program administrator that all public utility and third party bid responses were evaluated under the published CPRE Program methodology and that all bids were treated equitably through the CPRE Program solicitation(s) during the reporting year.

(e) Compliance with CPRE Program Requirements.

(1) An electric public utility shall be in compliance with the CPRE Program requirements during a given year where the Commission finds and determines that the electric public utility's CPRE Program plan is reasonably designed to meet the requirements of G.S. 62-110.8 and determines based on the utility's most recently filed CPRE report that the electric public utility is reasonably and prudently implementing the CPRE Program requirements.

(2) In any year, an electric public utility subject to this rule or other interested party may petition the Commission to modify or delay the provisions of G.S. 62-110.8 in whole or in part. The Commission may grant such petition upon a finding that it is in the public interest to do so.

(3) Renewable energy certificates claimed by an electric public utility while complying with G.S. 62-110.8 must have been earned after January 1, 2018, and may be retired to meet an electric public utility's REPS compliance obligations under G.S. 62-133.8 or sold to another electric power supplier.

(4) Any facility selected through a CPRE Program solicitation shall register with the Commission as a renewable energy facility under Rule R8-66 within 60 calendar days of notification that it was selected and shall assure that renewable energy certificates contracted for under the CPRE Program shall be issued by, or imported into, the North Carolina Renewable Energy Tracking System.

(f) Cost recovery.

(1) Beginning in 2018, for each electric public utility subject to this Rule, the Commission shall schedule an annual public hearing pursuant to G.S. 62-110.8(g) to review the costs projected to be incurred by the electric public utility to comply with G.S. 62-110.8. 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.

(2) The Commission shall permit each electric public utility to charge an increment or decrement as a rider to its rates to recover in a timely manner the reasonable costs and authorized revenues prudently incurred to implement its CPRE Program and to comply with G.S. 62-110.8. For utility-owned assets selected under the CPRE Program, the utility may propose a revenue requirement using the market price established in the same CPRE Program solicitation to calculate forecasted authorized revenues over the equivalent term as the power purchase agreement solicited in the CPRE Program solicitation. Where the electric public utility proposes to determine authorized revenues based upon the market price of renewable energy resources procured through a CPRE solicitation, the Commission shall approve authorized revenue to be recovered under this section upon finding that such recovery is in the public interest.

(3) Unless otherwise ordered by the Commission, the test period for each electric public utility shall be the same as its test period for purposes of Rule R8-55.

(4) Rates set pursuant to this section shall be recovered during a fixed cost recovery period that shall coincide, to the extent practical, with the recovery period for the cost of fuel and fuel-related cost rider established pursuant to Rule R8-55.

(5) The costs and authorized revenue will be further modified through the use of a CPRE experience modification factor (CPRE EMF) rider. The CPRE EMF rider will reflect the difference between reasonable and prudently incurred CPRE projected costs and authorized revenue and the revenues that were actually realized during the test period under the CPRE rider then in effect. Upon request of the electric public utility, the Commission shall also incorporate in this determination the experienced over-recovery or under-recovery of the costs and authorized revenue up to thirty (30) days prior to the date of the hearing, provided that the reasonableness and prudence of these costs and authorized revenues shall be subject to review in the utility's next annual CPRE Program cost recovery hearing.

(6) The CPRE EMF rider will remain in effect for a fixed 12-month period following establishment and will carry through as a rider to rates established in any intervening general rate case proceedings.

(7) 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 CPRE 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.

(8) Each electric public utility shall follow deferred accounting with respect to the difference between actual reasonable and prudently-incurred costs or authorized revenue and related revenues realized under rates in effect.

(9) The annual increase in CPRE Program-related amounts to be recovered by an electric public utility in any cost recovery period from its North Carolina retail customers to comply with G.S. 62-110.8 shall not exceed one percent (1%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year determined as of December 31 of the previous calendar year. Any amount in excess of that limit shall be carried over and recovered in the next recovery period.

(10) Each electric public utility, at a minimum, shall submit to the Commission for purposes of investigation and hearing the information required for the CPRE Program compliance report for the 12-month test period established in subsection (3) consistent with Rule R8-55, accompanied by supporting workpapers and direct testimony and exhibits of expert witnesses, and any change in rates proposed by the electric public utility at the same time that it files the information required by Rule R8-55.

(11) 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 30 days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-110.8(g) and setting forth the time and place of the hearing.

(12) Persons having an interest in said hearing may file a petition to intervene setting forth such interest 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.

(13) 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.

(14) The electric public utility may file rebuttal testimony and exhibits of expert witnesses no later than 5 days prior to the hearing date.

(15) The burden of proof as to whether CPRE Program and CPRE-related costs to be recovered under this section were reasonable and prudently incurred shall be on the electric public utility.

(g) Program Guidelines and Pro Forma Contracts.

