

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION  
DOCKET NO. E-100, SUB 191**

In the Matter of: )  
)  
Rulemaking Proceeding Related to ) **RESPONSE IN SUPPORT OF NEW**  
Biennial Consolidated Carbon Plan ) **ENERGY ECONOMICS' PETITION**  
and Integrated Resource Plans of ) **TO INTERVENE**  
Duke Energy Carolinas, LLC, and )  
Duke Energy Progress, LLC, )  
Pursuant to N.C.G.S. § 62-110.9 )  
and § 62-110.1(c) )

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The Southern Alliance for Clean Energy (SACE), the Sierra Club, and the Natural Resources Defense Council (NRDC), jointly with the North Carolina Sustainable Energy Association (NCSEA), submit this Response in Support of New Energy Economics' Petition to Intervene, requesting that the North Carolina Utilities Commission (Commission) grant the Petition to Intervene (Petition) filed by New Energy Economics (NEE) in this proceeding on May 25, 2023. This Response also acknowledges and responds to the "Response in Opposition to New Energy Economics' Petition to Intervene" (Duke Response in Opposition), filed by Duke Energy Carolinas, LLC (DEC) and Duke Energy Progress, LLC (DEP, together with DEC, Duke) on June 1, 2023.

The Commission should grant the Petition because NEE's interests exceed the standard set by the Commission in prior intervention proceedings, particularly its "Order Granting the Environmental Working Group's Petition to Intervene and Motion for Limited Practice," (EWG Order), filed on July 12, 2022 in Docket No. E-100, Sub 179. In addition, this proceeding is narrower than the proceedings where the Commission has found it necessary to limit intervention. For these reasons, as explained further below, the Commission should grant NEE's Petition.

**1. NEE's Interest in This Proceeding Surpasses the Standard Set by the Commission in Prior Proceedings**

NEE's interest in this matter exceeds the standard set by the Commission in its EWG Order. NEE's interest in this proceeding is at least as compelling as the interests advanced by EWG.

In its petition, EWG asserted a number of grounds for its intervention, including: maintaining a webpage devoted to North Carolina environmental news, receiving social media and website interaction from North Carolina residents, and serving as a founding member for a coalition of advocacy organizations that seek to monitor Duke's activities. Petition to Intervene by Environmental Working Group ¶¶ 1-3 (EWG Petition). EWG also asserted the following: "EWG policy and influence on North Carolina environmental health matters is also informed by its board member and Chapel Hill, North Carolina resident, and former secretary of the North Carolina Department of Environmental and Natural Resources, William Ross, Jr." EWG Petition ¶ 3.

Among these justifications for intervention, the Commission found Mr. Ross's role in EWG compelling. EWG Order at 5-6. It concluded:

Notwithstanding the foregoing, the Chair finds that Mr. Ross' significant service record with the state and his expertise in the area of environmental policy, which is implicated in the subject matter of the Carbon Plan, as well as his well-evidenced involvement in EWG, sufficiently evidence EWG's real interest in the subject matter of the proceeding.

*Id.*

NEE's interest in the instant proceeding meets and surpasses the standards that the Commission set in the EWG Order and other precedent. Where EWG presented Mr. Ross, NEE presented two affiliated persons with extensive experience and expertise in North Carolina utility regulation, Mr. Levitas and Mr. Urlaub. Upon information and belief, Mr. Levitas, like Mr. Ross, served with the North Carolina Department of Environmental Quality, acting as Deputy Secretary from January 1993 until December 1996. Mr. Levitas is currently the Senior Vice President for Strategic Initiatives at a major solar developer in the state and has spent decades working on renewable energy project development and environmental regulatory matters in North Carolina. On information and belief, Mr. Urlaub has decades of experience as a North Carolina clean energy policy expert, including helping to develop the Renewable Energy and Efficiency Portfolio Standard (REPS) and being twice appointed by the Senate President to two terms on the NC Legislative Commission on Global Climate Change, as well as over 15 years of advocacy before the Commission and other bodies in his past roles at NCSEA. Neither is a stranger to the Commission. Even Duke recognized their extensive experience and connections to clean energy development in the state. Duke Response in Opposition ¶ 8-10.

In an attempt to get around these obstacles, Duke made two contradictory arguments, each of which is incorrect. First, Duke argued that NEE has no stake in the proceeding, oddly even comparing NEE to an "overseas" organization and

claiming it might seek to advance “its own (or some unidentified interests’) policy positions.” Duke Response in Opposition ¶ 12. But throughout its filing, Duke also recognized the interests of the two in-state personnel NEE presented, Messrs. Levitas and Urlaub. These personnel demonstrate NEE’s interest in the proceeding at least to the degree that EWG had an interest in the initial Carbon Plan proceeding, making Duke’s argument incorrect.

Second, Duke argued that NEE’s interests—which it simultaneously denied—are adequately represented by other parties. It attempted to obscure the connection between NEE and its North Carolina personnel Messrs. Levitas and Urlaub by dressing this argument up as a series of claims about the various ways that Duke imagines that other parties might be able to represent *Messrs. Levitas and Urlaub’s* interests in this proceeding. But just as Mr. Ross’s service record, expertise, and connection with EWG evidenced EWG’s real interest in the initial Carbon Plan proceeding, Messrs. Levitas and Urlaub’s service records, expertise, and connection with NEE evidence NEE’s real interest in this proceeding, not just Messrs. Levitas and Urlaub’s individual interests (as Duke interpreted them). To measure whether NEE’s interest is adequately represented in the proceeding, the Commission should look to NEE’s stated interest. Notably, NEE appears to have a greater focus on all-source procurement than any party in the proceeding.

