

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 179

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:)	PARTIAL PROPOSED ORDER OF
Duke Energy Progress, LLC, and)	REDTAILED HAWK COLLECTIVE,
Duke Energy Carolinas, LLC, 2022)	ROBESON COUNTY COOPERATIVE
Biennial Integrated Resource Plans)	FOR SUSTAINABLE DEVELOPMENT,
and Carbon Plan)	ENVIRONMENTAL JUSTICE
)	COMMUNITY ACTION NETWORK,
)	AND DOWN EAST COAL ASH
)	ENVIRONMENTAL AND SOCIAL
)	JUSTICE COALITION

Pursuant to the North Carolina Utilities Commission’s (“Commission”) October 4, 2022 *Notice of Due Date for Proposed Orders and/or Briefs*, Intervenor the RedTailed Hawk Collective (“RTHC”), the Robeson County Cooperative for Sustainable Development (“RCCSD”), the Environmental Justice Community Action Network (“EJCAN”), and the Down East Coal Ash Environmental and Social Justice Coalition (“DECAESJC”) (collectively, “Environmental Justice Intervenor” or “EJ Intervenor”) respectfully submit this partial proposed order in the above-captioned docket regarding the draft Carbon Plan submitted by Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively, “Duke Energy”).

I. THE APPLICATION OF LEAST COST WITHIN THE CARBON PLAN

a. EJ Intervenor’s Comments

The EJ Intervenor’s discussion of least cost begins with a discussion of the risk and uncertainty attendant to making long-term investments within a rapidly-changing

sector. First, the EJ Intervenors identified Duke Energy’s portfolios’ reliance on new methane gas infrastructure, such as gas-fired electric generation facilities and pipelines, as carrying considerable risk both as to cost and to communities. One aspect of this risk is the timeline of availability for new construction and a second aspect is the likelihood of cost overruns. EJ Intervenors cited the abandoned Atlantic Coast Pipeline (“ACP”) as a reason to closely scrutinize Duke Energy’s ability to secure new methane gas capacity and of the potential for significant cost overruns. This discussion is continued in EJ Intervenors’ Responsive Comments. EJ Intervenors also identify significant risk to the construction of new methane gas infrastructure of becoming a stranded asset as North Carolina strives to attain the goals of House Bill 951 (“HB951”). Finally, EJ Intervenors challenge that there is a “first-mover” advantage when adopting new technologies, particularly capital-intensive ones such as new nuclear or methane gas facilities.

The EJ Intervenors also discuss Governor Cooper’s Executive Order 246 (“EO246”), specifically where it encourages the Commission to incorporate the social cost of greenhouse gas emissions (“SC-GHG”). In order to plan for the least cost pathway to decarbonization that also “is consistent with the level of energy needed for the protection of public health and safety...,”¹ certain facets of the SC-GHG should be considered. These include valuing the risks posed to communities and critical infrastructure by a changing climate, the energy sector’s role in both precipitating and planning for this crisis, as well as the potential for future investments to either mitigate or exacerbate the harm to come.

¹ N.C. GEN. STAT. § 62-2(a)(6).

The next aspect of least cost discussed by the EJ Intervenors are nonmarket damages and carbon pricing. One type of nonmarket damages discussed are moral damages, defined as “injur[ies] caused by a violation of rights but that is not associated with actual damage to property or persons.”² Other types of nonmarket damages discussed include health impacts, ecological damages, and community impacts. While these are sometimes difficult to quantify, that does not diminish the real harm caused to the well-being of individuals, ecosystems, and communities—the Commission should take every opportunity to incorporate these impacts in its analysis of least cost. EJ Intervenors also expressed skepticism in the ability of current carbon pricing tools to meaningfully reduce carbon emissions, particularly without further disadvantaging already overburdened communities.

