

**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 Carolinas, LLC, and)	
Duke Energy Progress, LLC 2022)	COMMENTS OF
Procurement Pursuant to Session)	CIGFUR II AND III
Law 2021-165, Section 2(c))	

NOW COME the Carolina Industrial Group for Fair Utility Rates II and III (together, “CIGFUR”), by and through the undersigned counsel, and respectfully submit these comments pursuant to the Commission’s *Order Opening Separate Dockets and Establishing Procedural Deadlines* issued in the above-captioned docket on March 11, 2022.

Introduction

On October 13, 2021, Governor Roy Cooper signed Session Law 2021-165 (S.L. 2021-165), which directs the Commission in Section 1(1) to develop a Carbon Plan to facilitate the taking of

all reasonable steps to achieve a seventy percent (70%) reduction in emissions of carbon dioxide (CO₂) emitted in the State from electric generating facilities owned or operated by electric public utilities from 2005 levels by the year 2030 and carbon neutrality by the year 2050.

In addition, Section 2(c) of S.L. 2021-165 authorizes the Commission to

direct the procurement of solar energy facilities in 2022 by the electric public utilities if, after stakeholder participation and review of preliminary analysis developed in preparation of the initial Carbon Plan, the Commission finds that such

solar energy facilities will be needed in accordance with the criteria and requirements set forth in Section 1 of this act to achieve the authorized carbon reduction goals.

Also relevant to these comments are the provisions of S.L. 2021-165 pertaining to new voluntary customer renewable energy programs, including Section 5, which directs the Commission to, among other things,

establish a rider for a voluntary program that will allow industrial, commercial, and residential customers who elect to purchase from the electric public utility renewable energy or renewable energy credits ... to offset their energy consumption, which shall ensure that customers who voluntarily elect to purchase renewable energy or renewable energy credits through such programs bear the full direct and indirect cost of those purchases, and that customers that do not participate in such arrangements are held harmless, and neither advantaged nor disadvantaged, from the impacts of the renewable energy procured on behalf of the program customer, and no cross-subsidization occurs.

Voluntary customer programs are also referenced in Section 1(2)b. to clarify that the 45% third-party/55% utility-owned ownership split for new solar generation also applies to new solar generation “procured in connection with any voluntary customer program.”

On March 14, 2022, Duke Energy Carolinas, LLC (DEC) and Duke Energy Progress, LLC (DEP) (together, Duke) filed a petition proposing

to commence a system-wide solar procurement (2022 SP) request for proposal (RFP) targeting a minimum of 700 megawatts (MW) of utility-owned and third-party solar energy resources in North Carolina and South Carolina[.]

Duke’s Petition at 1.

CIGFUR respectfully submits the following comments in response to Duke’s Petition.

Recommendation for Customer Program Set-Aside

CIGFUR appreciated the opportunity to actively participate in both the Carbon Plan stakeholder process and the related 2022 SP stakeholder process, during which CIGFUR provided extensive feedback. This feedback included the perspective that system benefits could be realized in a cost-effective manner if the Carbon Plan sufficiently leverages commercial and industrial (C&I) customers' interest in new voluntary program(s) enabling them to purchase renewable energy resources to offset their energy consumption. To be sure, the potential of such programs to assist in meeting the CO₂ emissions reduction targets set forth in S.L. 2021-165 cannot be overstated. Several of CIGFUR's member companies are listed on JUST Capital's top 100 companies on environmental, social, and corporate governance (ESG) issues across all industries for 2022.¹ The companies on the JUST 100 list have ambitious commitments to combat climate change, including through reducing CO₂ emissions. One of the ways these companies work to reduce emissions is by ensuring the electricity they consume is sourced from renewable energy generating facilities.

