

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NOS. E-2, SUB 1159; E-7, SUB 1156

In the Matter of:)	
Joint Petition of Duke Energy)	
Carolinas, LLC, and Duke Energy)	REPLY COMMENTS OF
Progress, LLC, for Approval of)	SOUTHERN ALLIANCE FOR
Competitive procurement of)	CLEAN ENERGY
Renewable Energy Program)	
)	

PURSUANT TO the Commission’s June 2, 2021 *Order Requesting Update* and June 23 *Order Granting Petition to Intervene of SACE and Allowing Additional Interventions*, the Southern Alliance for Clean Energy (“SACE”) respectfully submits the following reply comments.

In its June 2, 2021 *Order Requesting Update*, the Commission requested that Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP” and together with DEC, “Duke Energy”) file initial comments responding to the following enumerated topics:

- (1) the most current status of the Transition MW, (2) the need for and appropriate timing of a CPRE Tranche 3, and (3) the parties’ positions on statutory interpretation regarding what must be completed within the 45-month term and what actions the Commission may properly take beyond the 45-month timeframe to ensure that the final procurement target is met.

June 2, 2021 *Order Requesting Update 2*. The Commission allowed other parties to respond to these topics and also to file reply comments.

These reply comments address these three topics in turn and conclude with SACE’s recommendation. First, in its initial comments, Duke Energy stated that as of

May 31, 2021 it has procured 1,185 MW through the CPRE Program and approximately 4,390 Transition MW, for a total of 5,575 MW of the total 6,160 MW required by N.C. Gen. Stat. § 62-110.8, leaving 585 MW remaining. Duke Energy also stated that it projects to procure a maximum of 473 MW of additional Transition MW before the end of the 45-month CPRE procurement period, which if credited as Transition MW would leave only 112 MW to procure through CPRE. Accordingly, Duke Energy states that it will need to procure between 112 and 585 MW through CPRE, although the final figure will not be available until the conclusion of the CPRE procurement period. Initial Comments Duke Energy 4; *see* Initial Comments of the Public Staff 2-3.

Second, as set forth above, a third tranche of CPRE procurement will be necessary to meet the procurement requirements of N.C. Gen. Stat. § 62-110.8. Each of the parties that filed initial comments agrees that a third tranche is needed in order to comply with N.C. Gen. Stat. § 62-110.8. Initial Comments of Duke Energy 4; Initial Comments of the Public Staff 3; Comments of Carolinas Clean Energy Business Association (“CCEBA”) in Response to Order Requesting Update 2. The parties differ somewhat in their positions on the timing, size, and administration of a third tranche, as discussed below.

Third, procurement must be completed within the 45-month term. The CPRE statute provides, “the electric public utilities shall issue requests for proposals to procure *and shall procure*, energy and capacity from renewable energy facilities in the aggregate amount of 2,660 megawatts (MW), *and the total amount shall be reasonably allocated over a term of 45 months* beginning when the Commission approves the program.” N.C.

Gen. Stat. § 62-110.8(a) (emphasis added).¹ Accordingly, the statute requires that Duke Energy actually procure the entire 2,660 MW within the 45-month term. *See* Rule R8-71(b)(5) (defining “CPRE Program Procurement Period” as “initial 45-month period in which the aggregate 2,660 MW of renewable energy resource nameplate capacity is required to be procured”); Rule R8-71(c)(1)(i) (requiring program plan to include allocation for “the 2,660 MW required to be procured during the CPRE Program Procurement Period”).

To “procure” means to “obtain.” *In the Matter of Petition of Duke Energy Progress, LLC, & Duke Energy Carolinas, LLC, Requesting Approval of Green Source Advantage Program & Rider GSA to Implement N.C.G.S. S 62-159.2*, Docket Nos. E-2, Sub 1170; E-7, Sub 1169, 2019 WL 3767489, at *7 (Aug. 5, 2019) (quoting Black’s Law Dictionary, 10th Ed.). In the context of the CPRE program, the procurement requirement is satisfied by entering a contract. *See* N.C. Gen. Stat. § 62-110.8(b) (equating procurement with entering a power purchase agreement); Rule R8-71(f)(3)(v) (explaining that if a market participant fails to execute a contract the Independent Administrator “shall determine whether the next-ranked proposal or proposals should be selected in order to procure the total generating capacity sought in the CPRE RFP Solicitation”); *see Ripellino v. N. Carolina Sch. Boards Ass'n, Inc.*, 158 N.C. App. 423, 427, 581 S.E.2d 88, 92 (2003) (discussing procuring insurance). Accordingly, Duke Energy must contract for the full 2,660 MW prior to the end of the 45-month CPRE Program Period.

