



434 Fayetteville Street
Suite 2800
Raleigh, NC 27601
Tel (919) 755-8700 Fax (919) 755-8800
www.foxrothschild.com

BENJAMIN L. SNOWDEN
Direct No: 919.719.1257
Email: bsnowden@foxrothschild.com

October 24, 2022

Ms. A. Shonta Dunston
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street, Room 5063
Raleigh, NC 27603

Via Electronic Submittal

RE: *In the Matters of*
Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC, Joint Petition
for Approval of Competitive Procurement of Renewable Energy Program
Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC,
2022 Solar Procurement Pursuant to Session Law 2021-165, Section 2(c)
NCUC Dockets: E-2, Sub 1159; E-2, Sub 1297; E-7, Sub 1156; E-7, Sub 1268

Dear Ms. Dunston:

Pursuant to Rule RI-7 of the North Carolina Utility Commission's Rules of Procedure, enclosed please find Clean Power Suppliers Association and Carolinas Clean Energy Business Association's Motion for Leave to File Supplemental Comments and Supplemental Comments Regarding CPRE Petition for filing in the above-referenced NCUC dockets.

If you should have any questions concerning this filing, please do not hesitate to contact me. Thank you for your assistance.

Yours truly,
/s/ Benjamin L. Snowden
Benjamin L. Snowden
Counsel for
Clean Power Suppliers Association

cc: Counsel and Parties of Record
NC Public Staff

139293002.1

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 Virginia Washington

OFFICIAL COPY

Oct 24 2022

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1159
DOCKET NO. E-2, SUB 1297
DOCKET NO. E-7, SUB 1156
DOCKET NO. E-7, SUB 1268

In the Matter of Duke Energy)
Progress, LLC, and Duke Energy)
Carolinas, LLC, Joint Petition for)
Approval of Competitive Procurement of)
Renewable Energy Program)
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))

CLEAN POWER SUPPLIERS
ASSOCIATION AND CAROLINAS
CLEAN ENERGY BUSINESS
ASSOCIATION'S
MOTION FOR LEAVE TO FILE
SUPPLEMENTAL COMMENTS

MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMMENTS

Pursuant to Rule RI-7 of the North Carolina Utility Commission's ("Commission's") Rules of Procedure, Clean Power Suppliers Association ("CPSA") and Carolinas Clean Energy Business Association ("CCEBA") (collectively, "Movants") hereby file this Motion For Leave to File Supplemental Comments ("Motion") in the above-referenced proceeding. Proposed Supplemental Comments are attached. In support of their Motion, Movants state as follows:

1. On September 1, 2022, Duke filed a petition informing the Commission that the CPRE Program is 441 MW short of meeting the goal established by N.C.G.S. § 62-110.8 and requesting the Commission's approval to procure the CPRE Program capacity shortfall through the 2022 Solar Procurement ("2022 SP"), and to extend the CPRE Program PPA term and waive certain provisions of Commission Rule R8-71 ("CPRE Petition").

2. On September 23, 2022, the Commission issued an Order Requesting Comments responsive to the following topics: "the solar resource procurement target for

the 2022 Solar Procurement” and “Duke’s request to procure the CPRE Program capacity shortfall through the 2022 Solar Procurement, to extend the CPRE Program PPA term, and for waiver of certain provisions of Commission Rule R8-71.” (September 23 Order) The September 23 Order directed the parties to file responsive comments by October 4 and directed Duke to file reply comments by October 12.

3. Movants, Public Staff, and CLEAN Intervenors (Southern Alliance for Clean Energy, the Sierra Club, the Natural Resources Defense Council, and the North Carolina Sustainable Energy Association) filed comments on October 4. Duke filed reply comments on October 12.

4. In its comments, the Public Staff recommends that at least 400 MW of solar generation resources from the 2022 SP should be located in Duke Energy Carolinas (“DEC”) service territory. In its reply comments on October 12, Duke accepts this recommendation.

5. The question of whether any capacity in the 2022 SP should be allocated to DEC or DEP was not raised in the CPRE Petition. Because of the comment schedule established in the September 23 Order, Movants have not had the opportunity to respond to the Public Staff’s request.¹

6. On October 17, the Public Staff filed a Proposed Notice of Decision (“Proposed NOD”), “to be considered in conjunction with the Public Staff’s comments that were filed separately on October 4, 2022 in these dockets.” The Proposed NOD provides

¹ Public Staff witness Jeff Thomas referenced the requested DEC allocation in his Direct Testimony in the Carbon Plan docket (docket no. E-100, Sub 179). However, Mr. Thomas’s testimony was filed the same day as Movants’ testimony in that docket, and so Movants have not had an opportunity to fully respond to the Public Staff’s proposal.

additional arguments and evidence relating to its proposed DEC allocation. The Public Staff filed a letter requesting to withdraw the Proposed NOD on October 19.

7. Intervenors have had no opportunity to respond to the arguments and evidence raised by the Public Staff in its October 4 Comments and in its Proposed NOD. For the reasons stated in the proposed Supplemental Comments, the Public Staff's proposal to require 400 MW of the 2022 SP to be allocated to projects in DEC would have severe negative consequences that should be considered by the Commission in addressing the CPRE Petition.

