

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

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

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Duke Energy Progress, LLC, and Duke)	COMMENTS OF THE PUBLIC STAFF
Energy Carolinas, LLC, 2022 Solar)	
Procurement Pursuant to Session Law)	
2021-165, Section 2(c))	

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and responds to the Commission’s May 26, 2022 Order Authorizing a Competitive Procurement of Solar Resources Pursuant to House Bill 951 and Establishing Further Procedures (May 26 Order) and provide commentary on the Commission’s questions included in its June 1, 2022 Order Requiring Answers to Commission Questions (June 1 Order).

BACKGROUND

1. On January 10, 2022, Duke Energy Carolinas, LLC (DEC) and Duke Energy Progress, LLC (DEP) (collectively, Duke or the Companies) filed a letter in Docket No. E-100 Sub 179 (Carbon Plan Docket), providing the Commission and interested stakeholders notice that that the Companies intended to engage with stakeholders on the potential 2022 solar procurement process set out in Part I, Section 2(c) of Session Law 2021-165 (HB 951).

2. On March 8, 2022, Duke filed its 2022 Solar Procurement Stakeholder Engagement Meeting 3 Update and Plans for the 2022 Solar Procurement Plan in the Carbon Plan Docket.

3. On March 11, 2022, the Commission issued an Order Opening Separate Dockets and Establishing Procedural Deadlines for the purpose of considering whether a 2022 Solar Procurement is warranted consistent with HB 951.

4. On March 14, 2022, Duke filed a Petition for Authorization of 2022 Solar Procurement Program, which seeks Commission authorization of a system-wide competitive procurement of a minimum of 700 megawatts (MW) of utility-owned and third-party solar capacity.

5. The Commission's May 26 Order: (1) authorized the Companies to commence a system-wide competitive procurement seeking a minimum of 700 MW of utility-owned and third-party solar energy resources subject to other terms and conditions to be contained in the final, Commission-approved RFP [Request for Proposal] and pro forma PPA [Power Purchase Agreement]; (2) required Duke to file its proposed RFP, including a PPA Re-Pricing Mechanism, and pro forma PPA by June 1, 2022; and (3) allowed the parties to file comments pertaining to the proposed RFP and pro forma PPA by June 3, 2022.

6. The Commission then issued the June 1 Order, requiring Duke to respond to the following questions:

1. Confirm that the System Upgrades will be taken into account when evaluating the cost-effectiveness of bids and ranking

the bids for the 2022 procurement, and provide an explanation how the costs will be evaluated.

2. Identify any System Upgrade projects that will be included in the baseline for the 2022 DISIS [Definitive Interconnection System Impact Study] that: i) were identified in the TCS [Transition Cluster Study]; ii) were referenced in the Carbon Plan or the 2022 NCTPC [North Carolina Transmission Planning Collaborative] Study Scope Document; or iii) were previously identified as network upgrades that would have been assigned to an interconnection customer.
3. For any System Upgrade projects identified in the answer to Question 2, explain how including the identified upgrades in the baseline for the 2022 DISIS will impact the 2022 procurement process, paying particular attention to whether such inclusion has the potential to impact the cost-effectiveness of bids.

The June 1 Order concluded by allowing parties to include commentary on the Commission's questions along with their comments filed pursuant to the May 26 Order and notifying the parties that the Commission will issue an order regarding the RFP and pro forma PPA no later than June 17, 2022.

Response to the Commission's May 26 Order

7. A significant amount of stakeholder input and collaboration was undertaken to arrive at the filed RFP, and all parties agree that a 2022 solar RFP is necessary to meet the Carbon Plan goals in a least cost manner. Therefore, the Public Staff generally supports the RFP and pro forma PPA as filed.

8. The development process for the 2022 Solar RFP has been ongoing for some time, beginning in January 2022 with Duke's January 10, 2022, filing of its Planned Stakeholder Engagement & Procedural Plans for Potential Commission-Directed 2022 Solar Procurement in Docket No. E-100, Sub 179. The

Public Staff has been diligently engaged with the Companies and intervenors since that time, meeting independently with Duke and potential market participants in addition to the stakeholder meetings on January 20, February 7, February 25, and April 18.

9. During this time frame, the Public Staff has continued to advocate for strong and reasonable ratepayer protections that will ensure the Carbon Plan satisfies its carbon reduction goals and its least cost mandate. The end result of these negotiations has been several ratepayer protections that have been included in the final RFP, including: (1) the volume adjustment mechanism (RFP at 2); (2) a notice in the RFP that the final allocation between DEC and DEP will be decided by the Commission (RFP at 2); (3) proposal size flexibility (RFP at 11); inclusion of the “increase in interconnection cost reallocation” in the development risk score (RFP, Appendix F); (4) limits on the amount and cost-effectiveness of projects eligible for awards after Step 1 of the Definitive Interconnection System Impact Study (DISIS) (RFP at 18); (5) the consideration of Affected System Studies (RFP at 19); (6) a Winner’s Fee structured to recover all Independent Evaluator costs (RFP at 20); and (7) a provision allowing for limited termination rights, should the transmission upgrade costs exceed the DISIS Phase 2 estimates by 125% or more (RFP, Attachment B, at 35). The Public Staff believes these measures, in addition to the scope of the IE and the RFP evaluation structure, strike an appropriate balance between controlling ratepayer costs and progressing towards the interim 70% carbon reduction goal.