EJ Intervenors discuss least costs’ application to the dual mandate with HB951 of achieving 70% carbon reduction by 2030 and also carbon neutrality by 2050. Without careful consideration, what might be considered the least cost path for achieving the 2030 goal could ultimately handicap the Commission’s ability to achieve the 2050 in the least cost manner—particularly considering the rapid technological change now-occurring in the energy sector. To moderate this risk, EJ Intervenors propose the Commission adopt a value for flexibility in-and-of itself—citing Real Options Analysis as one such approach.

EJ Intervenors also addressed least cost concerns within their Responsive Comments in three ways. First, EJ Intervenors addressed the potential impacts of the Inflation Reduction Act on least cost considerations, including the extension and stabilization of federal tax credits for renewable energy resources, investment promoting

² UNITED NATIONS, GENERAL ASSEMBLY, RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS, WITH COMMENTARIES (2001), Art. 36, Comment. 1.

customer-owned generation, incentives for non-Investor-Owned utilities to invest in renewables, new federal loan programs for untested and emerging technologies, and amending the Clean Air Act (“CAA”) to expand the definition of “air pollutants” to include GHGs.

Second, the Responsive Comments address the potential underrepresentation of costs associated with Duke Energy’s methane gas infrastructure proposals—as discussed above—citing details from the ACP. Third, EJ Intervenors discuss the costs and risks to both environmental and public health that will be disproportionately borne by rural, racially-diverse, and low-income communities mostly located in Eastern North Carolina should Duke Energy’s plans for development of new methane gas, nuclear, and biofuel infrastructure be allowed to proceed as currently proposed. These costs are linked to EJ Intervenors’ discussion of nonmarket damages as described above.

b. Proposed Commission Conclusions

As the Commission endeavors to apply a least cost framework consistent with HB951 and prior Commission precedents, we find that there are certain types of costs that bear greater scrutiny both within the development of the Carbon Plan and in future dockets implicated by this proceeding.

When comparing the development cost of different generation technologies, we find that least cost considerations must include everything necessary for a project to be used and useful. This includes, *inter alia*, facility lifecycle concerns, labor, all of the support infrastructure needed to efficiently operate the facility, cost of land and/or rights-of-way, legal fees, and a reasonable margin for foreseeable cost over-runs based on previous experiences. In particular, considering the recent history of construction of

transmission pipelines, we find it necessary to seek further details on the full extent of support infrastructure, and the costs associated, that would be necessary for a new transmission pipeline supplying a new generating facility to become used and useful.

In the past, this Commission has declined to take a broader view of certain environmental factors, including the impact of carbon emissions as well as other types of damages. With the passage of HB951, the General Assembly signaled its intention to expand how these costs are considered by this Commission. Though not binding, Governor Cooper's EO246 strongly encouraged this Commission to incorporate the SC-GHG as determined by the Interagency Working Group on the Social Cost of Greenhouse Gases. Therefore, we find good cause to include the SH-GHG, as determined at the federal level, in determinations of least cost.

Like the SC-GHG, this Commission has also declined to consider other nonmarket costs in the past. While the term "nonmarket costs" can be expansive, we find it appropriate to include certain aspects of these costs where appropriate. Though North Carolina's population is mostly concentrated in a number of core urban areas, North Carolina's energy infrastructure is mostly located in rural regions and is often concentrated. This has led to disparate and cumulative impacts borne by certain communities and ratepayers, which may be exacerbated by this Commission. The excess costs borne by these ratepayers, while not being equitably shared with other ratepayers, may unlawfully lead to unjust discrimination and/or undue preferences or advantages for certain ratepayers. As we consider the development of new facilities in the future, the potential for such a facility to disproportionately impact communities already hosting other industrial facilities must be considered.

HB951 includes goals for both 2030 and 2050. Though it is necessary to emphasize the goal nearer in time, HB951 does not prioritize either goal over the other. As we consider actions necessary to achieve HB951’s 2030 goal, it is important to consider the effect of capital investments through 2050 and to ensure that choices made to achieve the 2030 goal in no way put at risk North Carolina’s ability to achieve the 2050 goal.