(1) An electric public utility shall develop guidelines to support implementing the CPRE Program and to inform market participants regarding the terms and conditions and process for participating in the CPRE Program. The utility shall initially file CPRE Program guidelines at the time it initially proposes a CPRE Program for Commission approval and shall thereafter publicize and maintain the its then-current CPRE Program guidelines on its website.

(2) After approval by the Commission and at least 30 days prior to the initial CPRE Program solicitation, the third party entity selected to administer CPRE Program solicitations shall develop and publish the methodology to be used to evaluate all proposals offered in the CPRE Program solicitation. The CPRE Program evaluation methodology shall be designed to achieve the purpose of the CPRE Program, as set forth in G.S. 62-110.8, and shall be consistent with the CPRE Program guidelines developed by the electric public utility. The third party entity selected by the Commission to administer the CPRE Program solicitation shall maintain a website to support implementing the CPRE Program and shall post the CPRE Program evaluation methodology, bidder FAQs and any other pertinent documents on its website.

(3) At least 30 days prior to holding a CPRE Program solicitation, the electric public utility shall post the pro forma contract to be utilized during the CPRE Program solicitation on its website to inform market participants of terms and conditions of the competitive solicitation. The electric public utility shall also file the pro forma contract with the Commission and identify any material changes to the pro forma contract terms and conditions from the contract used in the electric public utility's most recent CPRE Program solicitation.

(4) Each electric public utility shall include appropriate language in all pro forma contracts (i) providing the procuring public utility rights to dispatch, operate, and control the solicited renewable energy facilities in the same manner as the utility's own generating resources; (ii) defining limits and compensation for resource dispatch and curtailments; and (iii) prohibiting the seller from claiming or otherwise remarketing the environmental and renewable energy attributes, including the renewable energy certificates being purchased by the electric public utility under power purchase agreements entered into under the CPRE Program. An electric public utility may redefine its rights to dispatch, operate, and control solicited renewable energy facilities, including defining limits and compensation for resource dispatch and curtailments, in pro forma contracts to be offer in future CPRE Program solicitations, and may also elect to solicit multiple products based upon

differing rights to dispatch, operate, and control solicited renewable energy facilities through developing multiple pro forma contracts within a single CPRE Program solicitation.

(h) Expedited review and approval of Certificate of Public Convenience and Necessity (CPCN) for generating facilities procured under the CPRE Program to be owned by an electric public utility.

(1) Where a renewable energy facility is selected through a CPRE Program solicitation and is either (i) proposed to be constructed, owned and operated by an electric public utility requiring a CPCN; or (ii) is planned to be acquired from a third party to be owned and operated by the electric public utility requiring transfer of an existing CPCN, the electric public utility shall file a petition for the expedited review and approval or transfer of CPCN(s) to construct, own, and operate the generating facilities.

(2) Petitions for CPCN(s) filed and approved pursuant to this section shall satisfy the requirements of G.S. 62-110.1(a) and G.S. 62-82, and the electric public utility shall not otherwise be required to follow the procedures for obtaining a CPCN under Rule R8-61.

(3) An application to obtain a new CPCN for a renewable energy facility planned to be constructed by the electric public utility under this section shall be comprised of the following Exhibits:

(i) Exhibit 1 shall include:

(a) A color map or aerial photo showing the location of the generating facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks, with the proposed location of major equipment indicated on the map or photo, including: the generator, fuel handling equipment, plant distribution system, startup equipment, the site boundary, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities. A U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system is preferred;

(b) The E911 street address, county in which the proposed facility would be located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree; and

(c) Whether the electric public utility is the site owner, and, if not, providing the full and correct name of the site owner and the electric public utility's interest in the site.

(ii) Exhibit 2 shall include:

(a) The nature of the renewable energy facility, including the type and source of its power or fuel;

(b) A description of the buildings, structures and equipment comprising the renewable energy facility and the manner of its operation;

(c) The gross and net projected maximum dependable capacity of the renewable energy facility as well as the renewable energy facility's nameplate capacity, expressed as megawatts (alternating current);

(d) The projected date on which the renewable energy facility will come on line;
(e) The service life of the project;
(f) The projected annual production of the renewable energy facility in kilowatt-hours, including a detailed explanation of the anticipated kilowatt and kilowatt-hour outputs, on-peak and off-peak, for each month of the year; and
(g) The projected annual production of renewable energy certificates that is eligible for compliance with the State's renewable energy and energy efficiency portfolio standard.

(iii) Exhibit 3 shall include:
(a) A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the renewable energy facility and a statement of whether each has been obtained or applied for.
(b) A copy of those that have been obtained should be filed with the application; a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained.

(iv) Exhibit 4 shall contain the expected cost of the proposed facility.

