BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-2, SUB 1283
DOCKET NO. E-7, SUB 1259

In the Matter of:	**)**	
Joint Petition of Duke Energy Carolinas,	**)**	**NCSEA'S INITIAL**
LLC and Duke Energy Progress, LLC to	**)**	**COMMENTS**
Request the Commission to Hold a Joint	**)**	
Hearing with the Public Service	**)**	
Commission of South Carolina to Develop	**)**	
Carbon Plan	**)**	

NCSEA'S INITIAL COMMENTS

Just a few days ago, on December 17, 2021, Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (DEC and DEP, collectively, "Duke") told the North Carolina Utilities Commission ("Commission") that "despite attempts . . . to argue otherwise, HB 951 does not empower the Commission to effectively legislate what [parties] perceive as missed opportunities or policy shortcomings in HB 951."[1] Duke further stated that "the Commission should reject requests that effectively override the PBR statute (a product of overwhelming bipartisan consensus), contradict the policy framework established by the General Assembly, or go beyond the actions authorized under HB 951 – such requests disregard the plain language and legislative intent of HB 951 and would exceed the Commission's authority."[2] However, in a duplicitous argument in the instant docket, Duke asks the Commission to "effectively legislate" what it perceives as a missed opportunity or policy shortcoming in S.L. 2021-165 ("House Bill 951) and go beyond the actions authorized under House Bill 951.

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[1] *Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Reply Comments*, p. 6, Docket No. E-100, Sub 178 (December 17, 2021).
[2] *Id.*

As such, the North Carolina Sustainable Energy Association ("NCSEA"), an intervenor in the above-captioned proceedings, files these initial comments on the *Joint Petition to Request the Commission to Hold a Joint Hearing with the Public Service Commission of South Carolina to Develop Carbon Plan* ("Petition") filed by Duke and pursuant to the *Order Requesting Comments on Petition for Joint Proceeding* issued by the Commission on November 23, 2021 requesting that the Commission deny Duke's Petition. Contemporaneously with the filing of the Petition, Duke also filed a *Joint Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC* ("South Carolina Petition") with the Public Service Commission of South Carolina ("PSCSC") in PSCSC Docket No. 2021-349-E. The South Carolina Petition filed with the PSCSC is substantively identical to the Petition filed with the Commission and included the same recommendations.

I. DUKE'S LIMITED REQUEST FOR JOINT IMPLEMENTATION OF A SINGLE CARBON PLAN IS INCONSISTENT WITH ITS STATED GOAL

In the Petition and the South Carolina Petition, Duke requests that the NCUC and the PSCSC "hold a joint proceeding . . . in 2022 to develop the Commission's initial plan to achieve the least cost path to meet HB 951's authorized carbon reduction goals" required by Section 1 of House Bill 951 ("Carbon Plan"). Duke asserts "that a well-planned and coordinated energy transition is of vital importance to their customers in both North Carolina and South Carolina[,]"[3] but has never, to the best of NCSEA's knowledge, previously suggested that the Commission jointly implement *any* proceeding with the PSCSC, nor is Duke suggesting that future planning proceedings should be jointly implemented by the Commission and the PSCSC.

[3] Petition at 3.

A. DUKE IS ASKING FOR ONE CARBON PLAN TO BE JOINTLY IMPLEMENTED BUT NOT FUTURE CARBON PLANS

If Duke were truly interested in "a well-planned and coordinated energy transition" involving both the Commission and the PSCSC as it asserts,[4] it would ask the Commission and the PSCSC to jointly implement *all* Carbon Plans, both in 2022 and in future years. However, Duke explicitly states that "the Companies do not anticipate that there would be a need to conduct future Carbon Plan/IRP proceedings jointly between the States."[5] NCSEA welcomes enhanced regional planning, particularly in the interest of keeping ratepayers' bills low and seamlessly transitioning to a sustainable, clean energy generation portfolio, but this request for joint implementation from Duke is *not* that. Duke seeks a one-off bi-state proceeding to protect its shareholders and it will come at the cost of higher rates for ratepayers ultimately via regulatory costs and mismanagement. Duke has done nothing to prepare stakeholders or plan for the comprehensive clean energy transition process it seeks.