Considering the pace of technological change, the risks associated with being a first-adopter of new technologies, global supply chain shocks, and unprecedented federal investment—there is a considerable value to maintaining flexibility within the Carbon Plan at this stage. As we apply precepts of least cost in the Carbon Plan, flexibility to adapt to changing circumstances will be valued.

With the passage of the Inflation Reduction Act, the Infrastructure Investment and Jobs Act, and the CHIPS and Science Act, the federal government has committed an unprecedented amount of resources to the energy sector. As regulations continue to be developed, we direct Duke Energy to take all available steps to take advantage of this increase in funding.

II. OUTREACH AND CONSULTATION OF IMPACTED LOW-INCOME, MINORITY, AND INDIGENOUS COMMUNITIES

a. EJ Intervenor’s Comments

EJ Intervenor’s begin by noting the insufficiency of Duke Energy’s stakeholder process’s outreach to low-income, minority, and indigenous communities while developing its proposed Carbon Plan. While the three general stakeholder meetings held by Duke Energy’s third-party contractor were nominally “open to the public,” their design as all-day meetings held digitally precluded substantive participation from anyone

unable to be excused from work or without access to broadband. EJ Intervenors also discuss the environmental justice-specific stakeholder meeting held by Duke Energy on May 3, 2022, less than two weeks before the release of Duke Energy’s draft plan, and their skepticism that such feedback could be effectively integrated on that timeframe. EJ Intervenors pursued these concerns in their questioning of Duke Energy witness Kendal Bowman on September 13, 2022 during the Carbon Plan evidentiary hearing.³ Ms. Bowman testified that the May 3rd meeting, and ones to be held in the future, were “not specific to the Carbon Plan.”⁴ Ms. Bowman also testified that while this meeting consisted of an “open dialogue,” Duke Energy is not prepared to summarize what was discussed during that meeting—leaving intervenors in the dark as to the context and content of those discussions.⁵ While Duke Energy’s steps to include more justice-oriented stakeholders in their planning processes is a step in the right direction, the lack of their inclusion in the development of the proposed Carbon Plan—a plan that implicates the future of all of North Carolina’s electricity system—is a glaring omission that must be remedied in future dockets.

EJ Intervenors then discuss examples of required outreach and consultation at the international, national, and state levels. The principle of free, prior, and informed consent (“FPIC”), based upon the recognition of tribal sovereignty and right to self-determination, is recognized by the United Nations and by nations across the world. Title VI of the Civil Rights Act of 1964 applies to any “program or activity receiving Federal Financial assistance”⁶ and recognizes both intentional discrimination and disparate

³ Official Transcript Vol. 7, E-100 Sub 179 (Session Date Sept. 13, 2022) pp. 134-41.

⁴ *Id.* at pg. 139.

⁵ *Id.* at pp. 134-38.

⁶ 42 U.S.C. § 2000d.

impact. Disparate impact discrimination occurs when a recipient of federal financial assistance uses a facially neutral policy or practice that has a harmful and disproportionate effect based on race, color, or national origin—intent does not matter. Disparate impacts also include cumulative impacts, or impacts that accrue from multiple projects within one geographic area. Cumulative impacts often aggregate due to the involvement of multiple decision-making authorities, each citing the other for why they cannot act. At the state level, EJ Intervenors cite multiple sections of Governor Cooper's EO246 in support of the need for North Carolina agencies to develop public participation plans informed by stakeholder input.

EJ Intervenors also discuss two examples of recent projects where public participation and environmental justice outreach were particularly concerned. The first is from a November 9th, 2017 report released by the Health Committee of the Lumbee Tribal Council entitled "The Need for a Culturally Relevant Assessment of the Atlantic Coast Pipeline: Summary and Recommendations."⁷ The report summarizes potential impacts from the ACP and how, in many cases, plans were made with limited consultation of impacted communities. In their Responsive Comments, EJ Intervenors also discuss the development of a new liquefied natural gas facility in Robeson County. While initial plans would have required a synthetic minor permit for the facility, plans were amended in such a way where public consultation of any kind was no longer required by law.