CIGFUR endeavors to be actively involved in the process by which any C&I customer renewable program is designed. The inclusion of C&I customer input and stakeholder representation in the development of a new C&I customer program is critically important to ensuring that the structure of any new program is workable for large business customers. The more flexible and customizable the program, the more attractive it will be as a potential solution for meeting a range of diverse C&I customer needs and thus, the more likely the program is to be a success. To that end, CIGFUR has appreciated the

¹ "The Just 100 List," CNBC (Jan. 11, 2022), *available at* <https://www.cnbc.com/2022/01/11/the-just-100-list.html>.

preliminary dialogue exchanged with various stakeholders surrounding a new C&I customer program generally, including but not limited to Duke, the Public Staff, the Tech Customers, NCSEA, CUCA, SELC, CCEBA, and CPSA. As CIGFUR has shared with other stakeholders, CIGFUR believes any new C&I customer program should be designed with maximal optionality and flexibility in mind, enabling customers to tailor the program to meet their unique business and operational needs. At the same time, CIGFUR understands that any such program must also (1) be able to be reduced to a universally-applicable tariff leaf; and (2) comply with the statutory prohibition against cross-subsidization of program costs by non-participating customers. Underscoring the need for customers to be able to customize a new C&I program to meet their unique needs is the diverse spectrum of ESG goals and customer program preferences among large business customers. One preference about which there seems to be broad alignment across the board, however, is that many large C&I customers want timely access to renewable energy resources through a voluntary procurement program, not just a REC-buying program. Ownership of those resources (third-party vs. utility), type of procurement (self-supply vs. Duke-directed), and other program details such as the bill credit and contract term all can and should be designed with a customer-centric focus.

With respect to existing voluntary C&I customer renewable program offerings, the Green Source Advantage Program (GSA Program) has only 4.4 MW of capacity remaining for business customers. Such an amount is insufficient to allow even one of Duke's largest industrial customers to meaningfully offset its energy consumption. In addition, due to an amendment to the GSA Program enabling statute enacted into law as a budget line item in

the “Current Operations Appropriations Act of 2021,”² future customer eligibility criteria were modified to effectively exclude CIGFUR member companies from subscribing to any reserved but unsubscribed capacity previously set aside for major military installations and the UNC system.³

In light of (1) the current unavailability (other than the 4.4 MW of capacity remaining to be subscribed under the GSA Program) of voluntary renewable customer programs for Duke’s C&I customers; (2) the strong customer interest for a new program that is more attractive to C&I customers to be developed as quickly as possible; and (3) the amount of time CIGFUR anticipates it will take to thoughtfully develop and build stakeholder consensus around the structure of a new, long-term C&I customer program, CIGFUR recommends that the Commission direct Duke to set aside a portion of the 2022 SP capacity for a new C&I customer renewable program. CIGFUR’s members are concerned that without a customer program carve-out in the 2022 SP capacity, C&I

² S.L. 2021-180 § 11.19.(f1).

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reserved exclusively for use by the UNC system, and 100 MW shall be reserved exclusively for use by major military installations in North Carolina (together, the “Reserved Capacity”). Pursuant to Section 11.19.(f1) of Session Law 2021-180, the total 350 MW of Reserved Capacity shall also be made available and reserved for an “eligible customer” - is also eligible to for the 350MW of reserved capacity for the UNC system and the military, defined as any customer of an electric utility that locates a new manufacturing facility at a project site that is subject to agreement with the Department of Commerce pursuant to Section 11.19.(d) of Session Law 2021-180. The remaining 250 MW shall be reserved for use by Eligible GSA Customers in either Duke Energy Carolinas or Duke Energy Progress service territories on a first- come, first-served basis. Any Reserved Capacity that is not subscribed by the UNC system or major military installations by August 5, 2022 shall be solely reserved for an eligible customer pursuant to Section 11.19.(f1) of Session Law 2021-180 through January 1, 2028, or “eligible customer”, as applicable, within the three-year Reserved Capacity period following initial Program approval of August 5, 2019 will remain available for “eligible customer” until January 1, 2028, shall then be made available for subscription by any Eligible GSA Customer in either Duke Energy Carolinas or Duke Energy Progress service territories. This This Rider and the Program shall remain open to Eligible GSA Customers pursuant to the Program’s terms and conditions, as approved by the Commission, for a period of five years following initial Program approval of August 5, 2019 and shall remain open to an “eligible customer” pursuant to Section 11.19.(f1) of Session Law 2021-180 until January 1, 2028.