The transition from Duke's current fleet of fossil fuel generation to zero-carbon resources will not happen overnight. Instead, the General Assembly expects it to happen over the course of three decades, with Section 1 of House Bill 951 requiring net-zero carbon emissions by 2050. Duke's Petition even acknowledges that the transition will be a long-term process, noting that "Facilitating coordination between the two State commissions responsible for regulating Duke Energy's Carolinas operations and overseeing resource planning will also benefit North Carolina customers as the Commission is tasked with achieving the least cost path that assures continued reliability

[4] *Id.*
[5] *Id.* at 7.

during this transition."[6] However, this acknowledgement is inherently undermined by Duke's assertion that the coordination between the Commission and the PSCSC should be a one-time endeavor. If there is a need for the Commission and the PSCSC to jointly implement the Carbon Plan, there is simply no logical argument for why they should only jointly implement the 2022 Carbon Plan and not all future Carbon Plans.

B. DUKE IS NOT SUGGESTING THE IRPS BE JOINTLY IMPLEMENTED

The Carbon Plan is not the only proceeding governing Duke's long term generation planning: both North Carolina and South Carolina have requirements for integrated resource planning ("IRP"). Duke claims that "The enactment of HB 951 provides crucial policy direction through a carbon reduction framework that is consistent with the strategies and themes set forth in the Companies' Integrated Resource Plan ('IRP') filings in both North Carolina and South Carolina."[7] However, despite asserting that "both North Carolina and South Carolina have an interest in coordinating their approaches to utility planning to the extent possible[,]"[8] Duke does not propose for the Commission and the PSCSC to jointly implement the IRP process.

Duke's Petition also ignores the Commission's directive to combine IRP planning with the Carbon Plan. In its November 19, 2021 *Order Accepting Integrated Resource Plans, REPS, and CPRE Program Plans with Conditions and Providing Further Direction for Future Planning* ("IRP Order"), the Commission is explicit: the Carbon Plan and the IRP processes should inform each other. The Commission directs that "in developing their Carbon Plan for 2022 and for future IRPs DEC and DEP" should consider six explicit

[6] *Id.* at 8.
[7] *Id.* at 1-2.
[8] *Id.* at 13.

planning directives along with other general considerations when filing the planning processes in each area.[9] Despite this directive, Duke's Petition fails to set forth how the IRP processes required by the Commission will interact with the proposed bi-state carbon planning process. This failure is symptomatic of the overall inconsistency found in Duke's proposal.

Duke's credibility is further strained by its attempts to twist logic and argue that the current IRP process is coordinated between the Commission and the PSCSC. Duke argues that "DEC and DEP submitted similar IRPs to both states outlining the same plans for projecting future loads and resource plans to serve that load[,]"[10] but goes on to note that "DEC and DEP submitted modified 2020 IRPs on August 27, 2021 as required by PSCSC Order No. 2021-447[,]"[11] even though it never filed these modified IRPs with the Commission for its consideration.

Duke further notes that "HB 951 includes carbon emission reduction goals—70% by 2030 and net-zero by 2050—that are generally consistent with those of the Companies as reflected in the preferred scenarios included in the modified 2020 IRPs recently submitted to the PSCSC."[12] Duke states that "Achieving these goals will require consideration of the timing of retirement of coal generation and determination of what resources will be chosen to replace that coal generation—issues of significant importance to both North Carolina and South Carolina customers and stakeholders, as demonstrated in recent IRP proceedings in both States."[13] However, the IRP proceedings before the

[9] IRP Order at 15-16.
[10] Petition at 13.
[11] *Id.* at 11.
[12] *Id.* at 7.
[13] *Id.* at 3.

Commission and the PSCSC resulted in different outcomes. While this Commission held that "With respect to the modeling, analysis and results of the base case and alternative resource portfolios in the DEC and DEP 2020 IRPs, the Commission receives these as presented but declines to accept them for future planning purposes[,]"[14] the PSCSC "mandate[d] that Duke [. . .] use Portfolio A2 as the selected base plan for their respective modified 2020 Integrated Resource Plan."[15] Portfolio A2, mandated by the PSCSC, falls short of the carbon emission reductions required by the Carbon Plan, reaching only 57% reductions by 2030.[16] To the extent that Duke is concerned that South Carolina's planning process may not align with North Carolina's, it should be incumbent upon Duke, and not this Commission, to address any discrepancies.