⁷ HEALTH COMMITTEE OF THE LUMBEE TRIBE OF N.C., THE NEED FOR A CULTURALLY RELEVANT ASSESSMENT OF THE ATLANTIC COAST PIPELINE: SUMMARY AND RECOMMENDATIONS (Nov. 2017), https://file.ejatlant.org/docs/3547/AdvisoryPanelReport_v5.pdf.

EJ Intervenor include the following recommendations as the Commission considers appropriate next steps, both within this docket and in future ones: In consideration of the requirements of FPIC, Title VI, and EO246, the Commission should consider consulting directly with at-risk communities, or hiring a third party to do so. EJ Intervenor also request the Commission to review the above-cited report published by the Lumbee Tribal Council and to take steps to meaningfully engage all eight state-recognized Tribes in North Carolina. Finally—in recognition that many of the most impacted communities lack reliable access to broadband services and live far away from urban areas—every effort should be made to expand the locations of in person meetings as there is no guarantee that the in-person or virtual meetings will provide for fair treatment and meaningful engagement as defined in the universally accepted definition of environmental justice.

b. Proposed Commission Conclusions

In the development of their Draft Carbon Plan, Duke Energy conducted extensive stakeholder outreach. However, in relation to the development of this Carbon Plan, there was no outreach targeted towards—or accessible to—low-income, minority, or rural communities. We find Duke Energy’s outreach to environmental justice communities in this docket to be inadequate. In the future, when efforts are required to be made to engage stakeholders in planning and decision-making processes, those efforts must also include consultation with impacted environmental justice communities.

In recent years this Commission has seen a large increase in the amount of public participation and comment it receives. While we are encouraged by the increase in public engagement around issues impacting all North Carolinians, these perspectives likely

represent an incomplete picture as there are communities that cannot participate through existing outreach, either by this Commission or by Duke Energy. Rather than assuming these communities' concerns will be otherwise considered, we recognize that only those living in impacted communities can capture the full range of the lived experience.

In future proceedings before this Commission, moving parties will be required to undertake substantive consultations with communities likely to be impacted by the subject-matter of that proceeding. This can be accomplished directly or by hiring a third party. Such consultations must occur early enough to be integrated into the substance of that party's filing. In dockets established by this Commission, standard Commission practice will be to hold no fewer than one impacted community-specific consultation, occurring no later than six months after the start of the proceeding.

In an effort to streamline future impacted community outreach, the Commission orders Duke Energy and the Public Staff to study the implementation of regional coordinating committees as detailed in the Duke University Nicholas Institute's Energy Insecurity in the Southeast Report.

For stakeholder meetings in future proceedings, every effort shall be made to expand the locations of in person meetings in recognition that many of the most impacted communities lack reliable access to broadband services and live far away from urban areas.

The principle of requiring free, prior, and informed consent ("FPIC") from indigenous communities is internationally recognized. Until this docket, this Commission has had very limited engagement with members from North Carolina's eight state-recognized tribes. In future dockets, when implicated by the underlying subject matter,

this Commission will endeavor to meaningfully consult with North Carolina’s tribal communities—including by adopting the FPIC standards for engagement with indigenous peoples.

III. GRID EDGE PROGRAMS AND OPPORTUNITIES FOR COMMUNITY-OWNERSHIP

a. EJ Intervenor’s Comments

EJ Intervenor’s begin by discussing the need to expand Duke Energy’s Grid Edge programming for low- and moderate-income households. There is considerable energy poverty in North Carolina, energy efficiency and Demand-Side Management programs can significantly impact rates of energy poverty within a utilities footprint. EJ Intervenor’s identify and support some of Duke Energy’s proposals within their draft Carbon Plan, including refining eligibility criteria to expand access to income-qualified programs, expanding weatherization offerings across service territories, pursuing an Energy Burden Reduction Pilot program, expanding the Neighborhood Energy Saver program, and the development of an on-tariff financing pilot. EJ Intervenor’s ask the Commission to require clear implementation timelines and metrics to use to analyze projects, ensure their efficient implementation, and determine their potential to be scaled.

