



Fox Rothschild LLP
ATTORNEYS AT LAW

Tel (919) 755-8700
Fax (919) 755-8800
www.foxrothschild.com

BENJAMIN L. SNOWDEN
Direct No: 919.719-1257
Email: BSnowden@foxrothschild.com

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May 06 2022

May 6, 2022

Ms. A. Shonta Dunston
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

**RE: In the matter of
Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC, 2022
Solar Procurement Pursuant to Session Law 2021-165, Section 2(c)
NCUC Docket Nos. E-2, Sub 1297 and E-7, Sub 1268
Clean Power Suppliers Association's Comments in Response to
Duke Energy's Response to Commission's Order Requesting Answers
on 2022 SP Program Petition**

Dear Ms. Dunston:

Pursuant to the *Order Requiring Answers to Commission's Questions and Establishing Additional Procedural Deadlines* issued on April 25, 2022, attached please find intervenor Clean Power Suppliers Association's Comments in Response to Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Response to Commission Order Requiring Answers on 2022 SP Program Petition.

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

Sincerely,

/s/ Benjamin L. Snowden

Benjamin L. Snowden
Counsel for Clean Power Suppliers Association

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota
Nevada New Jersey New York North Carolina Pennsylvania South Carolina Texas Washington



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Ms. A. Shonta Dunston
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Enclosure

Copy to: Parties of Record

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1297
DOCKET NO. E-7, SUB 1268

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Duke Energy Progress, LLC, and Duke)	Clean Power Suppliers Association's
Energy Carolinas, LLC, 2022 Solar)	Comments in Response to
Procurement Pursuant to Session Law)	Duke Energy Carolinas, LLC
2021-165, Section 2(c))	and
)	Duke Energy Progress, LLC's
)	Response to Commission Order
)	Requiring Answers
)	on 2022 SP Program Petition

The Clean Power Suppliers Association ("CPSA") is pleased to provide the following comments in response to Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's (collectively, "Duke's") Response to Commission Order Requiring Answers on 2022 SP Program Petition. Please note that CPSA does not have any comments in response to Questions 1, 3, and 4.

2. Describe how the Carbon Plan Solar Reference Cost will be determined.

CPSA Response:

CPSA does not take issue with Duke's description of the Carbon Plan Solar Reference Cost ("Solar Reference Cost") but notes that the Reference Cost is a critical input in modeling related to the Carbon Plan. It is also the result of a complex calculation that reflects assumptions not only about the projected price of third-party solar PPAs, but also about Duke's own cost to develop solar projects.

As such, Duke's calculation will be subject to scrutiny by intervenors and the Commission in the Carbon Plan docket. To the extent the Commission may ultimately direct Duke to change its calculation of the Reference Cost for purposes of the Carbon Plan (or Duke may elect to change it in response to Intervenor comments), such changes should be reflected in the Reference Cost used for purposes of volume adjustment in the 2022 SP.

In addition, for reasons detailed in comments on the 2022 RFP documents submitted by CPSA to Duke and Charles River Associates on May 5, 2022, a copy of which is attached, CPSA believes it is premature to conclude that the projects selected in the 2022 procurement should be limited to those that are projected to be placed in service in 2026. However, CPSA believes it is nonetheless appropriate to utilize solar costs for projects

expected to achieve COD in 2026 in calculating the Solar Reference Cost since any changes in projected cost for solar project in later years is unlikely to have a material impact on the volume of solar selected in the Carbon Plan.

5. How does the Carbon Plan Solar Reference Cost compare to or comply with the least cost mandate contained in S.L. 2021-165?

CPSA Response:

CPSA generally agrees with Duke's response to this question. The Solar Reference Cost is simply one input in the modeling conducted to develop a least-cost Carbon Plan. As such, the use of a sound Solar Reference Cost is consistent with and essential to least-cost planning as required by H.B. 951.

6. Does the proposed 2022 solar procurement potentially allow for PURPA qualifying facilities to be compensated at a rate that is in excess of the rates calculated using the avoided cost method established by the Commission pursuant to N.C.G.S. § 62-156? If so, why should the Commission permit PURPA qualifying facilities to be compensated in excess of avoided cost rates?

CPSA Response:

CPSA agrees with Duke's assessment that the 2022 procurement potentially allows for solar QFs to be paid "all-in" PPA rates that exceed administratively determined avoided cost rates. However, as noted by Duke, avoided cost rates calculated under G.S. § 62-156 compensate QFs only for the energy and capacity provided by the facility. 18 C.F.R. § 292.303(a), 292.304(b). Rates for PPAs awarded under the 2022 SP, by contrast, must also compensate bidders for the value of Renewable Energy Credits (RECs) and for enhanced curtailment rights, neither of which are conveyed under the PURPA "must-take" construct.¹

So PPA rates under the 2022 SP are not directly comparable to administratively-determined avoided cost rates because the utility is procuring (and the QF should be compensated for) more than just energy and capacity, as it would in a purchase transaction governed by G.S. § 62-156.

However, even if Duke were not obtaining RECs and enhanced curtailment rights under 2022 SP PPAs, CPSA submits that under a state-jurisdictional procurement, although PURPA would limit compensation for energy and capacity to avoided cost,² G.S. § 62-156 would not apply.

