



Jack E. Jirak
Deputy General Counsel

Mailing Address:
NCRH 20 / P.O. Box 1551
Raleigh, NC 27602

o: 919.546.3257

jack.jirak@duke-energy.com

June 8, 2022

VIA ELECTRONIC FILING

Ms. A. Shonta Dunston
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

**RE: Duke Energy Carolina, LLC and Duke Energy Progress, LLC's Reply
to Joint Response in Opposition to Motion to Modify Issues Report
Requirement
Docket No. E-100, Sub 179**

Dear Ms. Dunston:

Enclosed for filing in the above-referenced docket, please find Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Reply to Joint Response in Opposition to Motion to Modify Issues Report Requirement.

If you have any questions, please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Jirak", written in a cursive style.

Jack E. Jirak

Enclosure

cc: Parties of Record

OFFICIAL COPY

JUN 08 2022

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 179

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Duke Energy Progress, LLC, and)	DUKE ENERGY REPLY TO JOINT
Duke Energy Carolinas, LLC, 2022)	RESPONSE IN OPPOSITION TO
Biennial Integrated Resource Plans)	MOTION TO MODIFY ISSUES
And Carbon Plan)	REPORT REQUIREMENT
)	

NOW COME Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP” and together with DEC, “Duke Energy” or the “Companies”) by and through counsel and pursuant to Rule R1-7 of the Rules and Regulations of the North Carolina Utilities Commission (“Commission”), and respectfully reply to the Joint Response in Opposition to Duke Energy’s Motion to Modify Issues Report Requirement filed on June 6, 2022 (“Joint Response”) in this proceeding. In support of the Companies’ reply, they show as follows:

I. Introduction

On May 2, 2022, the Companies’ filed their Motion to Modify Issues Report Requirement (“Motion”) seeking a procedural modification that is reasonable and balanced and consistent with the Commission’s goal of resolving this proceeding without an evidentiary hearing. The reasonableness of the proposed modification is demonstrated by the wide range of intervenors that either support or do not oppose the Motion.

As more fully explained below, the Joint Respondents¹ fail to articulate how their preferred framework will further the Commission's goals of resolving the proceeding without an evidentiary proceeding. The Joint Respondents also mischaracterize the relief sought by the Motion in a number of key respects.

II. Response

a. The proposed modification will allow the Companies to narrow the scope of issues identified for an evidentiary hearing

The Joint Respondents assert that "the Motion seeks to add another round of pleadings to the proceeding without making further reductions to the scope of the evidentiary hearing." This statement demonstrates a fundamental misunderstanding of the Motion. The very point of the additional reply comments proposed in the Motion is to provide another tool to allow the Companies to limit the issues identified in the Issues List for the evidentiary hearing (*i.e.*, to reduce the scope of the evidentiary hearing).

Without a reply comment alternative to the evidentiary proceeding, the Companies' only opportunity to respond to alternative Carbon Plans submitted on July 15, 2022 is through an evidentiary proceeding. With the reply comment opportunity (which would be available to all parties), the Companies can seek to substantially limit those issues that are required to go to evidentiary proceeding by addressing certain disputed issues through reply comments. Despite Joint Respondents confounding assertion that the relief sought will not "mak[e] further reductions to the scope of the evidentiary hearing," it is certain

¹ The Joint Respondents are comprised of the Carolina Utility Customers Association, Tech Customers (Apple Inc., Google LLC, and Meta Platforms, Inc.), the North Carolina Sustainable Energy Association, Southern Alliance for Clean Energy, Natural Resources Defense Council, and the Sierra Club.

that the scope of the required evidentiary proceeding will be reduced if the Motion is granted.²

Finally, if parties disagree with the Issues List and believe that an issue in dispute would be better handled through evidentiary proceedings rather than through reply comments, they are free to make that position known to the Commission.

b. The Companies' proposed modification is fair to all parties and does not create an "imbalance of opportunities."

The Joint Respondents assert that the proposed modification "could create an imbalance of the opportunities to address controverted issues." Nothing could be further from the truth. The proposed modification would provide all parties the opportunity to submit reply comments on controverted issues that do not go to evidentiary hearing.

The Joint Respondents further assert that "for issues that are excluded from an evidentiary hearing, Duke Energy will have presented evidence on the issue (in its May 16, 2022 Carbon Plan filing) and, likewise, other parties will have presented evidence on the issues (in their responsive filings). Thus, both sides will have an equal opportunity to be heard on the issues." This statement is also not accurate. As of July 15, 2022, it is likely that multiple parties will file alternative modeling and alternative Carbon Plans.³ Duke

² The Joint Respondents cite an informal exchange with counsel for the Companies to assert that the Companies "anticipate a final 'briefing process' on all issues—which seems to make this new layer of reply comments superfluous." Putting aside the procedural oddity of introducing in the Joint Response an informal email exchange intended to foster dialogue, the Companies do not agree with the characterization of the reply comment opportunity as "superfluous" to any further briefing allowed by the Commission. As counsel for the Companies explained in the referenced communication, "[t]he reply comment opportunity is distinct from and a predicate to the briefing process and will be more technical in nature." The Companies recognize that it is the Commission's decision whether to allow briefing at the conclusion of the comment cycle and any evidentiary hearing.