¹ As a *separate* requirement, “at the *termination* of the initial competitive procurement period of 45 months, the offering of a *new* renewable energy resources competitive procurement and the amount to be procured shall be determined by the Commission, based on a showing of need evidenced by the electric public utility's most recent biennial integrated resource plan or annual update approved by the Commission pursuant to G.S. 62-110.1(c).” N.C. Gen. Stat. § 62-110.8(a) (emphasis added). SACE does not understand the Commission to be deciding on this additional competitive procurement at this time.

At the same time, the CPRE statute gives the Commission substantial authority to take action beyond the 45-month timeframe to ensure that the final procurement target is met. *See* N.C. Gen. Stat. § 62-110.8(h)(1), (requiring Commission to oversee program) (5) (allowing Commission to modify implementation in the public interest).

The parties' initial comments suggest three alternatives for the timing and size of a third tranche. Duke Energy argues that it will be "impossible to determine the final, actual amount of Transition MW until the end of the CPRE Procurement Period" and concludes that "the Tranche 3 procurement should be commenced within the 45-month period but need not be concluded during the 45-month period." Initial Comments of Duke Energy 5. The Public Staff is concerned that opening a relatively small Tranche 3 for as few as 112 MW could incur disproportionate administrative costs and recommends essentially merging Tranche 3 into the procurement of new solar capacity needed under Duke Energy's IRPs. Initial Comments of the Public Staff 6-7. However, the Public Staff recommends waiting to do this until "after the initial CPRE Program Procurement Period." Initial Comments of the Public Staff 8. Finally, CCEBA recommends opening "a full Tranche 3 procurement (~600-700 MW) *regardless* of the Transition MW accounting and as soon as possible." CCEBA Comments 2.

SACE recommends a fourth option, but in the alternative supports CCEBA's proposal. SACE recommends immediately opening a third tranche soliciting 585 MW of CPRE procurement, based on the amount of CPRE and Transition MW procured as of May 31, 2021. This option best carries out the General Assembly's intent as expressed in the plain language of the CPRE statute. As discussed above, the plain text of the CPRE

statute requires actually procuring—contracting for—the full 2,660 MW prior to the end of the 45-month CPRE Program Period.

This interpretation and SACE’s proposal also effectuate other provisions in the CPRE statute. The statute requires that if, “prior to the end of the initial 45-month” period, the Transition MW exceed 3,500 MW then the Commission must “reduce the competitive procurement aggregate amount” by the difference. N.C. Gen. Stat. § 62-110.8(b)(1). This provision does not require waiting until the end of the CPRE Program Period; to the contrary, it requires calculating the reduction in CPRE MW “prior to” the end of the period. The provision is the only part of the CPRE statute that sets a limit on the number of MW to be procured through the CPRE program and it does not establish a firm maximum. Rather, the CPRE statute requires procurement “in the aggregate amount of 2,660 megawatts (MW),” N.C. Gen. Stat. § 62-110.8(a), making this figure—as reduced pursuant to N.C. Gen. Stat. § 62-110.8(b)(1)—a floor and not a ceiling for actual procurement.

To effectuate both the clear mandate to “procure” the entire 2,660 MW within the 45-month term as required by N.C. Gen. Stat. § 62-110.8(a) and the reduction in the CPRE MW “prior to” the end of the program required by N.C. Gen. Stat. § 62-110.8(b)(1), SACE recommends that the Commission simply calculate the reduction at the time that the Commission directs Duke Energy to open the third tranche. Because the 45-month CPRE Procurement Period will end in November 2021 and procurement takes time, the Commission should direct Duke Energy to solicit the third tranche immediately. And because the reduction in MW is based on executed power purchase agreements, N.C.