¹ PURPA significantly limits the circumstances under which a utility can curtail QF output.

² It should be noted that QFs are free to sell their output to utilities in arms-length transactions outside the confines of PURPA, at rates in excess of avoided cost – though they have no legally enforceable *right* to do so. The avoided cost cap applies only where the utility is being required to purchase the QF's output under PURPA. 16 USC § 824a-

That provision applies, and requires that QFs be compensated at administratively determined avoided cost rates, only “[i]n the event that a small power producer and an electric public utility are unable to mutually agree to a contract for the sale of electricity or to a price for the electricity purchased by the electric public utility.” G.S. § 62-156(a). In other words, the approach to avoided cost set forth in G.S. § 62-156 applies only to “must-take” PURPA purchases, and not to purchases made pursuant to a competitive procurement with prices agreed upon by the utility and the small power producer. This is consistent with the approach the Commission took in the CPRE program, which (as required by HB 589) capped purchases prices at avoided cost as calculated according to “the Commission-approved avoided cost methodology” but did not require the actual PPA rates to be “design[ed] . . . consistent with the most recent Commission-approved avoided cost methodology,” as it would have if G.S. § 62-156 applied.

Like the CPRE program, procurement under HB 951 is not governed by the requirements of G.S. § 62-156, although the Commission of course has the authority to approve and oversee any application of avoided cost methodologies in this context. It should also be noted that if GS 62-156 applied to contracts under HB 951, it would require that QFs entering such PPAs would have to be compensated at, not below, avoided cost rates for their energy and capacity, as well as being compensated for RECs and for enhanced curtailment rights.

CPSA does not dispute that, with respect to sales proceeding under PURPA, compensation for energy and capacity is limited to avoided cost. 16 U.S.C. § 824a-3. However, this does not mean that an “administratively determined” rate is the only allowable means of calculating avoided cost.

As stated by Duke, a state may establish an alternative PURPA program so long as it has a PURPA-compliant program under Section 210 (as North Carolina does). See, e.g., *In re Investigation to Review Avoided Costs*, 2021 VT 28, P1, 254 A.3d 178, 181; *Winding Creek Solar LLC*, 151 F.E.R.C. P61,103, 61663 (F.E.R.C. May 8, 2015); *Otter Creek Solar LLC*, 143 F.E.R.C. P61,282, 62968 (F.E.R.C. June 27, 2013); *Otter Creek Solar LLC*, 146 F.E.R.C. P61,192, 61837 (F.E.R.C. March 20, 2014).

PURPA also gives states broad flexibility to establish appropriate avoided cost rates. See, e.g., *Cal. PUC*, 133 F.E.R.C. P61,059, 61266 (F.E.R.C. October 21, 2010); *Order No. 872 P 714* (referencing “wide discretion” of states to set avoided cost rates).

3(b). However, FERC has exclusive jurisdiction over the rates and terms of such non-PURPA sales, as well as over the interconnection of the facility. Although utility procurements in other jurisdictions have proceeded under this non-PURPA structure (and H.B. 951 is silent as to whether procurements proceed under state or federal jurisdiction), there are many reasons why it is preferable for procurements under H.B. 951 to proceed under a PURPA structure, including allowing this Commission to retain jurisdiction over the important aspects of the procurement. However, if the Commission were to disagree with Duke and CPSA on the question presented here, it would be more appropriate to treat H.B. 951 solar PPAs as FERC-jurisdictional than to impose an unintended, discriminatory, and counterproductive avoided cost cap on such procurements.

States may, for example, establish “tiered” or resource-specific avoided cost rates if the state has mandated procurement from certain categories of resources. Cal. PUC, 132 F.E.R.C. P61,047, 61326 (F.E.R.C. July 15, 2010); *Californians for Renewable Energy v. Cal. PUC*, 922 F.3d 929, 937. H.B. 951 effectively mandates procurement of carbon-free resources in order to meet the decarbonization requirements of the law, and procurements under H.B. 951 would proceed pursuant to that mandate as implemented by this Commission.

In addition, avoided cost rates may be based on the results of a competitive procurement. This is provided for in FERC regulations at 18 C.F.R. § 292.304(b)(8), and discussed at length in FERC Order No. 872, where FERC states that “allowing QFs to compete to provide capacity and energy needs, through a properly administered competitive solicitation, may help ensure an accurate determination of the purchasing electric utility’s avoided cost, and therefore result in prices meeting the PURPA’s statutory requirements. . . . We continue to find that competitive solicitations as discussed in this final rule may accurately reflect a purchasing electric utility’s avoided costs and ensure that the resulting rates for winners of such competitive solicitations are consistent with PURPA.” Order No. 872, P 416, 420.

As a matter of both state and federal law, then, this Commission would have the discretion to approve an alternative approach to calculating avoided cost for the limited purposes of solar procurements, outside the procedures called for by G.S. § 62-156. That approach, however, would not be generally applicable to PURPA “must-take” contracts, which are subject to G.S. § 62-156.