EJ Intervenor’s cite a recent report from Duke University’s Nicholas Institute on energy insecurity in the Southeast. They highlight the following recommendations in particular: designing programs specifically for renting households, the expansion of inclusive energy efficiency financing mechanisms (with robust consumer protections), including non-energy benefits in cost effectiveness tests, requiring further data collection and dissemination to determine the true scale of this issue and to monitor the efficacy of

specific programs, and strong procedural protections and payment assistance programs to mitigate harm caused by utility shutoffs.

EJ Intervenor also discuss the need for more opportunities for community participation and ownership of clean energy assets. In particular, they suggest the development of regional coordinating committees as envisaged in the above Nicholas Institute report, allowing for ongoing discussions as subsequent decisions are made. EJ Intervenor also suggest the development of a public “one-stop shop” that outlines eligibility across programs, includes a centralized application, and allows for collaborative program implementation. An awareness campaign targeting at-risk individuals and households is also discussed. EJ Intervenor end by highlighting advancements in program design for community solar and the development of new programs for multi-family housing as two types of programs that allow for a degree of ownership and savings to be realized at the household level.

b. Proposed Commission Conclusions

The Commission is encouraged by Duke Energy’s efforts to create new and innovative programs to reduce energy usage and encourage energy efficiency investments by customers. However, in order to ensure their efficient implementation and to accurately judge their potential to be scaled, the Commission finds good cause to require the development of clear implementation timelines, periods of review, and benchmarks to gauge success for each program. While these metrics may necessarily be altered as a program is developed, they are essential to along for the accurate comparison of disparate programs.

With the passage of the Inflation Reduction Act, the Infrastructure Investment and Jobs Act, and the CHIPS and Science Act, the federal government has committed an unprecedented amount of resources to the energy sector. As regulations continue to be developed, we direct Duke Energy to take all available steps to take advantage of this increase in funding—including by ensuring that utility programs are designed to allow for customer adoption of technologies receiving federal subsidy.

Duke Energy's grid edge programs are widely varied with many different considerations involved. However, in order to increase customer adoption rates, all reasonable efforts should be made to streamline the customer adoption process. For residential customers, we direct Duke Energy to develop a single landing page for all grid edge programs available in that service territory. This landing page shall include a centralized application form that can direct customers to the appropriate program(s) based on the information they submit. Weblinks to appropriate authorities, regulations, implementation guidelines should be included. All reasonable efforts shall be taken to create a similar such landing page for all commercial customers.

With respect to increasing rates of customer adoption of energy efficiency technologies, the Commission directs Duke Energy to study the marginal benefit to increasing program expenditures for public outreach. This study should examine the relationship between the amount of additional savings that could reasonably be expected to be achieved when funding for outreach of a specific program is increased. Efforts should be taken to examine different methods of public outreach, including advertising, in-home mailers, working with community colleges/local universities/non-profit organizations, or hiring a third party.

When it comes to increasing grid edge programming meant to alleviate energy insecurity concerns, much work has already been done. Specifically, we direct Duke Energy to implement, to the extent reasonable and practicable, the Duke University Nicholas Institute’s Energy Insecurity in the Southeast Report. In consideration of the types of households most at-risk, the Commission is particularly interested in new programming for rental and multi-family housing.

IV. BIOFUELS

a. EJ Intervenor’s Comments

EJ Intervenor’s discussion of biofuels begins with their 2007 codification as “renewable resources” for the purposes of North Carolina Renewable Energy and Energy Efficiency Portfolio Standard (“REPS”)—despite falling short on basic definitions of “renewability.” In their Draft Carbon Plan, Duke Energy identifies four projects it has invested in, totaling 28MW of generation capacity. While Duke Energy also describes this resource as having numerous barriers to further development, the passage of the 2021 North Carolina Farm Bill and North Carolina Department of Environmental Quality’s (“DEQ”) subsequent issuance of a general permit suggests that, without further scrutiny by the Commission, biofuels facilities could rapidly expand with limited regulatory oversight or input from impacted communities.