³ See e.g., <https://cleanenergy.org/news-and-resources/clean-energy-advocates-react-to-duke-energys-proposed-carbon-plan/> (multiple intervenors describing intent to submit alternative Carbon Plans).

(and Public Staff and intervenors) will therefore not have had an “equal opportunity” to be heard with respect to the alternative modeling and alternative Carbon Plans filed on July 15, 2022. Absent the Companies’ proposed modifications, the only route for Duke to have an “equal opportunity” to comment on alternative Carbon Plans and alternative modeling is through the evidentiary proceeding.

The Joint Respondents go on to assert that “Joint Respondents believe the current procedure ordered by the Commission is fair: controverted issues are either left standing on the existing filings, or move to an evidentiary hearing in which all parties—not just the Companies—have a second chance to be heard.” Having acknowledged earlier in the Joint Response that the “Motion allows all parties to file additional comments,” it is perplexing that the Joint Respondents proceed to mischaracterize the modifications sought by the Motion. Under the Motion, all parties—not “just the Companies”—are given a “second chance to be heard” through reply comments.

c. Joint Respondents’ fixation on whether Duke has the “last word” is misguided.

Contrary to Joint Respondents’ assertion that the Companies are not entitled to the last word, the Commission has, in fact, already deemed it appropriate for the Companies to have the “last word,” since the Companies are provided a rebuttal testimony opportunity in the evidentiary hearing. This is reasonable and appropriate given that it is the utility that bears the responsibility to execute the Carbon Plan and ensure the provision of reliable electric service to its customers. Moreover, and as explained above, the Companies’ proposed modification would actually give all parties equal opportunity to have the “last word” on those issues in dispute that do not go to an evidentiary proceeding. In other

words, the Motion actually would enlarge the topics on which all parties are provided an opportunity to have the “last word.”

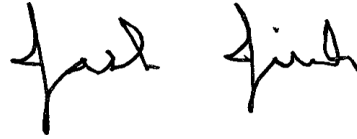
d. The Motion is Not Premature.

Finally, the Joint Response asserts that the Companies’ proposed modification is “premature.”⁴ To the contrary, a decision in this respect is essential prior to July 15, 2022 because it will directly influence the Issues List.

WHEREFORE, the Companies respectfully request that the Commission issue an order allowing the proposed procedural modifications described in Motion.

⁴ The Joint Respondents allege that “serious technical issues” exist in the Encompass datasets. The Companies do not agree with this characterization but are continuing to engage intervenors on these technical issues, including through the avenues described in the Companies’ June 7, 2022 letter filed in this docket. However, such issues have no bearing on the modifications requested in the Motion.

Respectfully submitted, this the 8th day of June, 2022.



Jack E. Jirak
Kendrick C. Fentress
Jason A. Higginbotham
Duke Energy Corporation
P.O. Box 1551/NCRH 20
Raleigh, North Carolina 27602
JEJ Telephone: (919) 546-3257
KCF Telephone: (919) 546-6733
JAH Telephone: (704) 731-4015
Jack.Jirak@duke-energy.com
Kendrick.Fentress@duke-energy.com
Jason.Higginbotham@duke-energy.com

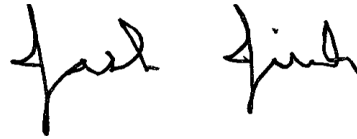
E. Brett Breitschwerdt
Andrea E. Kells
Tracy S. DeMarco
McGuireWoods LLP
501 Fayetteville Street, Suite 500
PO Box 27507 (27611)
Raleigh, North Carolina 27601
EBB Telephone: (919) 755-6563
AEK Telephone: (919) 755-6614
TSD Telephone: (919) 755-6682
bbreitschwerdt@mcguirewoods.com
akells@mcguirewood.com
tdemarco@mcguirewoods.com

*Counsel for Duke Energy Carolinas, LLC
and Duke Energy Progress, LLC*

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Reply to Joint Response in Opposition to Motion to Modify Issues Report Requirement, in Docket No. E-100, Sub 179, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid, to parties of record.

This the 8th day of June, 2022.

A handwritten signature in black ink, appearing to read "Jack Jirak", written in a cursive style.

Jack E. Jirak
Deputy General Counsel
Duke Energy Corporation
P.O. Box 1551/NCRH 20
Raleigh, North Carolina 27602
(919) 546-3257
Jack.jirak@duke-energy.com