In response to the Commission’s question of why it *should* permit QFs to be compensated in excess of avoided cost rates established under G.S. § 62-156, CPSA has three further observations:

First, third-party PPAs constitute, by law, only 45% of the solar resources procured under H.B. 951 – the rest is made up of utility-owned solar. Unless procurement of utility-owned solar resource were capped at avoided cost (or an equivalent capital cost), it would be arbitrary and unfair to impose an avoided cost cap on third party solar PPA.

Second, as noted above, the “peaker” method approved by the Commission for the calculation of administratively determined avoided cost rates does not represent the energy and capacity costs avoided by the procurement of a solar PPA under H.B. 951. Because of the large demand for carbon-free resources on Duke’s system resulting from H.B. 951, the “avoided unit” that would be displaced by procured solar will not be a gas-fired peaker unit – it will be another carbon-free resource.³

Third, and most importantly, Section 1 of H.B. 951 requires this Commission to “take all reasonable steps to achieve” the carbon reduction mandates of the law. In contrast to the renewable energy procurement program created by H.B. 589 in 2017, which expressly

³ CPSA does not assert in this docket that the peaker method is also inappropriate for “must-take” PURPA PPAs.

capped PPA pricing at avoided cost, in enacting H.B. 951 the General Assembly elected not to include an avoided cost cap on renewable energy procurements needed to achieve its decarbonization goals. To the extent that additional solar resources represent the least-cost means of achieving the carbon reduction mandates of H.B. 951 – an issue that will be addressed in detail in the Carbon Plan proceeding – CPSA submits that it would be reasonable to pay QFs rates in excess of administratively determined avoided cost which as discussed above, in a state-jurisdictional procurement, may be based on an alternative avoided cost structure.

7. How will the services of the proposed Independent Evaluator compare to those of the Independent Administrator of the Competitive Procurement of Renewable Energy Program pursuant to N.C.G.S. § 62-110.8? What will be the main differences?

CPSA Response:

CPSA does not take issue with Duke's response to this question. However, CPSA does note that the 2022 SP represents the first significant procurement in which an independent evaluator, rather than independent administrator, will be employed. The Draft RFP documents currently proposed by Duke and CRA suggest that the RFP will be structured to give Duke wide latitude to influence the ultimate results of the procurement, independent of any ranking or recommendations made by the IE. It is incumbent on the IE to independently verify that Duke is exercising this discretion in a fair and equitable manner that does not result in preferential treatment for certain bidders or for Duke's own proposed projects. This issue is addressed further in CPSA's attached comments on the RFP documents.

8. Will ratepayers be responsible for any Independent Evaluator's fees that exceed program fees collected from solar procurement bidders? Describe cost containment measures to be implemented with regard to the Independent Evaluator's fees.

CPSA Response:

CPSA does not take issue with Duke's response to this question. However, CPSA submits that to the extent Duke-developed projects are selected for the Utility Ownership Track, Duke should be responsible for a proportional share of the Independent Evaluator's fees (although CPSA does not believe that bidders fees or winner's fees paid by Duke should be recovered from ratepayers).

9. What solutions have the stakeholders discussed to mitigate the concerns described in Paragraph No. 13 of the Public Staff's initial comments, particularly in light of the rate disparity between DEC and DEP raised in footnote 5?

CPSA Response:

CPSA takes issue with Duke's claim, in response to this question, that "The most immediate mitigant against increasing the rate disparity is to limit the size of the 2022 SP to a reasonable level so that Duke Energy and stakeholders can work together on Carbon Plan-informed solutions that can be incorporated into future procurements."

The 2022 SP should be sized to meet the requirements of the Carbon Plan, full stop. The final 2022 SP volume will not be established by this Commission until after it has fully reviewed the Carbon Plan and the comments of interested parties, and after 2022 SP bid pricing is known the results of Phase 1 of DISIS (with respect to Network Upgrade costs) are available. As explained in CPSA and CCEBA's Joint Comments on Duke's Petition, Duke's long lead times for interconnection mean that the 2022 SP should attempt to procure some portion of the solar selected by the Plan for 2027 and 2028. *Comments of the Clean Power Suppliers Association and the Carolinas Clean Energy Business Association on 2022 Solar Procurement Proposal* (Joint Comments) (Mar. 28, 2022) at 5.

CPSA does not question the legitimacy or importance of the Public Staff's concerns about disparate rate impacts on DEC and DEP. However, reducing the size of the 2022 does nothing to resolve these concerns – it simply defers them to future procurements, while making it more difficult to comply with HB 951 (and most likely increasing the ultimate cost of any required transmission upgrades, given the long-term trend of increasing transmission and interconnection costs).

Moreover, there are a number of potential solutions to this issue – such as combining DEC and DEP's balancing authority areas, adjusting the allocation of future procurements between DEC and DEP, or seeking changes to the allocation of relevant transmission costs between DEC and DEP – that would not imperil Duke's ability to meet its legal obligation to achieve 70% carbon reduction by 2030.

10. Explain further how the "Volume Adjustment Mechanism" described in Paragraph No. 9 of the Public Staff's initial comments will "provide some ratepayer protection and offer some assurance that the 2022 Solar RFP adheres to the Carbon Plan's least cost pathway." What other cost-containment measures have been considered?