C. DUKE IS NOT SUGGESTING THAT THE SOUTH CAROLINA MARKETS STUDY BE JOINTLY IMPLEMENTED

Duke's Petition ignores the fact that there is activity in South Carolina that could have a major impact on its planning in both states: the Electricity Market Reform Measures Study Committee ("Market Study Committee") established by South Carolina Act 187.[17] The Market Study Committee is tasked with "the full range of possible market reforms that may benefit South Carolina consumers including, but not limited to," establishing a southeastern Regional Transmission Organization ("RTO"), requiring monopoly utilities

[14] IRP Order at 7.
[15] Public Service Commission of South Carolina Commission Directive, Docket Nos. 2019-224-E and 2019-225-E (December 14, 2021), available at https://dms.psc.sc.gov/Attachments/Matter/a2026c01-c3f3-419c-b26f-a656ade620b5.
[16] *See*, *Duke Energy Carolinas 2020 Modified Integrated Resource Plan*, Table 1-B, South Carolina Public Service Commission Docket No. 2019-224-E (August 27, 2021), available at https://dms.psc.sc.gov/Attachments/Matter/81fe90b2-7966-4435-b14a-6a79549bfa33, and *Duke Energy Progress 2020 Modified Integrated Resource Plan*, Table 1-B, South Carolina Public Service Commission Docket No. 2019-225-E (August 27, 2021), available at https://dms.psc.sc.gov/Attachments/Matter/bee30357-fd82-4851-8bad-5209170f0222.
[17] 2020 S.C. Acts 187, available at https://www.scstatehouse.gov/sess123_2019-2020/bills/4940.htm.

to divest their generation assets, authorizing full customer retail choice for electricity, and authorizing community choice aggregation.[18] Adoption of any one of these policies would have major impacts on Duke's planning both in South Carolina and North Carolina. Despite suggesting that "both North Carolina and South Carolina stakeholders should have a seat at the table as decisions are made regarding the resources needed to meet Duke Energy customers' energy needs for the next decade[,]"[19] Duke is not suggesting that the Commission be involved in any manner with the Market Study Committee.

D. DUKE'S PETITION IGNORES STATE SOVEREIGNTY

While Duke presents its proposal to the Commission as a "joint" proceeding, it is clear that the PSCSC would be subservient to this Commission in any joint proceeding. Duke proposes that "The NCUC Chair would preside at the hearing [because] The NCUC has a statutory mandate to adopt a Carbon Plan for DEC and DEP, and that requirement supports a primary role for the NCUC."[20] Duke goes on to propose that "The hearing would be in person at the NCUC, and the PSCSC would participate virtually[]" and that "The NCUC would certify the transcript as the formal record of the proceeding and transmit the record to the PSCSC for inclusion in the PSCSC proceeding docket."[21] This proposal clearly infringes upon the PSCSC's ability to hold its own hearings and, in doing so, may undermine Commission orders which may be subject to appellate scrutiny as further detailed below. Were Duke to propose the PSCSC and the Commission jointly implement a South Carolina law with roles reversed it would be just as insulting to the state sovereignty of North Carolina.

[18] *Id.* at Section 2(B).
[19] Petition at 2.
[20] *Id.* at p. 1 of Attachment A.
[21] *Id.*

Moreover, while Duke asserts that "The Commission and the PSCSC both have significant interests in the Companies' continued least cost planning for generation and in overseeing the Companies' least cost path to achieving compliance with HB 951's authorized carbon reduction goals[,]"[22] the PSCSC simply has no interest in Duke's compliance with the Carbon Plan requirements. The Carbon Plan is a matter of North Carolina law and does not govern South Carolina law.

Finally, "While DEC and DEP request that the Commission and PSCSC hold a joint proceeding, they do not seek to have the two commissions issue joint orders ruling on the merits of the issues being presented."[23] Instead, "After consideration of the record of the proceedings and issuance of a Commission order approving the Carbon Plan, the Companies will seek an Order from the PSCSC requiring that the Carbon Plan be incorporated into DEC's and DEP's comprehensive future IRPs to be filed in that State[.]"[24] Proposing a joint proceeding without a joint order is simply nonsensical, and there are a multitude of easier ways to achieve receiving two separate orders from the Commission and the PSCSC. The simplest of such alternatives would be for Duke to ask the PSCSC to take judicial notice of the record developed in the Commission's Carbon Plan proceeding.

