

**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
Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC, Joint Petition for Approval of Competitive Procurement of Renewable Energy Program) ORDER ACCEPTING CPRE PROGRAM PLAN, CONCLUDING CPRE PROGRAM, AND GRANTING WAIVER OF COMMISSION RULES R8-71(g) AND R8-71(h)

BY THE COMMISSION: Pursuant to N.C. Gen. Stat. § 62-110.8, the Commission is tasked with oversight of the Competitive Procurement of Renewable Energy Program (CPRE Program) designed and implemented by Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP and collectively with DEC, Duke) for the competitive procurement and development of an aggregate amount of 2,660 megawatts (MW) of renewable energy facilities in North Carolina over a period of 45 months, which commenced on February 21, 2018, and concluded on November 21, 2021 (CPRE Program Procurement Period).

Pursuant to N.C.G.S. § 62-110.8, Duke was required to solicit a total of 6,160 MW of renewable energy through a combination of (1) CPRE Program procurement solicitations (CPRE MW), and (2) the execution of power purchase agreements (PPAs) for renewable energy capacity within the DEC and DEP balancing authority areas that are not subject to economic dispatch or curtailment and were not procured pursuant to the Green Source Advantage program authorized under N.C.G.S. § 62-159.2 (Transition MW). Under N.C.G.S. § 62-110.8(a) and (b)(1), 2,660 MW of this 6,160 MW total was targeted to be procured through the CPRE Program, and the remaining 3,500 MW was targeted to be Transition MW.

Section 62-110.8(h)(1) further directed the Commission to adopt rules to facilitate the CPRE Program. On November 6, 2017, the Commission adopted Commission Rule R8-71.

Between 2018 and 2021, the Commission oversaw Duke's implementation of Tranches 1 and 2 of the CPRE Program, which resulted in the procurement of 1,185 MW. On November 21, 2021, the 45-month CPRE Program Procurement Period ended.

On December 20, 2021, the Commission directed DEC to target 596 MW in a CPRE Tranche 3 in order to fully meet the procurement requirements under N.C.G.S. § 62-110.8.4. On January 5, 2022, DEC issued the CPRE Tranche 3 Request for

Proposals (RFP) seeking to procure 596 MW. The bid window for CPRE Tranche 3 closed on February 3, 2022. Only two projects totaling 155 MW completed the Tranche 3 bid evaluation process and entered into contracts with DEC.

At the close of Tranche 3, Duke identified 441 MW of unawarded CPRE Program MW relative to the target CPRE Program MW total. On November 1, 2022, the Commission directed Duke to pursue procuring the CPRE Program 441 MW-shortfall through a successor solar procurement program, but further concluded that “regardless of whether the CPRE MW shortfall is procured in total through the 2022 Solar Procurement, the CPRE Program will be closed out upon the conclusion of the 2022 Solar Procurement.” Order Permitting Additional CPRE Program Procurement and Establishing Target Procurement Volume for the 2022 Solar Procurement, at 7, Docket Nos. E-2, Subs 1159 and 1297, and E-7 Subs 1156 and 1268 (Nov. 1, 2022). On June 30, 2023, Duke notified the Commission that it had contracted with 286 MW of controllable CPRE Program solar resources through the 2022 Solar Procurement.

On September 1, 2023, Duke filed a motion requesting that the Commission formally close or discontinue the CPRE Program and discontinue the planning and reporting requirements established by the Commission in Commission Rule R8-71 Subsections (g) and (h) because the CPRE Program procurement implementation phase has concluded (Motion).

Also on September 1, 2023, Duke filed its annual CPRE Program Plan (September 1, 2023 CPRE Program Plan) pursuant to Commission Rule R8-71(g) in the above-captioned docket.

In response to the Commission’s request for comments on Duke’s Motion and the September 1, 2023 CPRE Program Plan, the Public Staff along with Carolinas Clean Energy Business Association (CCEBA) and the North Carolina Sustainable Energy Association (NCSEA), filing jointly, filed comments responsive to the Motion. Duke also filed reply comments.

SUMMARY OF THE PLEADINGS

Duke’s Motion

Duke’s Motion seeks relief from the Commission in two ways. First, Duke requests that the Commission “formally close or discontinue” the CPRE Program. Second, Duke requests that the Commission “discontinue the planning and reporting requirements established by the Commission in Commission Rule R8-71 Subsections (g) and (h) because the CPRE Program procurement implementation phase has now concluded.” Duke’s Motion further notes that it will continue to procure new solar resources identified as needed in the Commission’s Carbon Plan under the procurement framework established by N.C.G.S. § 62-110.9(2)b.

CPRE Program Closure

In support of the Motion, Duke states “the State’s new framework for procuring renewable energy no longer relies upon or calls for implementation of the CPRE Program under N.C.G.S. § 62-110.8 and Commission Rule R8-71[.]” accordingly Duke recommends that it is “appropriate and in the public interest” for the Commission to formally conclude the CPRE Program. Motion at ¶¶ 20.

Rule Waiver

Duke explains that Commission Rule R8-71 subsections (g) and (h) require Duke to make annual filings with the Commission that provide information related to the implementation of the CPRE Program. More particularly, Commission Rule R8-71(g)(2) requires Duke to annually file a CPRE Program plan (Plan) “covering the remainder of the CPRE Program Procurement Period.” Duke asserts that, the CPRE Program Procurement Period having ended, there is no longer need for an annual CPRE Program Plan.