10. During these stakeholder discussions, the Public Staff has voiced its concerns that the RFP differs from the Competitive Procurement of Renewable Energy (CPRE) program in that the RFP does not have an avoided cost cap set by statute. The Public Staff felt that an avoided cost cap might still be appropriate to implement to ensure the Carbon Plan is least cost. However, upon discussions with stakeholders, the Public Staff is satisfied that the existing cost control measures in the RFP will protect ratepayers. While an avoided cost cap might provide additional protection, the Public Staff notes that CPRE was enacted before HB 951 was passed, and at the time, no carbon reduction goal was in effect. Now that there is a carbon reduction goal, the administratively determined avoided cost may not be the best measure for determining the “least cost” Carbon Plan. In addition, forcing the 2022 RFP resources to be capped at avoided cost without statutory support could make meeting HB 951’s carbon reduction goals more difficult, as solar would be the only carbon-free resource currently subject to such a cap, and the Public Staff is unaware of any thermal resource subject to an avoided cost cap. Thus, the Public Staff, after much discussion, negotiated the cost control measures previously described in lieu of an avoided cost cap to ensure that all carbon-free and low-carbon resources necessary to meet HB 951’s carbon reduction goals were being evaluated on a level playing field. In addition, the cost control measures in place for the 2022 RFP could easily be applied to future RFPs, regardless of the technology sought to be procured. However, the Public Staff’s support for the terms of the 2022 Solar RFP and pro forma PPA at this time should not be construed as support for the same terms in future Carbon Plan related

procurement RFPs. The Public Staff intends to learn from this RFP process and make adjustments to future RFPs.

11. In its initial comments and in comments submitted to Great Plains Institute (GPI), the Public Staff suggested increasing the minimum volume and the target volume in order to more efficiently consider and estimate transmission upgrade costs. At the current time, the Public Staff has no reason to believe that the 700 MW minimum volume is insufficient to elicit a substantial and competitive market response.¹ The Public Staff has raised concerns about redundant transmission upgrades that could result from reactive, piecemeal transmission planning, and plans to address the appropriate target volume in its comments on the Carbon Plan, in Docket No. E-100, Sub 179, for a Commission decision on or before November 1, 2022.

12. The determination of final RFP volume will depend on the evidence presented during the Carbon Plan proceedings and parties' initial and reply comments, and potentially testimony filed for a possible evidentiary hearing in September 2022. The Public Staff notes that based on the proposed timeline included in the RFP (at 9), Step 2 Proposal Security will be required (and any Step 1 winners announced) on November 29, 2022. Thus, if the Commission issues an order approving the final procurement volume and allocation between DEC and

¹ The intervenor comments calling for a higher minimum volume generally cited difficulty meeting HB 951's goals, rather than a lack of developer interest. Initial comments of the AGO at 3; SACE et al at 5; CPSA and CCEBA at 4. NCSEA is the only party to suggest that the floor may be insufficient to "enable enough competition", at 4.

DEP on or about November 1, 2022, as requested by Duke, it should give market participants sufficient time to decide whether or not to proceed to Step 2.

13. The Public Staff also wishes to highlight that only 50% of the project score is dependent on pricing, and the transmission cost reallocation risk for interdependent and contingent projects is highly uncertain. As such, it is likely that the portfolio of projects selected will not consist solely of least-cost projects. Some lower cost projects may be eliminated in favor of higher cost projects, if the lower cost project is deemed to have inordinate development risk that could result in significantly higher transmission upgrade costs. It may be that selecting higher cost, lower risk projects will still lead to the least cost Carbon Plan. The Public Staff finds the scoring rubric and the balancing of cost and risk to be acceptable in this RFP.

14. The Public Staff does not object to a 25-year PPA or the structure of the Utility Ownership Track proposals.

15. The Public Staff supports the repricing mechanism, as described in the RFP. This repricing mechanism is designed to capture savings from any potential extension of the federal investment tax credit. The Public Staff does want to identify the risk that the ongoing U.S. Department of Commerce Antidumping and Countervailing Duties investigation of crystalline silicon photovoltaic cells from southeast Asia² may result in tariffs which would significantly increase the cost of solar panels to all solar developers. Depending on the timing and outcome of this

² See Department of Commerce Docket No. A-570-979, C-570-980.

investigation, it may have significant impacts on the viability of the 2022 RFP, particularly if the repricing mechanism does not allow for price increases to reflect any tariffs imposed on imported solar panels. The Public Staff recognizes that some projects that are selected early after Phase 1 may not be able to refresh their bids. However, the Public Staff believes that this could be an effective incentive to find open capacity on the transmission system. Further, given the limitations on the amount of capacity that can receive an early award, and the required cost competitiveness, the Public Staff finds this to be a reasonable risk. This early award process may be revisited in future procurements

16. The Public Staff is appreciative of the Commission's attention to the rate disparity between DEC and DEP and looks forward to additional discussions with the Companies on how to address this in the Carbon Plan and in future cost recovery proceedings. This is a critical issue and will weigh heavily on the Public Staff while developing its position. Unaddressed, this issue has the potential to become even more pronounced going forward, as the draft Carbon Plan anticipates significantly higher rate increases for DEP customers through 2035 in all portfolios, causing financial hardship not only for existing DEP customers, but threatening the future economic development viability within DEP's service territory.³

³ See Duke's Carbon Plan, filed May 16, 2022 in Docket No. E-100, Sub 179, table 3-3.