In any case, Duke failed to show that NEE’s interest—even if defined by Duke’s interpretation of Messrs. Levitas and Urlaub’s interests—is adequately represented by other parties in the proceeding. Duke argued that Mr. Levitas’ interests are adequately represented by Carolinas Clean Energy Business Association (CCEBA), because Mr. Levitas’ direct-report at Pine Gate Renewables is a current member of the board of directors of CCEBA and Pine Gate Renewables is a member of CCEBA. Response in Opposition ¶ 8. This chain of connections is too attenuated to demonstrate that Mr. Levitas’ interests, as a member of NEE, are adequately represented by other parties in this proceeding. Duke’s further argument that Mr. Levitas’ prior presentations to the Commission concerning all-source procurement in a prior role at CCEBA in fact further demonstrate this point. *Id.* Mr. Levitas evidently maintained an interest in all-source procurement in the past, and he quite likely sought NEE’s participation in the proceeding precisely because he did not believe CCEBA would adequately address the topic.

Duke made similar flawed arguments with respect to Mr. Urlaub. Duke claimed that Mr. Urlaub’s interests are already represented by “a variety of intervenors who could hire Mr. Urlaub . . . if they elected to do so,” but such speculation does not even attempt to define Mr. Urlaub’s interests let alone explain how they are adequately represented by others. Response in Opposition ¶ 9. Duke also asserted Mr. Urlaub is adequately represented by NCSEA. Response in Opposition ¶ 9. Duke implied that Mr. Urlaub is an employee of

NCSEA with the title Chief, Strategy and Innovation. *Id.* But Mr. Urlaub left his employment with NCSEA in March of 2022. Since that time, Mr. Urlaub has worked as an outside consultant with NCSEA on a limited basis and under the terms of a contract which expires this month, June 2023. That is why he is listed on NCSEA's website as a strategic advisor. Mr. Urlaub likely supported NEE's participation precisely because he believed that other parties would not adequately address his interests.

Accordingly, the Commission should find that NEE's interest in this matter exceeds the standard set by the Commission in its EWG Order.

## **2. The Instant Proceeding Is Narrower in Scope and Is Not Subject to an Expedited Statutory Timeline**

As Duke emphasized in its filing, the Commission has found that intervention requests demand a "greater level of scrutiny" where "the Commission anticipates the intervention of numerous parties and where it faces expedited statutory deadlines." Response in Opposition at 10 (citing EWG Order at 3). The Commission contrasted the initial Carbon Plan proceeding, with the net metering proceeding (Docket No. E-100, Sub 180), where it had recently granted EWG intervention, explaining that the net metering proceeding was "narrower in scope than the Carbon Plan, such that there are fewer intervening parties." EWG Order at 3.

This proceeding is narrower than the Carbon Plan proceeding in each of the ways important to intervention decisions. First, there are fewer intervenors than there were for the initial Carbon Plan and so it is likely to remain. According to the Commission's final order in the initial Carbon Plan proceeding, by counsel's count, there were ultimately 38 intervenors.<sup>1</sup> By contrast, in the CPIRP rules proceeding, in which the May 25, 2023 intervention deadline has passed, by counsel's count there are 16 intervenors, not counting NEE. In the net metering proceeding, by counsel's count, there were 19.

Second, the Commission does not face a statutory deadline to establish new CPIRP rules. While the Commission must adopt a new Carbon Plan every two years, that deadline does not dictate the deadline to complete revised CPIRP rules. That is not to say that it is not imperative to adopt revised rules as soon as practicable, for the benefit of the present Carbon Plan proceeding and future proceedings. But the revised CPIRP rules will be designed to guide future Carbon Plan proceedings indefinitely, albeit subject to revision as necessary, and should not be rushed. Duke suggested that the Commission faces a September 1, 2023 deadline to adopt revised CPIRP rules. Duke Response in Opposition ¶ 15. But that is inaccurate. The second Carbon Plan proceeding has already begun and the stakeholder process has been underway for months. While all parties likely could agree that the sooner new rules are established the better for

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<sup>1</sup> In all cases, counting CIGFUR II and III as two parties.

the Carbon Plan proceeding, much of the content of the rules is intended to guide the substance of Duke's proposed Carbon Plan, which will be developed prior to September 1. Rules implemented by that date will be too late to guide Duke's development of its proposed Carbon Plan. After Duke files its proposed Carbon Plan on September 1, parties will have 180 days to review it, intervene, and comment. While the revised rules would help to guide that process, its success does not depend on having the rules in place by September 1.

Finally, unlike biennial Carbon Plan proceedings or rate cases, the instant rulemaking proceeding does not entail complex, iterative, and evidentiary processes. Its scope is limited to rulemaking for future proceedings, which is unlikely to elicit the quantity or complexity of interventions and comments that the Commission saw in the initial Carbon Plan proceeding. Though the rules are broad and vitally important, revising them pales in comparison to the complexity of other Carbon Plan proceedings.

Accordingly, the Commission should follow its policy of being "generally liberal in construing the intervention requests," EWG Order at 3, and grant NEE's Petition.

### **3. Conclusion**

For the foregoing reasons, the Commission should grant NEE's Petition.

Respectfully submitted,

/s/ Nick Jimenez

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing filing of the Southern Alliance for Clean Energy, the Sierra Club, and the Natural Resources Defense Council, and the North Carolina Sustainable Energy Association as filed today in Docket No. E-100, Sub 191 has been served on all parties of record by electronic mail or by deposit in the U.S. Mail, first-class, postage prepaid.

This 6th day of June, 2023.

s/ Nick Jimenez