8. Intervenors' Supplemental Comments address only the Public Staff's proposal to allocate 2022 SP capacity to DEC, to which Movants have not had the opportunity to file a response. Movants do not seek to respond to the Public Staff's or Duke's Comments on the target procurement volume for the 2022 Solar Procurement or on any other issue.

WHEREFORE, for the reasons set forth herein, Movants respectfully request that the Commission grant their Motion for Leave to File Supplemental Comments and accept the attached Supplemental Comments for consideration in this proceeding.

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

[Signature block on following page]

FOX ROTHSCHILD LLP

/s/ Benjamin L. Snowden

Benjamin L. Snowden

NC State Bar No. 51745

434 Fayetteville Street, Suite 2800

Raleigh, NC 27601

Telephone: 919-719-1257

bsnowden@foxrothschild.com

*Counsel for Clean Power Suppliers
Association*

CAROLINAS CLEAN ENERGY
BUSINESS ASSOCIATION

/s/ John D. Burns

John D. Burns

General Counsel

N.C. Bar No. 24152

811 Ninth Street

Suite 120-158

Durham, NC 27705

919-306-6906

counsel@carolinasceba.com

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1159
DOCKET NO. E-2, SUB 1297
DOCKET NO. E-7, SUB 1156
DOCKET NO. E-7, SUB 1268

In the Matter of Duke Energy)	
Progress, LLC, and Duke Energy)	
Carolinas, LLC, Joint Petition for)	
Approval of Competitive Procurement of)	SUPPLEMENTAL COMMENTS OF
Renewable Energy Program)	CLEAN POWER SUPPLIERS
)	ASSOCIATION AND CAROLINAS
In the Matter of:)	CLEAN ENERGY BUSINESS
Duke Energy Progress, LLC, and Duke)	ASSOCIATION
Energy Carolinas, LLC,)	
2022 Solar Procurement Pursuant to)	
Session Law 2021-165, Section 2(c))	

SUPPLEMENTAL COMMENTS REGARDING CPRE PETITION

Intervenors Clean Power Suppliers Association (“CPSA”) and Carolinas Clean Energy Business Association (“CCEBA”) (collectively, “Intervenors”) respectfully submit these Supplemental Comments in response to Comments of the Public Staff filed on October 4, 2022; and the Proposed Notice of Decision (“Proposed NOD”) filed by the Public Staff on October 17, 2022, and withdrawn on October 19, 2022. These Supplemental Comments address the Public Staff’s proposal to allocate at least 400 MW of the 2022 Solar Procurement volume to projects located in Duke Energy Carolinas (“DEC”) service territory

Proposed 400 MW DEC Allocation

In their October 4 Comments and in the Proposed NOD, the Public Staff advocates allocating at least 400 MW of solar generation resources from the 2022 Solar Procurement to resources located in DEC’s service territory. The Public Staff argues that this is

consistent with the DEC-only allocation of CPRE Tranche 3, stating that the purpose of allocating Tranche 3 entirely to DEC projects was “to facilitate [the] diversification of siting and to increase DEC’s solar penetration relative to load.”² This characterization is incorrect and is not supported by the documents cited by the Public Staff.

As described in the Commission’s December 20, 2021 *Order Determining Adjusted CPRE Program Procurement Target, Requiring Tranche 3 CPRE Program Procurement Solicitation, Approving Resource Solicitation Cluster, and Requiring Responses to Commission Questions Regarding Pro Forma PPA* in docket nos. E-2 Sub 1159 and E-7 Sub 1156 (Dec. 2021 Order), stakeholders (including Duke, the Public Staff, CCEBA, NCSEA, and the members of CPSA) agreed to a DEC-only procurement for Tranche 3 primarily because it would not have been feasible to conduct *two* Resource Solicitation Cluster studies (one each for DEC and DEP) in the limited time available to conduct Tranche 3 (which needed to be completed between the Transitional Cluster Study and the commencement of the first DISIS study).³ It was administrability, not Duke’s resource needs or the diversification of siting, that drove the DEC-only procurement in Tranche 3. This DEC-only allocation in no way supports the Public Staff’s proposal to allocate at least 400 MW of projects in the 2022 SP to DEC – and in fact, the DEC-only allocation of Tranche 3 may have been a contributing factor in its failure to procure anything close to its target volume.

Duke agrees to the Public Staff’s proposed allocation, stating that the “recommended minimum allocation is reasonable to promote least cost geographic diversification in this expanded resource procurement and to spread the cost of the 2022

² Public Staff Oct. 4 Comments at ¶ 10 (p. 5).

³ Dec. 2021 Order at 3-4.

SP procurement between the Companies.” Duke Reply Comments at 10. However, Duke warns that “with only approximately 850 MW of bids in DEC versus 4,050 MW in DEP, this minimum allocation by utility approach **could result in relatively higher priced projects being selected in DEC to fulfill a minimum 400 MW DEC requirement** due to the relatively fewer projects located in DEC and the still-unknown potential for significant assigned upgrade cost.” *Id.* at 11 (emphasis added).