CPSA Response:

The Volume adjustment provides a form of cost control and ratepayer protection by adjusting the volume of solar resource procured if the pricing available in the market differs substantially from Duke's projections (i.e. the Solar Reference Cost). If prices are higher than expected, less solar may be procured. Conversely, if prices are lower than expected, more solar may be procured.

This form of cost control is superior to a simple cost cap (which, as Duke notes, is not authorized by H.B. 951 and which is not consistent with least-cost planning), whether it is measured by avoided cost or some other metric. This is because a cost cap only considers the pricing of the most expensive projects, while ignoring the distribution of prices under

the cap and thus the total cost to ratepayers of an entire portfolio. The Volume Adjustment Mechanism proposed by Duke, by contrast, considers the total cost of the portfolio in comparison to modeled costs. Moreover, unlike a cost cap, the Volume Adjustment Mechanism allows for upward adjustment, allowing ratepayers to get the benefit of relative bargains available in the marketplace.

Although CPSA supports the Volume Adjustment Mechanism, there are several ways in which it could be improved to provide better protection to ratepayers.

First, as noted in CPSA and CCEBA's Joint Comments, volumes of PPA Track and Utility Ownership Track projects should be adjusted independently, providing a more precise response to market conditions in each sector. Joint Comments at 8-9. This change can and should be made in the 2022 SP.

Second, in future procurements the Volume Adjustment Mechanism could be better calibrated to reflect the results of Duke's resource plan modeling. The volume adjustments proposed in the 2022 SP are arbitrary (e.g. a +/-10% cost change yields a +/- 20% volume adjustment) and not necessarily correlated to the results of Duke's Carbon Plan Modeling (though CPSA has not objected to them as a simple approach for this initial procurement). A better mechanism would determine what volume of solar would be selected by Duke's model at various Reference Costs and would adjust the actual procurement volume to match the amount selected by the model based on actual bid pricing.⁴ CPSA proposed this mechanism for volume adjustment, but Duke indicated that it was modeling intensive and would not be practical for the 2022 SP (which CPSA does not dispute).

With respect to the Volume Adjustment Mechanism, CPSA offers one final observation: based on statements by Duke, CPSA expects that the Carbon Plan will actually select less than the economically optimal amount of solar, because of assumed limitations on Duke's ability to interconnect solar on an annual basis. If that proves true, then the baseline for any adjustment to the 2022 procurement volume based on higher-than-expected pricing should be the economically optimal amount of solar, rather than the target volume proposed by Duke.

11. What workarounds or alternatives are available to the issue described in Paragraph No. 15 of the Public Staff's initial comments – that the Commission may have difficulty enforcing a limited termination right in the event that transmission upgrade costs increase above a specified threshold relative to the DISIS upgrade costs without impacting projects both participating in the 2022 Solar RFP and those not participating in the 2022 Solar RFP?

⁴ In effect, this would produce a "demand curve" showing how much solar would be selected by Duke's modeling at various price points. The intersection of that curve and the actual procurement pricing would dictate the target amount of solar actually to be procured. It is entirely possible, if not likely, that the actual cost of solar resources could exceed the Solar Reference Cost and not reduce the volume of solar additions selected by the capacity expansion model (due to the decarbonization mandate and the limited availability and higher cost of alternative carbon-free resources). This is particularly likely to be true if Duke is allowed to impose arbitrary limits on the amount of solar selected by the model.

CPSA Response:

CPSA does not object to Duke having the contractual right – vis-a-vis a PPA counterparty – to terminate a 2022 SP PPA due to interconnection costs substantially exceeding DISIS Phase 2 estimates. However, as Duke notes, such termination could affect the overall Carbon Plan portfolio and Duke's compliance with H.B. 951 mandates. CPSA therefore believes that any action by Duke, including exercising such a contractual termination right, that would modify its generation resource additions approved by the Commission in the Carbon Plan should require Commission approval.

Respectfully submitted this the 6th day of May, 2022.

FOX ROTHSCHILD LLP

/s/ Benjamin L. Snowden

Benjamin L. Snowden
North Carolina State Bar No. 51745
434 Fayetteville Street
Suite 2800
Raleigh, NC 27601
Telephone: 919-719-1257
E-mail: BSnowden@foxrothschild.com

*Counsel for
Clean Power Suppliers Association*

CERTIFICATE OF SERVICE

I hereby certify that all persons on the Commission's docket service list have been served true and accurate copies of the foregoing Comments by hand delivery, first class mail, deposited in the U. S. Mail, postage pre-paid, or by e-mail transmission with the party's consent.

This the 6th day of May, 2022.