II. DUKE FEARS DISALLOWANCE IN COST RECOVERY PROCEEDINGS IN SOUTH CAROLINA DUE TO HIGH COSTS OF DUKE-OWNED GENERATION

The largely unspoken rationale for Duke's Petition is that Duke is afraid that the PSCSC may deny recovery for costs incurred in complying with House Bill 951. The PSCSC denied Duke's request for recovery for costs incurred for coal ash remediation

[22] Petition at 5.
[23] *Id.*
[24] *Id.* at 6.

required by North Carolina's Coal Ash Management Act of 2014.[25] The PSCSC's denial was affirmed by the Supreme Court of South Carolina.[26] Duke hints at this in its petition, stating that "Whether it is just and reasonable for North Carolina to have a North Carolina-only Carbon Plan or a Carbon Plan applicable to both North Carolina and South Carolina, with generation and costs allocated between the two States, is an important consideration for both resource planning and in setting just and reasonable rates to be charged to the Companies' Carolinas customers."[27]

Duke's Petition goes on to state that "The Companies' investors understandably desire clarity that the Carbon Plan and broader energy transition now underway is supported by both States and that the resources being financed are being planned to serve both States."[28] Duke is clearly concerned that, despite a least-cost mandate, compliance with the Carbon Plan will increase costs. However, the Commission should examine what in the Carbon Plan will cause costs to increase. As the Commission is well aware, even in the absence of the Carbon Plan, renewable energy resources are a least cost generation resource.[29] Furthermore, it is well established that markets and independent ownership of generation drive down costs for ratepayers.[30] This Commission has previously found that

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[25] N.C. Gen. Stat. § 130A-309.200 et seq. *See*, *In re: Application of Duke Energy Progress, LLC for Adjustment in Electric Rate Schedules and Tariffs*, Order No. 2019-341, Public Service Commission of South Carolina Docket No. 2018-318-E (May 21, 2019), available at https://dms.psc.sc.gov/Attachments/Order/02fbebad-5201-4917-afe8-207314b21777, and *In re: Application of Duke Energy Carolinas, LLC for Adjustment in Electric Rate Schedules and Tariffs*, Order No. 2019-323, Public Service Commission of South Carolina Docket No. 2018-319-E (May 21, 2019), available at https://dms.psc.sc.gov/Attachments/Order/3f9e2cfb-3698-44b8-8b43-f409114edc6a.

[26] *See*, Duke Energy Carolinas, LLC v. S.C. Office of Regulatory Staff, 864 S.E.2d 873.

[27] Petition at 9.

[28] *Id.* at 14.

[29] *See*, *Clean, Affordable, and Reliable: A Plan for Duke Energy's Future in the Carolinas (Corrected May 27, 2021)*, Docket No. E-100, Sub 165 (May 27, 2021).

[30] *See, Updated CPRE Tranche 1 Final Independent Administrator Report*, p. 1, Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 (July 23, 2019) (Showing nominal savings over 20-year period due to competitive procurement of solar energy with savings estimated at $228 million in DEC's service territory and $33.17 million in DEP's service territory).

Dominion Energy North Carolina's "integration into PJM has benefited its customers[.]"[31] In 2019, Virginia State Corporation Commission staff did not recommend approval of a Certificate for Public Convenience and Necessity for a solar facility to be built by Virginia Electric and Power Company ("Dominion") after concluding that utility-built ratebased solar projects were higher cost and higher risk as compared to third-party solar power purchase agreements.[32] Virginia State Corporation Commission staff further stated that utility-built rate-based solar "is generally the highest cost solar alternative and subjects the Company's jurisdictional customers to operational risk associated with solar projects" due to poor performance and operational issues.[33] Virginia State Corporation Commission Staff have repeatedly found the levelized cost of electricity of third party solar power purchase agreements to be significantly lower than for utility-built solar projects [34] Thus, if the Carbon Plan increases costs, the cause is found in Section 1.(2) of House Bill 951, which dictates that, with very limited exceptions, "Any new generation facilities or other resources selected by the Commission in order to achieve the authorized reduction goals for electric public utilities shall be owned and recovered on a cost of service basis by the applicable electric public utility[.]"