Relatedly, Commission Rule R8-71(h)(1) requires Duke to annually file a CPRE Program compliance report (Compliance Report) contemporaneous with the CPRE Program annual cost recovery rider filed pursuant to R8-71(j). Duke states that because “there will be no more CPRE Program procurements, there will be no new resources procured or obtained in future reporting years[.]” Rule R8-71(h), which focuses on information related to resources procured during the reporting period, becomes “contextually illogical.” *Id.* at ¶¶ 25.

Duke finally notes that the remaining subsections of Commission Rule R8-71 are appropriate and should continue.

Public Staff Comments

September 1, 2023 CPRE Program Plan

The Public Staff states that September 1, 2023 CPRE Program Plan complies with the requirements of Commission Rule R8-71 and recommends that the Commission accept the final CPRE Program Plan.

Duke’s Motion

The Public Staff states that it agrees that the CPRE Program has concluded. Further, the Public Staff agrees that “no reporting requirements contained in the CPRE Program Plan [pursuant to Commission Rule R8-71(g)] should continue.” Public Staff Comments at 3.

With regard to Commission Rule R8-71(h), which relates to the CPRE Program Compliance Report, the Public Staff states that some of the required information is helpful

and still relevant but notes that the same information is provided as part of the DEP and DEC CPRE Program cost recovery rider proceedings.

CPRE Program Analysis

Finally, the Public Staff provides the Commission with an overview of the CPRE Program's success in achieving the legislative intent underlying the program – to add 2,660 MW to “the State's generation portfolio in a manner that allows the State's electric public utilities to continue to reliably and cost-effectively serve customers' future energy needs.” N.C.G.S. § 62-110.8(a). The Public Staff states that “as of October 2023, approximately 35% of the total CPRE [Program] capacity that had an executed contract has terminated its [power purchase agreement (PPA)].” *Id.* at 4. Further, only 25% of the contracted MW are currently operational. *Id.* at Table 1. The Public Staff states that the

the significant shortfall between the CPRE [Program] capacity that executed PPAs and the amount that is either operational or actively proceeding with development was likely caused by unique market disruptions occurring between when bids were submitted and when developers were to actually start construction. For example, the bidding window for Tranche 2 opened in October 2019 and closed in November 2019. Since that time, global supply disruptions caused by the COVID-19 pandemic and global inflation have greatly increased costs, particularly in the construction sector. This likely led to an untenable position for many developers, who did not factor these significant cost increases into their Tranche 2 bids. In the CPRE program, this issue has been particularly challenging, as there is no mechanism to adjust a bid price once a project has been selected.

Id. at 4-5. Nonetheless, the Public Staff notes that “despite the challenges in procuring the target capacity, assuming all projects still active achieve commercial operation, the program will have resulted in the procurement of over 1,000 MW of solar capacity below avoided costs.” *Id.* at 5.

The Public Staff further opines that the CPRE Program has “served as a well-developed and tested procurement and evaluation process for [Duke], developers, and the Public Staff, which provided a starting point for the development of the 2022 and 2023 Solar Procurements.” *Id.* The Public Staff also notes that the CPRE Program has “resolved many complex issues” including how network upgrades are paid for and incorporated into the evaluation process, how to fairly evaluate utility self-developed and third-party proposals, and PPA terms. *Id.*

The Public Staff states that it intends to monitor the remaining CPRE projects to understand the potential magnitude of the execution risk caused by contracted project owners terminating their PPAs.

Joint CCEBA and NCSEA Comments

CCEBA and NCSEA state that they do not object to the termination of the CPRE Program as requested by Duke or to the September 1, 2023 CPRE Program Plan.

CCEBA and NCSEA note that the CPRE Program “was only partially successful in meeting its announced goals[,]” and they attribute “declining participation and high project attrition” to the ultimate inability of the CPRE Program to procure the full statutory target MW. Joint CCEBA and NCSEA Comments at 2. Finally, CCEBA and NCSEA contend that “[t]here is no reason to believe that the market disruptions of the last few years – cost increases, supply chain disruptions, trade issues, inflation, interest rate hikes, and labor cost increases, to name a few – will go away any time soon.” *Id.* at 5.

Duke Reply Comments

On reply, Duke addresses the “recent market disruptions and challenges that have impacted the CPRE Program” highlighted by the Public Staff, CCEBA, and NCSEA. Duke states that it agrees that the CPRE Program experienced unexpected challenges outside the bidders’ control including COVID, inflation, and supply chain challenges. Duke opines that these factors “significantly impacted developers’ ability to deliver projects selected in the CPRE [Program] procurements at the offered bid prices.” Duke Reply at 4. Duke states that it will continue to actively monitor the remaining CPRE Program projects that have not yet achieved commercial operation and will provide updates to the Commission in future CPRE Rider filings and other dockets, as appropriate.

DISCUSSION AND CONCLUSIONS

Based on the pleadings summarized above and the whole record, the Commission finds that no party objects to Duke’s Motion or the September 1, 2023 CPRE Program Plan. Accordingly, the Commission finds good cause to grant Duke’s Motion and accept the September 1, 2023 CPRE Program Plan. The Commission notes that portions of the comments filed by the parties extend beyond the scope of the Commission’s request for comments and fall outside the scope of N.C.G.S. § 62-110.8, Commission Rule R8-71, and the CPRE Program. Accordingly, the Commission declines to consider those comments at this time.

IT IS, THEREFORE, ORDERED as follows:

1. That Duke’s September 1, 2023 CPRE Program Plan is hereby accepted;
2. That the CPRE Program is hereby concluded; and

3. That Duke is excused from continued compliance with Commission Rules R8-71(g) and R8-71(h).

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of December, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script that reads "Tamika D. Conyers".

Tamika D. Conyers, Deputy Clerk