/s/ Benjamin L. Snowden

Benjamin L. Snowden
North Carolina State Bar No. 51745
434 Fayetteville Street
Suite 2800
Raleigh, NC 27601
Telephone: 919-719-1257
E-mail: BSnowden@foxrothschild.com

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2000 Market Street
20th Floor
Philadelphia, PA 19103-3222
Tel 215.299.2000 Fax 215.299.2150
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ATTACHMENT
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May 06 2022

May 5, 2022

Charles Rivers Associates
Duke2022SolarRFPCarolinas@crai.com

**Re: Clean Power Suppliers Association and Carolinas Clean Energy Business Association
Comments on 2022 Duke Energy Draft RFP**

Dear Independent Evaluator,

The Clean Power Suppliers Association ("CPSA") and the Carolinas Clean Energy Business Association ("CCEBA") (collectively, "Joint Commenters"), trade associations of independent renewable power project generators in North Carolina and South Carolina, are pleased to provide the following comments on the Draft RFP Plan Document and Appendices for the 2022 Solar Procurement Program by Duke Energy Carolinas and Duke Energy Progress ("Draft RFP"), issued on April 14, 2022. The comments, which consist of both requests for clarification and also requested changes to the Draft RFP and associated documents, are set forth below, in the order of the Draft RFP pages / documents to which they relate.

Section	Page	Comment
II	1	The Draft RFP says that "The RFP Target Volume seeks resources that will be interconnected and placed into service by 2026, as determined to be needed by the Companies' 2022 Carolinas Carbon Plan." This statement that interconnection must occur by 2026 seems inconsistent with the statement in Section II.A (p. 3) that eligible projects must "be capable of completing Facility construction (<i>not completion of interconnection</i>) within three years following the end of the contract phase [<i>i.e.</i> , mid-2026]." It is also inconsistent with Duke's response to a question on this specific issue on the most recent 2022 procurement

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Section	Page	Comment
		<p>stakeholder call. Finally, it should be noted that an interconnection deadline was never enforced as an eligibility requirement in CPRE.</p> <p>Achieving the mandates of H.B. 951 and the Carbon Plan will likely require that more solar resources be procured in 2022 than can be definitively placed in service by 2026. There is a real risk that limiting the 2022 procurement to projects that can achieve COD by 2026 will make it impossible to achieve 70% decarbonization by 2030. Likewise, there are a number of determinations that will have to be made by the NCUC and by the members of the North Carolina Transmission Planning Collaborative related to assumptions about annual interconnection limits, proactive transmission upgrade priorities and timing to complete those upgrades, total solar capacity identified in the Carbon Plan for procurement, and compliance date assumptions for achieving 70% carbon reductions. Until those decisions are made, it is premature to limit the 2022 procurement to projects that can be interconnected by 2026.</p> <p>For these reasons, the 2022 RFP should be sized and scoped as needed to achieve the goals of the Carbon Plan and should recognize that the failure to procure more than the 2026 target for solar additions in 2022 may result in inadequate solar procurement in 2027 and 2028.</p> <p>That said, Joint Commenters agree that Duke and the IE should use best efforts to ensure that the procurement satisfies the 2026 solar interconnection requirements of the carbon plan, and that an estimated timeframe for completion of contingent network upgrades is a legitimate criterion for bid evaluation. However, the RFP should not preemptively eliminate flexibility around procurement volume and PIS assumptions at this time. It is also critical that Duke and the IE provide clarity and transparency to bidders and to the NCUC with regard to how Duke arrives at its estimated timelines for contingent upgrades, and how those estimated timelines are weighed in bid evaluation. Estimated timeframes for completion of contingent network upgrades also should not be used to provide definitive deadlines for purposes of Power Purchase Agreements (especially given the uncertainty in PIS estimates, as acknowledged in Section VIII.A. of the Draft RFP).</p>



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Section	Page	Comment
II	2	Regarding volume adjustment: As stated in previous comments, the volume of Controllable PPA Track and Utility Ownership Track projects should be adjusted separately, based on the respective bid prices in each category.
II	2	<p>Joint Commenters request clarification on the following issues:</p> <ul style="list-style-type: none"> - Can a project that bids in both the Controllable PPA Track and the Utility Ownership Track be shortlisted in both tracks? - Given that Duke is requiring that Utility Ownership Track bids comply with Duke's vendor list, can a project bidding into both tracks include different technical specifications for each track? - Can a project that bids into both tracks express a preference for one track, if selected for both? <p>Joint Commenters request that all three options be permitted.</p>
II.A	3	<p>Requirement (3) states that "Duke Energy may decline to acquire a Facility under the Utility Ownership Track or decline to enter into a PPA with any bidder under the Controllable PPA Track if, in the opinion of Duke Energy, System Upgrades required to interconnect the Facility cannot be constructed in time to achieve Commercial Operation by November 30, 2026."</p> <ul style="list-style-type: none"> - See prior comments regarding requirement of a hard 2026 interconnection deadline. - In addition, please clarify how (and at what point in the RFP process) Duke would determine, for each project, whether System Upgrades required to interconnect the Facility cannot be constructed in time to achieve Commercial Operation by November 30, 2026. Please further clarify how Duke plans to account for the risk of delayed completion of contingent network upgrades in such determination, and how this will be considered for purposes of bid evaluation. Duke states that it "may decline" to enter into PPAs under this condition. This unbounded discretion creates an opportunity for inequitable treatment and should not be permitted. Given the importance