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[31] *Order Approving Rate Increase and Cost Differentials and Revising PJM Regulatory Conditions*, p. 144, Docket No. E-22, Sub 532 (December 22, 2016).

[32] *See*, *Pre-Filed Witness Testimony of Gregory L. Abbott, Virginia Electric and Power Company*, pp. 8-9, Virginia State Corporation Commission Case No. PUR-2019-00105 (November 19, 2019) ("Testimony of Gregory L. Abbott"), available at https://scc.virginia.gov/docketsearch/DOCS/4jxv01!.PDF.

[33] *Id*. In particular, the State Corporation Commission staff found that Dominion's proposed "Sadler Solar [project] is not cost competitive with third-party solar PPAs that were available to Dominion. Staff concludes that the Company could have executed two solar PPAs totaling 100 MWs and received the exact same constellation of benefits as the proposed US-4 Solar Project. Importantly, these benefits could have been attained at a much lower cost through these third-party solar PPAs rather than the Company-build rate-based Sadler Solar[.]" *Id*. at 16.

[34] *See*, Testimony of Gregory L. Abbott at 9; *See*, *Pre-Filed Testimony of David J. Dalton, Virginia Electric and Power Company*, p. 37 tbl. 5, Virginia State Corporation Commission Case No. PUR-2020-00134 (February 19, 2021) (Testimony of David J. Dalton), available at https://scc.virginia.gov/docketsearch/DOCS/4s2f01!.PDF.

NCSEA was an active participant in the stakeholder process at the General Assembly that led to House Bill 951. One of the most contentious issues in that process was whether new generation resources should be owned by Duke and included in rate base or whether they should be owned by independent power producers. Duke sought legislation that would maximize its ownership of new generation resources, and that desire is reflected in the version of House Bill 951 that became law. Duke lobbied for this policy knowing full well that it would increase costs for ratepayers and that there were risks inherent to the decision if supportive policies were not also adopted in South Carolina. Duke's refusal to allow a competitive market for new generation now further endangers its ratepayers and as such, any costs increase associated with the Carbon Plan should be borne by Duke shareholders.

III. THE LOGISTICAL PROCEDURES ASSOCIATED WITH A JOINT PROCEEDING WILL UNDULY BURDEN INTERVENORS

In its petition, Duke states that "both North Carolina and South Carolina stakeholders should have a seat at the table as decisions are made regarding the resources needed to meet Duke Energy customers' energy needs for the next decade."[35] NCSEA agrees with this sentiment. However, the procedures proposed by Duke in Attachment A of its Petition will make it harder for stakeholders to "have a seat at the table[]" by requiring them to participate in two proceedings and retain South Carolina counsel to do so. As such, NCSEA disputes Duke's statement that "A joint proceeding would create regulatory efficiencies for" parties that participate in planning proceedings in both States."[36]

[35] Petition at 2.
[36] *Id.* at 15.

A. DUKE'S PROPOSAL NECESSITATES PARTIES INTERVENE IN BOTH STATES

Duke's proposal notes that "All intervenors should be parties to the NCUC proceeding but should also, if desired, separately seek intervention in the applicable PSCSC docket."[37] Duke attempts to make intervention in the PSCSC docket appear optional. However, as a practical matter, intervention in the PSCSC docket would be mandatory.

Duke's proposal notes that "All filings would be simultaneously made in both states. . . . Each commission would have its own docket, but all filings would be made in both."[38] However, in South Carolina, only parties to a proceeding are entitled to receive all filings.[39] Thus, as a practical matter, and contrary to Duke's assertions, stakeholders would be required to intervene in the PSCSC proceeding in order to make and receive filings.

