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July 9, 2021

VIA Electronic Filing

Antonia Dunston, Interim Chief Clerk
North Carolina Utilities Commission
Dobbs Building
430 North Salisbury Street
Raleigh, North Carolina 27603

**Re: Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's
Motion for Leave to File Supplemental Reply Comments
Docket No. E-2, Sub 1159
Docket No. E-7, Sub 1156**

Dear Ms. Dunston:

Please find enclosed for filing *Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Motion for Leave to File Supplemental Reply Comments* in connection with the above-referenced proceeding.

If you have any questions, please let me know.

Sincerely,

Jack E. Jirak
Deputy General Counsel

Enclosure

OFFICIAL COPY

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**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

**DOCKET NO. E-2, SUB 1159
DOCKET NO. E-7, SUB 1156**

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Joint Petition of Duke Energy Carolinas,)	DUKE ENERGY CAROLINAS, LLC
LLC and Duke Energy Progress, LLC for)	AND DUKE ENERGY PROGRESS,
Approval of Competitive Procurement of)	LLC MOTION FOR LEAVE TO FILE
Renewable Energy Program)	SUPPLEMENTAL REPLY
)	COMMENTS

NOW COMES Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (together, the “Companies”) and hereby respectfully request that the North Carolina Utilities Commission (the “Commission”) grant them leave to file supplemental reply comments within five business days after an order by the Commission allowing supplemental reply comments, in order to respond to (1) new legal arguments raised by the North Carolina Sustainable Energy Association (“NCSEA”) and the Southern Alliance for Clean Energy (“SACE”) in reply comments that could have been raised in initial comments and (2) certain factual inaccuracies asserted by NCSEA regarding the Companies’ “future IRP need” for solar generation that similarly could have been raised in initial comments. In support of this Motion, the Companies show as follows:

1. On June 2, 2021, the Commission issued its *Order Requesting Update*, soliciting comments on the following topics: (1) the most current status of the Transition MW, (2) the need for and appropriate timing of a CPRE Tranche 3, and (3) the parties’ positions on statutory interpretation regarding what must be completed within the 45-month term and what actions the Commission may properly take beyond the 45-month timeframe to ensure that the final procurement target is met. The Commission’s Order

specifically requested initial comments by June 15, 2021 and reply comments by June 30, 2021.

2. On June 15, 2021, the Companies, Public Staff—North Carolina Utilities Commission (“Public Staff”), and Carolina Clean Energy Business Association (“CCEBA”) filed initial comments. NCSEA did not file initial comments. On the same day, SACE filed a petition to intervene. SACE did not, however, also file initial comments or a motion for leave to file initial comments.

3. On June 23, 2021, the Commission granted SACE’s petition to intervene.

4. On June 30, 2021, the Companies, Public Staff, CCEBA, NCSEA, and SACE filed reply comments.

5. Both SACE’s and NCSEA’s reply comments raise new legal arguments and factual assertions that could have been raised in initial comments. Similar to the concerns raised by the Companies in their Supplemental Reply Comments filed on July 1, 2021 in Docket No. E-100, Sub 165,¹ substantial equitable and fairness concerns are raised where parties wait until reply comments to introduce new legal arguments or factual assertions that could have been raised during initial comments. This approach unfairly deprives the Companies (and other parties) of the opportunity to respond to such new legal arguments and factual assertions and undermines the efficiency of the regulatory process by necessitating motions such as this. These concerns are particularly heightened where a party does not even attempt to file initial comments, as is the case for NCSEA and SACE.

¹ See Duke Energy Carolinas, LLC’s and Duke Energy Progress, LLC’s Supplemental Reply Comments, at 4, Docket No. E-100, Sub 165 (filed July 1, 2021).

6. For example, SACE’s reply comments argue for the first time and not in response to any party’s initial comments that the aggregate 2,660 MW amount included in the CPRE Statute² is “a floor and not a ceiling for actual procurement.”³ NCSEA’s reply comments similarly present novel legal arguments regarding the Transition MW concept under the CPRE Statute, N.C. Gen. Stat. § 62-110.8.

7. In addition, NCSEA’s reply comments assert inaccurately that the Companies’ 2019 Integrated Resource Plan Updates “identified 4,142 MW of solar . . . as a needed resource across the two Duke territories in 2020 alone...”⁴ to suggest that the Companies have an immediate and significant “IRP need” for future solar resources to be procured over-and-above the CPRE Program requirements. This assertion also could have been raised in initial comments.

8. NCSEA and SACE had an opportunity to raise these new legal arguments and factual assertions through initial comments as is contemplated by the Commission’s *Order Requesting Update*.⁵ Instead, they have elected to present these arguments for the first time in reply comments, depriving the Companies and other parties of an opportunity to respond and thereby preventing the Commission from having a complete record on which to base a decision.

9. The Companies submit that they will be prejudiced without a fair opportunity to respond to these new legal arguments and factual assertions raised by

² N.C. Gen. Stat. § 62-110.8

³ SACE Reply Comments, at 5.

⁴ NCSEA Reply Comments, at 3-4.

⁵ Ordering Paragraphs (1) and (2) of the *Order Requesting Update* state “(1) That on or before June 15, 2021, Duke and the Public Staff shall file initial comments responding to the topics enumerated herein and any other party hereto may also file initial comments responsive to the enumerated questions; and (2) That on or before June 30, 2021, parties may file reply comments.”

NCSEA and SACE in reply comments that could have been raised in initial comments, and that the Commission will also be prejudiced in that it will be forced to evaluate the need for and appropriate timing of a CPRE Tranche 3 without the Companies' response to these new comments raised for the first time through reply comments.⁶

10. The Commission has recently granted the Companies' similar request to file supplemental reply comments in response to new materials and purported reply comments that relied upon those new materials. *See Order Granting Motion to File Supplemental Reply Comment*, Docket No. E-100, Sub 165 (June 21, 2021).

WHEREFORE, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC respectfully request that the Commission grant their motion and allow them to file supplemental reply comments within five business days after an order by the Commission allowing supplemental reply comments, responding to new arguments raised in reply comments filed by NCSEA and SACE.

⁶ Notwithstanding the clear prejudice to the Companies due to these parties filing their positions for the first time in reply comments, the Commission may have sufficient information to determine that the proposed resolution recommended by the Companies, and supported by the Public Staff, that the Companies should address the need for, timing and size of a planned Tranche 3 procurement in its upcoming 2021 CPRE Program Plan, is appropriate. *See DEC/DEP Reply Comments*, at 2, 14-15; *Public Staff Reply Comments*, at 2.

Respectfully submitted, this the 9th day of July, 2021.

/s/E. Brett Breitschwerdt

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*Counsel for Duke Energy Carolinas, LLC
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Motion for Leave to File Supplemental Reply Comments as filed in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156, was served via electronic delivery or mailed, first-class, postage prepaid, upon all parties of record.

This, the 9th day of July, 2021.

/s/E. Brett Breitschwerdt

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