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Section	Page	Comment
		of this determination, such determinations must be documented (and such documentation provided to the bidder), reviewed by the IE, and included in any report to the Commission.
II.A	3	Requirement (4) states that a “Facility must have submitted an interconnection request during the 2022 Definitive Interconnection System Impact Study (“DISIS”) enrollment window.” Please clarify that this requirement is met when a project has submitted an interconnection application (in substantial compliance with application requirements), and that an interconnection queue number need not have been issued by the utility.
II.A	3	Requirement (5) states that “Bidders are also encouraged to address how the Facility’s design and operation exceeds applicable requirements and promotes environmental stewardship in the Carolinas.” This factor is highly subjective, and “applicable requirements” could differ widely in different regions of the Carolinas where the projects might not be comparable to one another. Please clarify how “exceeding applicable requirements” will be weighted in the RFP, and how inequitable treatment among projects in jurisdictions with different requirements will be avoided.
II.A	3	Requirement (4) provides that “in the event that, during the 2022 SP evaluation process, a default on the part of the MP Interconnection Customer occurs under the relevant Interconnection Agreement or the relevant Interconnection Agreement is terminated, the MP shall be removed from the evaluation process[.]” This should be revised to provide that removal from the RFP process is appropriate if a <u>non-curable</u> default occurs, or if the bidder fails to effect a timely cure of a curable default.
III.A	5	Joint Commenters reiterate their prior comments that the Asset Transfer option in the Utility Ownership Track is administratively complex, creates opportunities for inequitable treatment (or the appearance thereof), adds no value (as demonstrated in CPRE), and should therefore be removed from the RFP.



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Section	Page	Comment
III.B	6	<p>The Draft RFP states that project size for eligibility purposes is “based on the inverter nameplate capacity rating,” but also that “‘Nameplate Capacity Rating’ means the maximum generating capability of the Facility as measured at the delivery point.” Project capacity for eligibility purposes should be judged by reference to injection capability at the Point of Interconnection, consistent with FERC’s approach to determining compliance with the 80 MW size limitations for QFs under PURPA. The footnote on page 6 appears consistent with this approach. However, it is inappropriate and inaccurate to use the phrase “inverter nameplate capacity” in this context because significant losses can occur between project inverters and the point of interconnection.</p> <p>The RFP should state that project size for eligibility purposes should be judged by the project’s injection capability at the POI.</p>
III.B	7	<p>The Draft RFP states that “After closure of the RFP comment period and issuance of the RFP, the pro forma PPA is not subject to negotiation or adjustment for purposes of the 2022 Solar RFP.” The RFP should state that the pro forma PPA is not subject to adjustment after the RFP is issued, except by order of the NCUC.</p>
IV.B	8	<p>The RFP should clarify that direct communications between bidders and Duke are permissible, where such communications are organized and moderated by the IE. Preventing <u>any</u> communications between bidders and Duke, even with the participation of the IE, is unduly restrictive and will make it difficult to work through issues that arise in the administration of the RFP.</p>
IV.B	8	<p>The Draft RFP states that “After the Proposal submission date, the confidential message board will only be used should the IE need clarification concerning any Proposal.” Bidders should also be able to use the confidential message board to ask questions of and seek clarification from the IE after the submission date.</p>

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IV.C	9	The milestone schedule states that that the DISIS Phase 2 study will take from 12/27/2022 - 5/25/2023, which is the maximum amount of potential time allowed for Phase 2 in the interconnection procedures. The RFP should provide for the possibility that the Phase 2 study will be completed earlier than 5/25/23 and allow selected projects to move forward more quickly than the schedule provided.
IV.C	9	As stated in comments provided by Joint Commenters in the procurement docket, highly competitive projects with "clean" interconnections (i.e. no interdependencies) should be allowed to proceed to contracting prior to the end of the Phase 2 study.
IV.C	9	The milestone schedule states that "Step 2 bidders may provide additional non-economic updates to IE" by 4/1/23. Please provide more information on what this will entail and what role it will play in the final bid evaluation.
IV.D	9	It is inappropriate for Duke's Utility Ownership Team, which is responsible for preparing Duke Energy-sponsored bids for Utility Self-Developed Proposals to also be involved in evaluating third-party Utility Ownership Track proposals.
IV.E	10	<p>The Draft RFP states that "Each bidder is prohibited from disclosing to others the ongoing status of any bid." As stated, this is unduly restrictive and would prevent a bidder from, for example, informing its trade association that it has an active bid in the RFP, or that it has a problem or dispute in the RFP; or discussing any issues related to a bid with the Public Staff. This restriction should be narrowed to address confidentiality issues that Duke and the IE are concerned with. In addition, prospective purchasers of procurement projects, as well as potential and actual financing parties, should be added to the list of parties to whom Bidder Information may be disclosed.</p> <p>The requirement that representatives to whom bid information is conveyed "must be subject to a contractual obligation to maintain the confidentiality and not disclose Bidder Information" should be expanded to include Representatives (such as attorneys) who have an ethical or legal obligation to maintain confidentiality.</p>