Response to the Commission's June 1 Order

17. As an initial matter, the Public Staff is supportive of proactive, long-range transmission planning, which can reduce costs to ratepayers relative to the reactive process currently followed for generator interconnections. The Public Staff has attached as Exhibit A a publicly available document summarizing DEC and DEP transmission projects that may be part of the Companies' transmission expansion plan to solve "red zone" constraints.

18. Upgrades that are currently identified in Duke's 10-year transmission plan, which largely covers reliability and adequacy should be included in the 2022 DISIS baseline.⁴ The Public Staff also wishes to address Commission questions 2 and 3 from its June 1 Order.

19. In response to question 2, the Public Staff is hesitant to recommend that the \$560 million of transmission upgrades identified in Exhibit A and discussed in the Carbon Plan Appendix P be included in the 2022 DISIS baseline.⁵ The Public Staff has not had sufficient time to investigate these proposed upgrades and the amount of solar that is anticipated to be enabled by these upgrades as the Public Staff was only made aware of Duke's plan to construct these upgrades and include them in the baseline for the 2022 DISIS about a month ago and well into the RFP negotiation process. In addition, the Public Staff's preliminary investigation has

⁴ See Duke's most currently approved IRP, Docket No. E-100, Sub 165.

⁵ It is unclear at this time if these upgrades are accounted for in the Carbon Plan's projected rate impacts. These upgrades further illustrate the disparity in the aggregate costs of each Company's projected transmission investments that will lead to an even larger rate disparity in the future.

found that approximately 40% of the proactive upgrades listed in Exhibit A were not identified in the Transitional Cluster Study Phase 1 results.⁶ As a result, the Public Staff cannot agree that these transmission upgrades are truly “least regrets” at this time. Therefore, the Public Staff believes it may be premature to include these upgrades into the 2022 DISIS baseline and cannot support construction of these upgrades without completing further due diligence.⁷ The most cost effective projects and necessary transmission upgrades should then be identified per the RFP guidelines. To the extent that the 2022 DISIS process identifies transmission upgrades that are included in the long term plan, this would serve as additional validation that the proposed \$560 million investment, or part of the total proposed investment, would serve as a least regrets approach, and may be appropriate for inclusion in the 2023 DISIS baseline.

20. In response to question 3, the Public Staff notes that ultimately, ratepayers will pay for the required transmission upgrades to implement the Carbon Plan – whether they are reactive and based on generator interconnection requests, or proactive and based on regional transmission planning collaboratives and long-range transmission studies. It is possible that a transmission upgrade identified through the proactive process may benefit certain individual projects and

⁶ DEC and DEP’s Transition Cluster Study Phase 1 results under Generator Interconnection Information, Generator Study, Transition Cluster folder. DEC: <https://www.oasis.oati.com/duk/> DEP: <https://www.oasis.oati.com/cpl/>

⁷ To the extent Duke proceeds with these upgrades, the Public Staff’s recommendations for Carbon Plan portfolios that include these upgrades in the baseline or CPCNs for projects interconnecting to these upgraded lines should not preclude the Public Staff from disputing or the Commission from denying complete or partial cost recovery of these transmission upgrade in the next DEC or DEP general rate case.

developers more than others, depending on project location. However, the primary purpose of such proactive upgrades is to reduce overall costs to consumers. It would be nonsensical for consumers to pay for proactive transmission upgrades designed to facilitate zero or low carbon generator interconnections for carbon plan compliance, and then later disadvantage the very same projects seeking to utilize those upgrades by assigning them the cost of the proactive upgrades. The worst possible outcome would be for Duke to invest millions of dollars in proactive transmission upgrades, and then in future zero or low carbon resource procurements for carbon plan compliance fail to select any projects seeking to interconnect to these proactive upgrades.

Respectfully submitted this the 3rd day of June, 2022.

PUBLIC STAFF

Christopher J. Ayers
Executive Director

Lucy Edmondson
Interim Chief Counsel

Electronically submitted
/s/ Robert B. Josey
Staff Attorney

4326 Mail Service Center
Raleigh, North Carolina 27699-4326
Telephone: (919) 733-0975
Email: robert.josey@psncuc.nc.gov

CERTIFICATE OF SERVICE

I certify that a copy of these Initial Comments of the Public Staff has been served on all parties of record or their attorneys, or both, in accordance with Commission Rule R1-39, by United States Mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 3rd day of June, 2022.

Electronically submitted
/s/Robert B. Josey
Staff Attorney