

**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

DOCKET NO. E-2, Sub 1297)	
DOCKET NO. E-7, Sub 1268)	
)	
)	COMMENTS OF
In the Matter of:)	THE ATTORNEY GENERAL'S
Duke Energy Progress, LLC, and Duke)	OFFICE
Energy Carolinas, LLC, 2022 Solar)	
Procurement Pursuant to Session Law)	
2021-165, Section 2(c))	

The North Carolina Attorney General's Office (AGO) respectfully submits these initial comments regarding Duke Energy Progress, LLC (DEP) and Duke Energy Carolinas, LLC's (DEC) (together, Duke) joint petition for approval of a 2022 solar procurement program. The AGO supports initiating a robust system-wide solar procurement as soon as possible. Integrating least cost, utility-scale solar generation will be a fundamental aspect of Duke's upcoming Carbon Plans. However, the AGO is concerned that the initial target of 700 MW set by Duke in its petition for approval is insufficient to meet the Carbon Plan's 2030 goal. Further, Duke should provide the data underlying its petition to ensure a competitive bidding process and robust public engagement.

I. BACKGROUND

Governor Cooper signed House Bill 951 on October 13, 2021, which directs the Commission to take "all reasonable steps" to reduce the volume of carbon

dioxide emitted from the state's electric generating facilities by 70% by 2030 and to achieve carbon neutrality by 2050. The Commission has directed Duke to file proposed plans by May 16, 2022 to meet those goals.¹ By December 31, 2022, the Commission must approve a final plan.²

In order to meet the 2030 target of 70% reduction, Duke must rapidly add zero carbon emitting resources such as solar. House Bill 951 recognized that it may not be feasible to wait until the Carbon Plans are finalized to begin adding those resources to the system. Therefore, Section 2(c) of House Bill 951 authorized 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" to meet the carbon reduction goals.

Duke initiated a stakeholder process in January of 2022 to evaluate the need and magnitude of a 2022 solar procurement.³ Duke has since held three separate stakeholder meetings and has provided regular updates to the Commission on the stakeholder process.⁴

¹ Order Requiring Filing of Carbon Plan and Establishing Procedural Deadlines, Docket No. E-100, Sub 179 (Nov. 19, 2021); Order Granting Extension of Time, Docket No. E-100, Sub 179 (Nov. 29, 2021).

² See Energy Solutions for North Carolina, S.L. 2021-165, § 1, 2021 N.C. Sess. Laws, <https://www.ncleg.gov/Sessions/2021/Bills/House/PDF/H951v6.pdf> (House Bill 951).

³ Planned Stakeholder Engagement and Procedural Plans for Potential Commission-Direct 2022 Solar Procurement, Docket No. E-100, Sub 179 (Jan. 10, 2022).

⁴ See, e.g. 2022 Solar Procurement Stakeholder Engagement Update and Plan for Second Stakeholder Meeting, Docket No. E-100, Sub 179 (Jan. 31 2022).

On March 11, 2022, the Commission entered an order establishing the present dockets.⁵ Duke filed its petition for authorization of a 2022 solar procurement program on March 14, 2022.⁶ Per the Commission's March 11 order, persons interested in commenting on the 2022 solar procurement may intervene and file comments by March 28, 2022.

II. THE INITIAL TARGET OF 700 MW IS INSUFFICIENT TO MEET THE CARBON PLAN'S 2030 GOAL OF 70% CARBON REDUCTION AND SHOULD BE INCREASED.

Duke has proposed a "flexible need-based procurement" where the ultimate volume will be determined by the initial Carbon Plans that will be filed on May 16, 2022.⁷ However, Duke has asked for the Commission to approve an initial minimum target of 700 megawatts (MW) of procurement. Duke has requested that the Commission then issue an order adjusting that target by November 1, 2022. The RFP development process and bid window will both be completed prior to the Commission approval of a final target quantity.⁸ This timing is necessary "to ensure that all bids are established in the [Definitive Interconnection System Impact Study (DISIS)] Cluster prior to the close of the bid window."⁹ As explained below, the requested minimum target is insufficient, has not been sufficiently explained, and should be adjusted upward in order to comply with House Bill 951.

⁵ Order Opening Separate Dockets and Establishing Procedural Deadlines, Docket Nos. E-100, Sub 179, E-2, Sub 1297, and E-7, Sub 1268 (Mar. 11, 2022).

⁶ Petition for Authorization of 2022 Solar Procurement Program, Docket Nos. E-2, Sub 1297 and E-7, Sub 1268 (Mar. 14, 2022) (Duke Plan).

⁷ Duke Plan at 3.

⁸ Duke Plan at 12.

⁹ Duke Plan at 13.