(4) Procedure for Expedited Review of New CPCN. — Upon the filing of an application appearing to meet the requirements set forth above, the Commission will process it as follows:

(i) The Commission will issue an order requiring the applicant to publish notice of the application once a week for four successive weeks in a newspaper of general circulation in the county where the renewable energy facility is proposed to be constructed. The applicant shall be responsible for filing with the Commission an affidavit of publication after the final publication of the notice.

(ii) The Chief Clerk will deliver 2 copies of the application and the notice to the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration for distribution by the Coordinator to State agencies having an interest in the application. The Chief Clerk will request comments from state agencies within 20 days of delivering notice to the Clearinghouse Coordinator.

(iii) If a written complaint is filed with the Commission within 10 days after the last date of the publication of the notice, the Commission will schedule a public hearing to determine whether a certificate should be awarded and will give reasonable notice of the time and place of the hearing to the applicant electric public utility and to each complaining party and will require the applicant to publish notice of the hearing in the newspaper in which the notice of the application was published. If no complaint is received within the time specified, the Commission may, upon its own initiative, order and schedule a hearing to determine whether a certificate should be awarded and, if the Commission orders a hearing upon its own initiative, it will require notice of the hearing to be published by the applicant in the newspaper in which the notice of the application was published.

(iv) If no complaint is received within the time specified and the Commission does not order a hearing upon its own initiative, the Commission will enter an order awarding the CPCN requested in the application.

(5) Procedure for Expedited Transfer of CPCN. — Where an electric public utility procures a renewable energy facility through a CPRE Program solicitation that will be owned and operated by the electric public utility and the renewable energy facility has been previously granted a CPCN by the Commission, the electric public utility shall apply to the Commission to assign or transfer the CPCN. The Commission shall issue an Order within 30 days of the electric public utility's filing of the application, either approving the transfer of the CPCN or directing further review of the CPCN transfer application if circumstances so require. In support of its application to transfer the CPCN, the electric public utility shall:

(i) Describe the terms and conditions of the electric public utility's procurement of the renewable energy facility under the CPRE Program;

(ii) Identify any significant changes to the information previously filed by the third party CPCN applicant that was reviewed and approved the Commission in granting the CPCN to be assigned or transferred.

(6) All applications to transfer an existing CPCN shall be signed and verified by the electric public utility applicant. An application to transfer an existing CPCN shall also be verified by the entity which was initially granted the CPCN that it intends to transfer the CPCN to the electric public utility.

(7) Procedure for Acquiring Project Development Assets. — Where an electric public utility purchases assets from a third party developer that has previously obtained a CPCN with the intent of further developing the project and submitting the renewable energy facility in to a future CPRE solicitation, the electric public utility shall provide notice to the Commission in the docket where the CPCN was granted that the electric public utility has acquired ownership of the project development assets, but shall not be required to submit an application for transfer of the CPCN unless and until the project is selected through the CPRE process or the utility otherwise elects to proceed with construction of the renewable energy facility. An electric public utility proceeding under this section shall file an application and obtain Commission approval to transfer the CPCN prior to commencing the construction or operation of any renewable energy facility.

(i) Filing of Power Purchase Agreements with Affiliates and Waiver of Electric Public Utility Regulatory Conditions and/or Code of Conduct Restrictions.

(1) As provided for in G.S. 62-133.8(h)(2), to the extent an electric public utility or an affiliate of the electric public utility opts to participate in a CPRE solicitation under the CPRE Program, the regulatory conditions or code of conduct requirements applicable to the electric public utility or its affiliate are deemed waived for purposes of it participation in the CPRE Program. Wavier of the electric public utility's regulatory conditions and code of conduct requirements as provided for in this subsection shall be subject to review by the Commission pursuant to the process established in subsection (i)(2) of this section.

(2) No later than 30 days after an electric public utility executes a power purchase agreement with an affiliate that is competitively procured pursuant to a CPRE

solicitation under G.S. § 62-110.8, the electric public utility shall file the power purchase agreement with the Commission for review as provided in G.S. § 62-153(a).

(i) No later than 30 days after the filing of such purchase power agreement, any interested party, including the Public Staff of the North Carolina Utilities Commission, may file an objection on grounds that the waiver of any regulatory condition or requirement of the code of conduct does not hold the electric public utility's customers harmless or that the power purchase agreement is otherwise unjust and unreasonable and made for the purpose or with the effect of concealing, transferring or dissipating the earnings of the electric public utility, such that the power purchase agreement should not be carried out by the electric public utility. The party filing the timely objection to the waiver has the burden of proof to demonstrate that it does not hold the public utility's customers harmless.

(ii) The electric public utility, the affiliate, or any other interested party may file a reply to any objection within 10 days of the objection.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Initial Comments and Proposed Rule to Implement N.C. Gen. Stat. § 62-110.8*, as filed in Docket No. E-100, Sub 150, were served electronically or via U.S. mail, first-class, postage prepaid, upon all parties of record.

This, the 16th day of August, 2017.

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