EJ Intervenor then discuss carbon emissions and pollution impacts from the three primary forms of biofuel production present in North Carolina: 1) biogas produced from hog waste; (2) electricity production from the incineration of poultry waste, poultry parts, and wood waste; and (3) export-based wood pellet production.

With the development of hog waste biogas there are several potential points of leakage for both methane and other pollutants. Research shows that installing and operating an anaerobic digester increases the overall amount of methane produced from the facility, the levels of ammonia, hydrogen sulfide, and sulfur dioxide in the air, and the levels of nitrates that may pollute groundwater and residential wells downstream. Throughout the biogas production process there is the potential for leakage; however, the risk of significant carbon emissions comes primarily at the end of the process—either through venting/flaring or through the open storage of digester waste. EJ Intervenors cite numerous sources detailing the health impacts on nearby communities, citing reports from the National Association of Local Boards of Health, the U.S. Center for Disease Control and Prevention, and the National Academy of Sciences.

With respect to electricity generated from the incineration of wood and poultry waste, EJ Intervenors begin by citing a study by the Partnership for Policy Integrity that found such facilities release as much as 50 percent more carbon dioxide than coal plants per megawatt-hour and up to twice as much of other air pollutants, including carbon monoxide, nitrogen oxides, particulate matter, and volatile organic compounds (“VOCs”). EJ Intervenors then discuss their first-hand experience with North Carolina Renewable Power (“NCRP”), a facility that produces energy from burning poultry litter, poultry cake, and wood chips. NCRP has an extensive history of CAA violations, including of emissions limits and repeated failures on monitoring and testing requirements. Despite this history, DEQ issued a new permit to NCRP, retroactively reclassifying the facility as a PSD major source to reflect actual emissions—raising

serious questions as to how impacted community perspectives are considered during the review process.

While DEQ's North Carolina Clean Energy Plan states that the wood pellet industry is not part of the state plan, North Carolina produces more wood pellets than any other state in the nation—belying such a statement. EJ Intervenors include an extensive statement from Andy Wood, Director of the Coastal Plan Conservation Group, detailing the on-the-ground impacts of wood pellet production in Eastern North Carolina and the false carbon accounting required to call wood pellets “renewable” or “carbon-neutral.” Finally, EJ Intervenors cite DEQ's 2020 approval of a permit for Active Energy Renewable Power—over stringent local opposition—as indicative of major problems regarding how North Carolina regulators narrowly review permit applications and do not consider related issues, including untested methodologies, corporate history and financial stability, and cumulative impacts as required by Title VI of the Civil Rights Act.

Duke Energy's choice to include electricity generated from biofuels in its portfolios, no matter how minute, requires the Commission to consider their impact—especially as to carbon emissions. Labeling biofuels as “renewable” for the purposes of the REPS does not change the fact that there are real carbon emissions attendant to the operation of these facilities. Further, considering DEQ's consistently narrow interpretation of its permitting authority and the close relationship between carbon emissions and releases of other types of pollutants from biofuels facilities, EJ Intervenors urge the Commission to consider the on-the-ground pollution impacts being felt by some of North Carolina's lowest-income and highest percentage minority communities.

b. Proposed Commission Conclusions

While biofuels are considered “renewable” for the purposes of the REPS, we find that does not apply to HB951’s mandate to consider all carbon dioxide emissions from the electricity generation sector. Though this Commission’s purview does not extend to agricultural wastes, when those wastes are used to generate electricity the by-products thereof, in particular carbon dioxide, must be considered. Duke Energy’s choice to include electricity generated by biofuels in its generation portfolio, no matter how minute, requires this Commission to consider the effects of their carbon emissions. The Commission finds evidence that the combustion of biogas and biomass most likely results in the release of carbon dioxide into the atmosphere. Absent further showing, these technologies will not be considered “carbon-less” for the purposes of this or future Carbon Plans.