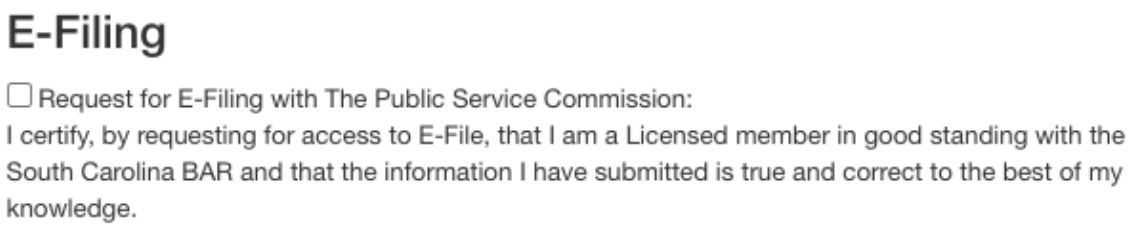
S.C. Code Ann. Regs. 103-805(A) states that only "Parties in a case have the right to participate or to be represented in all hearings or pre-hearing conferences related to their case." Given that Duke is proposing that the hearing be jointly held by the Commission and the PSCSC, stakeholders would be required to be parties to the PSCSC proceeding to participate in the Commission proceeding. Finally, S.C. Code Ann. Regs. 103-804(T)(1) states that "Representation of a party of record in a proceeding shall include the right to offer evidence on behalf of the party represented and to cross-examine witnesses offered by other parties." Read together, the South Carolina Rules make clear that, despite Duke's assertion otherwise, parties to the Commission proceeding would also be required to intervene in the PSCSC proceeding.

[37] *Id.* at Attachment A.
[38] *Id.*
[39] *See*, S.C. Code Ann. Regs. 103-804(L).

B. DUKE'S PROPOSAL IS AN ATTEMPT TO BURDEN INTERVENORS BY REQUIRING THEM TO RETAIN SOUTH CAROLINA COUNSEL

Duke's request is an attempt to financially burden intervenors by requiring them to retain counsel in South Carolina in order to participate in the Joint-State Proceeding. South Carolina Regulations are quite clear that organizations that are parties to a proceeding "must be represented by an attorney admitted to practice law in South Carolina, or an attorney" admitted pursuant to South Carolina's pro hac vice rules.[40] Moreover, "No one shall be permitted to represent a party where such representation would constitute the unauthorized practice of law."[41] South Carolina's pro hac vice rules make clear that "a person may not be admitted pro hac vice unless a regular member of the South Carolina Bar in good standing is associated as attorney of record with that person."[42] In fact, the PSCSC's e-filing website requires the individual making a filing to certify that they are a licensed South Carolina Attorney. *See*, Figure 1.

Figure 1: PSCSC E-Filing Certification



While this does not burden Duke, which operates in both North Carolina and South Carolina and employs attorneys licensed in both jurisdictions, it does substantially burden NCSEA, which does not employ attorneys licensed in South Carolina. Thus, should the

[40] S.C. Code Ann. Regs. 103-805(B).
[41] S.C. Code Ann. Regs. 103-805(A).
[42] S.C. App. Ct. Rule 404, available at https://www.sccourts.org/courtReg/displayRule.cfm?ruleID=404.0&subRuleID=&ruleType=APP.

Commission adopt Duke's proposal, NCSEA would be forced to incur the expense of retaining counsel licensed in South Carolina in order to be able to participate in a North Carolina proceeding to implement North Carolina law, and without the same ability as Duke to pass those legal costs on to ratepayers. In fact, NCSEA has already been forced to retain counsel licensed in South Carolina to protest Duke's South Carolina Petition in order to protect NCSEA's interests in North Carolina.

C. PROCEDURAL UNCERTAINTY ON APPEAL

Duke fails as a matter of law in their proposal because they fail to consider the logistics of appeal and the likely potentiality of conflicting records. "[T]he Companies request the development of a joint record through joint hearings and submissions of testimony and exhibits[.]"[43] Under North Carolina law, parties can appeal a final decision made by the Commission pursuant to N.C. Gen. Stat. § 62-90. However, the process by which the final order comes to fruition under Duke's proposal leaves significant gray area.