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		<p>All documents submitted with a proposal should be presumed confidential, without each page having to be marked as such.</p> <p>The Draft RFP states that “After the PPA or relevant asset acquisition agreement has been executed, Duke Energy and the IE are allowed to publicly disclose the project’s name, size, and owner/seller.” Bidders should also be permitted to disclose this information under the same circumstances.</p>
V.A	12	<p>The Draft RFP states that any costs from Affected System Studies and network upgrades for Affected Systems will be borne by the bidder. However, bidders have no clarity whatsoever as to the process and standards for identifying Affected System upgrades, and no ability to project the potential cost of upgrades.</p> <p>Accordingly, a bidder who is assessed significant Affected System Upgrade costs after being selected should be allowed to withdraw from the RFP without forfeiting proposal security (or terminate their PPA without penalty, if one has been executed). Joint Commenters invite further discussion with the IE and Duke regarding a reasonable threshold of costs for this purpose.</p> <p>If this is not allowed, then bidders must increase the amount of their bids to account for the risk that they will be forced to bear Affected System Upgrade costs with no opportunity for withdrawal.</p>
VI.B	14	<p>The Draft RFP states that “For PPA Proposals, the cost of the Proposal is determined by taking the MP-submitted \$/MWh rate and applying that rate to the Facility’s projected output.” Please explain why “the cost of the Proposal” is relevant if projects are ranked based on \$/MWh pricing.</p>
VI.B	14	<p>The Draft RFP states that “For Utility Ownership Track Proposals, the Proposal LCOE will be derived by taking the annual facility Cost of Service Revenue Requirement.” Please explain how LCOE is calculated for BOT bids.</p>

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VI.B	14	The Draft RFP states that “During the RFP Step 1 evaluation, the IE and Duke Evaluation Team will receive cost information from the DEC/DEP DISIS Phase 1 System Upgrade estimates, including interdependencies within Phase 1 and interdependencies with prior-queued projects and will factor those results into the RFP Step 1 evaluation process.” This information regarding interdependencies should be provided to Bidders so they can plan for upcoming security required to enter Phase 2.
VI.B	14-15	<p>The Draft RFP states that “The Duke Evaluation Team and IE will discuss and evaluate the risk of System Upgrade cost re-allocation from interdependencies and consider the lowest cost and most stable overall portfolio of projects accounting for shared cost allocation and project interdependency risk, and not just the individual rank orders.”</p> <p>As explained, this process is extremely unclear and appears to provide Duke with very wide discretion to re-order and select bids. Please clarify how these risks will be assessed by Duke, and how they will be weighted in RFP evaluation. Will these factors be evaluated on a portfolio basis, as opposed to an individual project basis?</p> <p>Detailed information concerning this aspect of the evaluation process should be provided to bidders and to the NCUC, including how and why Duke evaluated these risks, how the “most stable overall portfolio of projects” is selected, and the extent to which this selection results in a portfolio that does not represent the lowest cost portfolio.</p>
VI.C	15	The Draft RFP provides certain isolated details (e.g. proposal security, notification) but does not describe the Step 2 evaluation process as a whole. It does not, for example, describe how the IE will rank projects; how the Step 2 process will utilize interconnection information provided by the DISIS Phase 2 process; how (if at all) the Step 2 evaluation process will lead to re-studies in DISIS Phase 2, or how final project selections will be made by Duke. The RFP needs to provide a much more detailed description of the Step 2 process.
VI.D.3	16	The Draft RFP requires that, in general, an MP must “In the case of PPA proposals, have operated a renewable energy project or portfolio



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**ATTACHMENT
TO CLEAN POWER SUPPLIERS
ASSOCIATION'S COMMENTS IN
RESPONSE TO DEC AND DEP'S
RESPONSE TO COMMISSION'S
ORDER REQUIRING ANSWERS
NCUC DOCKET NOS.
E-2, SUB 1297 AND E-7, SUB 1268**

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		of projects >50 MW AC or 3x the nameplate capacity of the Proposal, whichever is less.” This requirement is problematic because a number of solar project developers (including some who received CPRE awards that led to successful projects) do not retain ownership of projects after commercial operation, and therefore have not “operated” a substantial portfolio of projects. This requirement would inappropriately prevent such developers from participating in the RFP, reducing competitiveness, and potentially driving up prices. It should be removed or revised to allow participation by companies that have successfully developed a substantial number of operating projects, regardless of whether they retained ownership of those projects after COD.
VII	17	<p>The Draft RFP states that “the Companies may assign a ‘Winners’ Fee’ to winning Proposals to satisfy the cost of the RFP. The Winners’ Fee is calculated for each winning bid as the pro rata share for any remaining IE costs not covered by the Proposal Fees.”</p> <p>The RFP should clarify whether each winner’s “pro rata share” of the fee is calculated based on project size (in MW) or on a per-project basis.</p> <p>The RFP should clarify that <u>all</u> Utility Ownership Track projects, including Utility Self-Developed Projects, are responsible for a pro rata share of the total Winner’s Fees.</p>
VIII.B	17-18	Joint Commenters support the provision of grid locational guidance as described in Section VIII.B. Given the substantial changes in grid locational guidance that are currently under consideration for DEC/DEP, Joint Commenters re-iterate their comments above under Section II.A – Facility Requirements regarding the importance of additional RFP guidelines around the evaluation and reporting of network upgrade contingencies. In the future, such guidance should be provided further in advance of the RFP issuance. In addition, grid locational guidance should not only describe known transmission limitations but should also provide detailed information about the location and timing of any transmission improvement projects planned by the Companies. To ensure fair and equitable treatment of all proposals, it is critical that both bidders and Duke be on an equal