Movants are sensitive to the problem of allocating costs between DEC and DEP, and agree that there are benefits to the geographical diversification of solar projects. However, implementing the DEC allocation proposed by the Public Staff in the 2022 SP is ill-advised, as it would increase the cost of the procurement and could have other damaging consequences, up to and including failure of the 2022 SP to hit its procurement targets.

The most obvious problem with the Public Staff’s proposal is that it is likely to result in a significant cost increase for the 2022 SP. As Duke states in its reply comments, only 850 MW of bids have been received in DEC for the 2022 SP, versus 4050 MW in DEP. While 400 MW represents only the most competitive 10% of projects in DEP, in order to procure 400 MW in DEC Duke would have to take every project in the bottom half of the bids (and perhaps more if projects drop out). Given the far more robust market response to the RFP in DEP territory, it is also likely that DEC bids are, on average, more expensive than DEP bids.⁴ If this proves true, this will further increase costs of the DEC allocation. Having testified repeatedly in the Carbon Plan regarding their concern about

⁴ It is worth noting in this respect that the average pricing of DEP proposals in CPRE Tranche 1 (\$31.24/MWh) was approximately 18% lower than the average pricing of DEC proposals (\$36.93). *CPRE Independent Administrator’s Report - Conclusion of Step 2 Evaluation and Selection of Proposals*, Docket Nos. E-2, sub 1159 and E-7, sub 1156 (Apr. 9, 2010) at 1. The average pricing of CPRE Tranche 2 and 3 proposals has not been publicly reported.

the potential costs of solar procurements—including, in particular, the potential for larger procurements to require less competitive projects to be selected⁵—Duke and the Public Staff now advance a proposal that is virtually certain to increase costs for ratepayers.

If, as expected, a 400 MW DEC allocation were to significantly increase bid costs, this could trigger a downward adjustment of the procurement volume under the Volume Adjustment Mechanism, decreasing the overall size of the procurement with no benefit to customers.⁶ A 400 MW DEC allocation could also make the already-difficult problem of allocating Upgrade costs to RFP projects even more complex. If Duke continues on its current course of allocating the cost of major Upgrades (including the Red Zone Upgrades) based on the DISIS phase 2 study results, this may result in the costs of any major Upgrades required in DEC or DEP being allocated to an even smaller set of projects, making the apparent cost of those projects even higher. Unless there are at least 400 MW of projects in the DEC RFP that do not require significant transmission upgrades—which seems unlikely, given the small number of DEC projects in the RFP—a 400 MW DEC procurement is likely to either fail or select some projects with outsized apparent costs. A reduction in the ability of DEP projects to share Upgrade costs would also increase the apparent cost of those projects (which under the VAM might result in further reductions of the target volume).

It is also concerning that no proposed DEC/DEP allocation was included in the 2022 RFP documents or otherwise communicated to participants before bidding closed on the RFP. If Duke intends to address the DEC/DEP cost allocation issue through

⁵ Docket no. E-100, Sub 179, Tr. Vol. 8, 94 (hearing testimony of Mr. Snider).

⁶ If future procurements include utility-specific allocations and some version of a VAM, both the VAM and the Solar Reference Cost (if one is utilized) should be specific to DEC and DEP, given the likelihood that solar development costs may differ significantly in the two utilities' territories.

procurements of specific RFP volumes by each utility, it should do so in subsequent procurements, so that bidders can consider this in developing projects and formulating bids. After the 2022 RFP, Duke and the Commission will also have more complete information about relative DEC/DEP project pricing, assuming that is provided by Duke. Furthermore, after the 2022 RFP there may be additional clarity regarding the treatment of and allocation of costs for the RZEP.

Given these factors, and the likelihood that a 400 MW DEC RFP allocation for the 2022 SP will drive up costs and have other negative impacts, the Commission should reject the Public Staff's proposal to allocate a minimum of 400 MW of capacity to DEC in the 2022 SP.

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

FOX ROTHSCHILD LLP

/s/ Benjamin L. Snowden

Benjamin L. Snowden
NC State Bar No. 51745
434 Fayetteville Street, Suite 2800
Raleigh, NC 27601
Telephone: 919-719-1257
bsnowden@foxrothschild.com
*Counsel for Clean Power Suppliers
Association*

CAROLINAS CLEAN ENERGY BUSINESS
ASSOCIATION

/s/ John D. Burns

John D. Burns
General Counsel
N.C. Bar No. 24152
811 Ninth Street
Suite 120-158
Durham, NC 27705
919-306-6906
counsel@carolinasceba.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing jointly filed Motion for Leave to File Supplemental Comments and Supplemental Comments have been served upon parties and counsel of record in NC Utilities Commission Docket Nos. E-2, Sub 1159, E-2, Sub 1297, E-7, Sub 1156, and E-7, Sub 1268 and on NC Public Staff by electronic mail, or by depositing same in the United States mail, postage prepaid.

This the 24th day of October, 2022.

/s/ Benjamin L. Snowden
Benjamin L. Snowden