Under Duke's proposal

> [a]fter consideration of the record of the proceedings and issuance of a Commission order approving the Carbon Plan, the Companies will seek an Order from the PSCSC requiring that the Carbon Plan be incorporated into DEC's and DEP's comprehensive future IRPs to be filed in that State and to confirm that the Companies' plans and associated costs for executing the transition under the Carbon Plan will be fully shared and embraced between the States consistent with historic planning practices.[44]

Chapter 62 of the North Carolina General Statutes includes a detailed set of requirements to appeal an order from the Commission.[45] Duke has not included in its Petition any explanation how an appeal of a substantive final order on the carbon plan in

[43] Petition at 5-6.
[44] *Id*. at 6.
[45] *See*, N.C. Gen. Stat. §§ 62-90 through 62-98.

either the South Carolina or the North Carolina dockets will work. Duke intends to "seek an Order from the PSCSC requiring that the Carbon Plan" be incorporated into Duke's South Carolina planning proceedings. However, there are no assurances from Duke regarding the form of that final order from South Carolina and whether it must match the final order issued by the Commission. If there is disparity between the two orders and one of the orders is thereafter successfully appealed, what is the legal effect (if any) on the other order? If an intervenor in South Carolina, for instance, successfully appeals a final order in South Carolina, then does that render the North Carolina final order a legal nullity? How is the record to be developed for a potential appeal? Would the underlying final order from either state commission be endangered by potential procedural missteps which have not yet been accounted for by Duke in its Petition? If the record in one state excludes evidence for any reason, does that potentially nullify any appellate result in the other state? There are clearly significant questions remaining about the legal effect of Duke's Petition proposal, and Duke has thus far failed to provide answers.

Duke did request in its conclusion that "the Commission appoint staff members to address procedural and logistical issues relating to the joint proceeding and direct those staff members to initiate such procedural conversations with the PSCSC staff."[46] This is a considerable request of the Commission and places responsibility on the shoulders of the Commission to communicate with and develop processes to maintain valid legal records in the respective state proceedings. This request is fraught with legal risk not normally within the purview of Commission staff work, including compliance with S.C. Code Ann. § 58-3-260, the ex parte prohibition that applies to PSCSC commissioners and staff. While

[46] Petition, p. 18.

NCSEA does not wish to forecast an appeal of an order of the Commission, the implications of maintaining the "procedural and legal issues" across two state utilities commissions in such a way that will alleviate appellate risk cannot be overstated. The last thing anyone involved in generation planning in North Carolina wants, and presumably in South Carolina as well, is for a party to file an appeal of either final order and that order being at risk of appellate decision based upon mistake or miscommunication between two utilities commission staffs who do not normally have to work across state lines to maintain an evidentiary record. If the purpose of this proceeding is to engender a bi-state carbon plan, there are considerable legal obstacles to a Commission-based pathway as proposed by Duke. NCSEA believes that regional planning is paramount to a sustainable energy future where the ratepayers are afforded best practices and the most affordable rates. However, Duke's Petition instead seeks to insert a North Carolina legal requirement into a South Carolina proceeding.

IV. CONCLUSION

While Duke argues out of one side of its mouth that "HB 951 does not empower the Commission to effectively legislate what [parties] perceive as missed opportunities or policy shortcomings in HB 951[]"[47] in the context of performance-based regulation, in this proceeding Duke asks the Commission to correct missed opportunities and policy shortcomings in House Bill 951 by requiring joint implementation of a single Carbon Plan proceeding with the PSCSC. While NCSEA does not take a position on the Commission's legal authority to work jointly with the PSCSC at this time, NCSEA recognizes that there are a multitude of legal and policy reasons why Duke's request is improper, unwarranted,

[47] *Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Reply Comments*, p. 6, Docket No. E-100, Sub 178 (December 17, 2021).

and unwieldly. As such, NCSEA respectfully requests that the Commission take the foregoing comments into account in its deliberations and that the Commission deny Duke's Petition.

Respectfully submitted, this the 20th day of December 2020.

/s/ Peter H. Ledford
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VERIFICATION

Peter H. Ledford, first being duly sworn, deposes and says that he is the attorney for NCSEA; that he has read the foregoing Initial Comments and that the same is true of his personal knowledge, except as to any matters and things therein stated on information and belief, and as to those, he believes them to be true; and that he is authorized to sign this verification on behalf of NCSEA.

This the 20th day of December 2021.

Peter H. Ledford

NORTH CAROLINA
WAKE COUNTY

Sworn to and subscribed before me,

this the 20 day of December 2021.

[AFFIX SEAL OF NOTARY]

Notary Public

Sarah R. McQuillan
Printed Name of Notary Public
My Commission Expires: 5/30/2026

CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing Initial Comments by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission with the party's consent.

This the 20th day of December 2020.

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