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		footing with regard to their understanding of planned improvements to the transmission system.
IX	19	<p>The Draft RFP states that “By submitting a Proposal in this RFP, MPs expressly agree that the NCUC shall be the sole venue for resolving any dispute relating to or arising out of this RFP.” From a legal standpoint, (a) the concept of “venue” is inapplicable, and (b) whether the NCUC has jurisdiction over any dispute is dictated by statute, and such jurisdiction cannot be created by the agreement of MPs, Duke, and/or the IE. For example, disputes over the interconnection of a FERC-jurisdictional project are under the exclusive jurisdiction of FERC and cannot be brought before the NCUC.</p> <p>Joint Commenters propose the following alternative language: “By submitting a Proposal in this RFP, MPs expressly agree to pursue any dispute relating to or arising out of this RFP (other than disputes under the exclusive jurisdiction of the Federal Energy Regulatory Commission) before the NCUC in the first instance, and not to assert that the NCUC is an improper forum for any such dispute.”</p>
X	19	The Draft RFP states that “Duke Energy reserves the right to modify, supplement or withdraw this RFP at any time, whether due to changes in law or otherwise, and including by issuing one or more amendments or addenda to this RFP during this solicitation, which addenda shall become a part of this RFP.” Unilateral modification of the RFP by Duke, without advance notice to bidders or approval by the NCUC, is unfair, inequitable, and commercially unreasonable. Any post-issuance changes to the RFP, and in particular to evaluation criteria, must be provided to bidders and submitted to the NCUC for approval.
X	19	The Draft RFP states that “Duke Energy reserves the right to reject any, all or portions of any proposal received for failure to meet any criteria set forth in this RFP <u>or otherwise and to accept proposals other than the lowest cost proposal.</u> Duke Energy also may decline to enter into any agreement with any bidder, terminate negotiations with any bidder or abandon the RFP process in its entirety at any time, <u>for any reason and without notice thereof.</u> ”

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		<p>This provision gives Duke absolute discretion to disqualify bids, ignore the published evaluation criteria, and select any project(s) it wishes to, without regard for project ranking or the least-cost requirements of H.B. 951. This is inequitable, unfair, and commercially unreasonable. It also contravenes the least-cost mandates of HB 951 as well as Duke's representations to the NC Commission (in its filings in support of a 2022 procurement) about "Independent Oversight and Bid Evaluation to Ensure Transparency and Fairness in [the] RFP."</p> <p>These provisions must either be removed entirely, or clearly state the limited circumstances under which Duke may reject a proposal, accept proposals other than the least cost proposal, terminate negotiations with a bidder, or abandon the RFP process. These circumstances must be clearly defined and must minimize the possibility of improper or inequitable conduct, especially in favor of Duke-sponsored bids.</p>
X	20	<p>The Draft RFP states that "By submitting its proposal, each respondent waives any right to challenge any determination of the Companies to select or reject its proposal. Each respondent, in submitting its proposal, irrevocably agrees and acknowledges that it is making its proposal subject to and in agreement with the terms of this RFP and waives any right to challenge any valuation by the Companies of its Proposal."</p> <p>It is inappropriate, unreasonable, and inconsistent with industry standards to deprive bidders of any opportunity to challenge any determination of Duke in the RFP. If bidders are unable to challenge any decision of the Company, there is no mechanism to ensure that the Companies actually comply with the terms of the RFP.</p> <p>This provision must be removed in its entirety.</p>
Appendix D ¶ (c)	2	Deadline for payment by Surety should be 10 <u>business</u> days.
Appendix D ¶ (h)	3	Deadline for payment by Surety should be 10 <u>business</u> days.



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Appendix H (list of preferred vendors)		<p>Given ongoing changes and disruption in the solar and storage industry, and the long lead time before projects contracting in the 2022 SP are likely to be constructed, Joint Commenters recommend (a) expanding the list of approved vendors to include additional companies; and (b) allowing bidders or contracting parties to request that additional vendors be added to the list of approved vendors. Maintaining the same static (and short) list of approved vendors until 2026 or 2027 will make procurement and construction more difficult and likely more expensive.</p> <p>Joint Commenters request to add the following vendors to Appendix H:</p> <ul style="list-style-type: none">- PV Modules: Astronergy/CHINT, HT-SAAE, Vikram Solar, Boviet, ET Solar, Trina Solar, Adani Solar, NE Solar, VSUN, Znshine- Inverters: Sungrow, Power Electronics, Gamesa- GSU's: WEG, Pennsylvania Transformer, SPX Waukesha- Racking/Trackers: FTC, Game Change

Thank you for your consideration of these comments. We would be pleased to answer any questions concerning our comments and to discuss them further with the IE, Duke, and other stakeholders.

Best Regards,

Ben Snowden
Counsel for the Clean Power Suppliers Association

Cc: John Burns, Esq.
Counsel for Carolinas Clean Energy Business Association