Considering the legacy of environmental justice issues concerning biofuels facilities (biogas and biomass), the Commission finds it appropriate to direct Duke Energy to conduct disparate impact and cumulative impact analyses before seeking approval for such facilities in the future. For such analyses to be deemed sufficient, all reasonable efforts shall be taken to conduct substantive consultations with nearby impacted communities.

V. INTERPRETATION OF TIME REQUIREMENTS WITHIN HOUSE BILL 951

a. EJ Intervenor’s Comments

EJ Intervenor’s begin by citing HB951 benchmark dates of 2030 and 2050 and comparing them to internationally-recognized emissions-reduction target dates that are the same. With the widespread adoption of the same targets, there is a strong implication that the North Carolina General Assembly intended these dates as firm goals and any

exceptions to be narrowly interpreted due to the reputational risk the state would face. The discussion focuses on two key phrases from HB951, “in the event” and “authorizes construction of a nuclear facility or wind energy facility.”

HB951 provides two, specific options that allow the Commission to “exceed the dates specified to achieve the authorized carbon reduction goals by more than two years,” both are prefaced by the clause “in the event.” While there are multiple interpretations of this phrase, the most common requires something to happen, or “a noteworthy happening.” As this the first ever Carbon Plan, no such event could have yet happened—making such a proscriptive finding improper at this time. Another potential interpretation of “in the event” includes a “postulated outcome,” or an outcome that is assumed or claimed to be true. Such an assumption cuts against the core fact-finding nature of the Commission, the clear goals of HB951, and the intent behind the Carbon Plan docket itself.

EJ Intervenors’ discussion of the “authorizes construction” clause begins with a comparison to the historical development of Integrated Resource Plans in North Carolina. While such plans provide a key framework to guide future decisions, they have never “authorized construction” of any generating facility by itself. Further Commission authorization, such as through a Certificate of Convenience and Necessity, is required. HB951 also requires a finding that such a facility (either nuclear or wind) “would require additional time for completion due to technical, legal, logistical, or other factors....” As this is the *initial* Carbon Plan, neither could such authorization have yet been granted nor such a finding have yet been made. Therefore, an extension beyond the dates explicitly included in HB951 would be improper at this time.

b. Proposed Commission Conclusions

HB951's Carbon plan provision explicitly included carbon reduction goals to be attained by the years 2030 and 2050. These goals align with internationally-recognized timelines for carbon reduction needed to avoid the worst impacts of climate change. We find that the General Assembly's choice of these dates was intentional, and that any exception should be read narrowly.

We find that the clause "in the event" within HB951 requires a discreet happening to have occurred in order to be triggered. This may be a finding by this Commission that an extension is required "to maintain the adequacy and reliability of the existing grid," or that the "construction of a nuclear facility or wind energy facility that would require additional time for completion due to technical, legal, logistical, or other factors...." However, no such finding can yet have been made as this is the *initial* Carbon Plan. Therefore, we find that it is inappropriate to consider any plans that extend HB951's deadlines by more than two years at this time.

We find that the Carbon Plan, like the Integrated Resource Plans developed before it, is developed as a key framework to guide future decisions by this Commission—it does not "authorize construction" as the term is used in HB951's exemption clause. Should a new generating facility that is contemplated by the Commission's Carbon Plan be pursued, either by Duke Energy or a third party, such a facility would require a full Certificate of Convenience and Necessity review process at the appropriate time.

Respectfully submitted this the 24th day of October, 2022.

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/s/Ethan Blumenthal
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon all counsel of record as listed in docket E-100, Sub 179 on the Commission's website by email transmission. A copy has also been emailed to briefs@ncuc.net pursuant to the Commission's October 4, 2022 Notice of Due Date for Proposed Orders and/or Briefs.

This the 24th day of October, 2022.

/s/ Ethan Blumenthal
Ethan Blumenthal