DEC and DEP’s *Motion to Modify GSA Program Tariffs*, Attachment A, p. 1, Docket Nos. E-2, Sub 1170 and E-7, Sub 1169 (Feb. 11, 2022).

customers may not have meaningful access to any C&I customer renewable program capacity until 2023 at the earliest.

Because stakeholders have only recently begun discussing a new C&I customer renewable program and no new customer programs authorized by House Bill 951 have thus far been proposed to the Commission for regulatory approval, CIGFUR further recommends that the Commission allow a new program for which Duke already has the administrative and operational framework in place as a near-term solution. More specifically, CIGFUR recommends that a potential temporary solution could be a new program identical to the existing GSA Program, with two exceptions to reflect the 45/55 ownership split in S.L. 2021-165: (1) allow the customer to elect whether they wish to participate through a “standard offer” like was initially proposed by Duke in the GSA Program dockets, or alternatively through the self-supply option ultimately approved by the Commission in the GSA Program dockets; and (2) allow the customer to decide whether the new facility will be utility-owned or IPP-owned.

CIGFUR believes these recommendations, if implemented, would further the policy goals set forth in House Bill 951. In addition, CIGFUR believes this proposed solution would provide a feasible near-term solution for the current lack of renewable program capacity for C&I customers in a manner that is consistent with the discretion and authority delegated to the Commission in S.L. 2021-165.

Jurisdictional Cost Allocation and Recovery Issue

Because Duke indicated that the 2022 SP is intended to be a systemwide procurement crossing state lines, CIGFUR would be remiss if it did not reiterate certain of the concerns expressed in its Initial Comments and Reply Comments filed in Docket Nos.

E-2, Sub 1283 and E-7, Sub 1259, inasmuch as North Carolina ratepayers should not bear the risk that the Public Service Commission of South Carolina (PSCSC) may disallow future recovery of costs to comply with House Bill 951, including but not limited to costs related to the South Carolina allocable portion of the 2022 SP.

While CIGFUR supports the systemwide sharing of capacity and energy when doing so is cost-effective and provides benefits to the system and Duke's customers, the fact remains that South Carolina at this time does not have a supportive policy resembling House Bill 951 with respect to carbon emissions reduction goals in the electricity sector. Furthermore, South Carolina has signaled somewhat forcefully that its citizens will not foot the bill to implement a North Carolina law.⁴ As a result, North Carolina ratepayers are understandably hoping for some assurance that if Duke proceeds with a systemwide 2022 SP despite the known regulatory risk in South Carolina, then North Carolina ratepayers should not be on the hook for the South Carolina allocable portion of 2022 SP costs in the event of a future related cost disallowance in South Carolina. For all of these reasons, CIGFUR continues to emphasize that the jurisdictional cost allocation issue is one that must be addressed on the front end—before substantial costs are incurred—in order to ensure North Carolina ratepayers are protected when the time comes for recovery of costs associated with the 2022 SP.

⁴ See Opinion of South Carolina Office of the Attorney General (Jan. 18, 2022), *available at* <https://www.scag.gov/media/pnhhkve/02876860.pdf> (“[W]e do not think that the [PSCSC] may order South Carolina ratepayers to ‘cover the costs of Duke Energy’s compliance with HB 951,’ a North Carolina statute, through utilization of § 58-27-170.”).

Conclusion

In summary, CIGFUR is respectfully asking that the Commission direct Duke to set aside a portion of the 2022 SP capacity for C&I customer programs, and that because a new program authorized by House Bill 951 has not yet been implemented, that the Commission allow a new, slightly modified version of the GSA Program to function as a short-term solution to the current lack of meaningful access to renewable program capacity for C&I customers. In addition, CIGFUR is requesting that the Commission consider the potential future consequences and risks associated with the jurisdictional cost allocation and recovery issue. CIGFUR appreciates the opportunity to highlight these two important issues in response to Duke's Petition for 2022 SP.

Respectfully submitted, this the 28th day of March, 2022.

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Certificate of Service

I hereby certify that a copy of the foregoing *Comments of CIGFUR II and III* has been served this day upon the parties of record in this proceeding by electronic mail.

This the 28th day of March, 2022.

/s/ Christina D. Cress
Christina D. Cress

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