Gen. Stat. § 62-110.8(b)(1), the third tranche would solicit the remaining CPRE procurement based on the latest figures provided by Duke Energy, or 585 MW.

SACE recognizes that this proposal could result in actually procuring some number of MW beyond the CPRE procurement floor established in N.C. Gen. Stat. § 62-110.8(a). For reasons set forth above, SACE submits that that potential result is simply a consequence of the General Assembly's intent as embodied in the text of the CPRE statute. However, in the alternative, SACE supports CCEBA's proposal. SACE believes that the Commission has the discretion in how it implements the CPRE program to open competitive procurement before the end of the 45-month term to meet both CPRE program and IRP need, and simply credit the proportion attributable to CPRE after the 45-month term ends and a final Transition MW figure is available.²

SACE is mindful of the Public Staff's concern that a relatively small competitive procurement solicitation could incur relatively high administrative costs. SACE submits that a relatively small solicitation likely is administratively inefficient for potential bidders in the clean energy industry as well, potentially resulting in disproportionately few bids and a less successful solicitation. However, SACE believes that the 585 MW solicitation that would result from SACE's proposal likely is large enough that disproportionately high administrative costs are not a concern. If the Commission

² The CPRE statute anticipates that IRP-based CPRE procurement will begin "at the termination of the initial competitive procurement period of 45 months." N.C. Gen. Stat. § 62-110.8(a). However, the Commission could in its discretion modify the implementation of the program to require some IRP-based procurement sooner than that and merge the remaining CPRE procurement with it, in the interest of complying with the procurement mandate in N.C. Gen. Stat. § 62-110.8(a) and administrative efficiency. *See* N.C. Gen. Stat. § 62-110(h). Given the procurement mandate in N.C. Gen. Stat. § 62-110.8(a), SACE submits that this interpretation better comports with the General Assembly's intent than would delaying the third tranche of CPRE procurement until after the 45-month term is up in order to then merge it with IRP-based procurement.

declines to adopt SACE’s proposal and instead requires a third tranche on the order of 112 MW then the concern about administrative inefficiency becomes more salient. In that case, SACE supports “merging” the third tranche with an immediate IRP-based procurement.³

Finally, SACE believes it is necessary to move as quickly as possible to deploy clean energy resources in order to reduce carbon emissions from the electric power sector and combat climate change. SACE has recently published a report on achieving 100% clean electricity in the Southeast by 2035, and the pathways to that goal would have Duke Energy procure substantial new clean energy resources, particularly solar.⁴ Duke Energy historically has interconnected between approximately 500-1,000MW of renewable energy per year, and interconnection delays can limit the total amount brought online each year. Accordingly, delays in deploying clean energy not only delay reductions in greenhouse gases and therefore result in lower cumulative reductions, but they also make it more difficult to achieve the same level of clean energy deployment by a given date, such as 2035. Deployment cannot simply be back-loaded without exacerbating interconnection delays. The urgency of combating climate change—and the CPRE statute—require procuring additional clean energy resources as quickly as possible.

³ SACE also would not oppose “merging” its proposed 585 MW procurement with an immediate IRP-based procurement but believes doing so is not necessary to address the administrative cost concern.

⁴ SOUTHERN ALLIANCE FOR CLEAN ENERGY, ACHIEVING 100% CLEAN ELECTRICITY IN THE SOUTHEAST (2021), <https://cleanenergy.org/wp-content/uploads/Achieving-100-Clean-Electricity-in-the-Southeast-Report-Appendix.pdf>.

Respectfully submitted this 30th day of June, 2021.

s/ Nick Jimenez

Nicholas Jimenez

N.C. Bar No. 53708

Southern Environmental Law Center

601 West Rosemary Street, Suite 220

Chapel Hill, NC 27516

Telephone: (919) 967-1450

Fax: (919) 929-9421

njimenez@selcnc.org

Attorney for Southern Alliance for Clean Energy

CERTIFICATE OF SERVICE

I certify that all parties of record on the service list have been served with the foregoing reply comments either by electronic mail or by deposit in the U.S. Mail, postage prepaid.

This the 30th day of June, 2021.

s/ Nick Jimenez
Nick Jimenez