House Bill 951 states that the Commission is authorized to direct procurement of any solar generation that “will be needed” in order to meet the carbon reduction goals based on preliminary analysis for the Carbon Plans.¹⁰ Duke’s proposed 700 MW target is instead “largely based upon the Companies’ most recent system-wide 2020 IRPs” rather than on the preliminary analysis conducted for the Carbon Plans.¹¹ As explained below, stakeholders have not had access to that preliminary analysis or the data underlying it. However, as Duke acknowledges, it is likely that a target based on preliminary analysis for the Carbon Plans would be much higher than the 700 MW proposed here.

It is not clear from Duke’s filing how the 700 MW initial target was derived from the 2020 IRPs. In its filing, Duke provided a comparison of the five 2020 IRP portfolios. Only two of those portfolios—the 70% with Wind and 70% with SMR portfolios—achieve House Bill 951’s 2030 goal. Under both of those portfolios, 4,575 MW of solar will need to be added by 2030.¹² Both of those portfolios rely on generation sources—offshore wind and small modular reactors—that Duke itself is skeptical will be available to meet the 2030 goal.¹³ Therefore, it is likely that the 4,575 MW figure underestimates the amount of solar that will need to be added by 2030.

¹⁰ House Bill 951 at § 2(c).

¹¹ Duke Plan at 7.

¹² Duke Plan at 9.

¹³ See First Stakeholder Meeting Summary Report, Docket No. E-100, Sub 179 (Feb. 1, 2022) at Attachment 1, page 27 (noting that no advanced nuclear facilities have been built in the United States) and Attachment 2, page 28 (showing that advanced nuclear will not be available until 2030 and offshore wind with limited availability).

Even using the 4,575 MW figure, it is not clear how Duke set the 700 MW initial target. There are likely only four DISIS clusters between now and 2030, meaning that an average of over 1,140 MW will need to be added during each cluster.¹⁴ Duke explains this apparent gap by explaining that the minimum target volume was intended to “strike the right balance between opportunity and risk by procuring a target volume that should be achievable in today’s market at a reasonable cost to customers based upon the best information available today.”¹⁵ Duke does not provide or elaborate on what information was used to determine the volume that is achievable at a reasonable cost. However, in the last completed Competitive Procurement of Renewable Energy (CPRE) program, DEC received proposals for 1,710.4 MW of capacity and DEP received proposals totaling 440.9 MW of capacity, well in excess of the system-wide 700 MW initial minimum target.¹⁶ The cost control measures included in Duke’s proposal provide ample protection without unnecessarily limiting the initial target volume.¹⁷

While the final target volume will likely be increased upon the filing of the preliminary Carbon Plan on May 16, 2022, it is important for the initial target volume to be as close as possible to the anticipated target volume. Preparation of bids takes vast amounts of time and resources on behalf of the bidders. An artificially low initial target volume threatens to dissuade interested bidders from participating and sends inaccurate market signals. Setting an initial minimum target that more

¹⁴ Duke Plan at 8.

¹⁵ Duke Plan at 8.

¹⁶ CPRE Tranche 2 Final Independent Administrator Report, Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 at 15-17 (Feb. 12, 2021).

¹⁷

closely aligns with the likely needs of the Carbon Plans could induce more bidders to join the process and allow bidders to bid more accurately, potentially lowering the cost to Duke and ultimately to ratepayers.

As Duke acknowledged, the time between a developer winning a bid and when a facility becomes fully operational can be several years. It is critical for both Duke and the Commission to take aggressive steps to ensure that House Bill 951's goals are achieved. While Duke argues that the initial target is set to minimize risk, there is risk that by failing to act aggressively the State is unable to meet its carbon reduction goals. Setting an initial target that more closely aligns with the likely needs under the Carbon Plans would send clearer signals to the market and advance the State's ability to meet its carbon reduction goals.

III. DUKE SHOULD PROVIDE THE DATA UNDERLYING ITS PETITION TO ENSURE A COMPETITIVE BIDDING PROCESS AND ROBUST PUBLIC ENGAGEMENT.

Throughout the Carbon Plan development process, parties have been troubled by a lack of transparency.¹⁸ Duke has not shared many of the key assumptions and inputs that inform its Carbon Plan. This is especially troubling in this proceeding, where Duke will be bidding against, and purchasing from, other parties who do not have access to the same information. This information asymmetry provides Duke with a competitive advantage, potentially causing ratepayers to pay more than necessary. This is precisely the type of exercise of market power that this Commission has been wary of in the past.¹⁹

¹⁸ See, e.g. CIGFUR Letter re: Second Stakeholder Meeting, Docket No. E-100, Sub 179 (Mar. 1, 2022).

¹⁹ See Order Initiating Investigation, Docket No. E-100, Sub 92 (Apr. 12, 2001).

Duke's proposal outlines two separate tracks that developers may bid into: the Utility Ownership Track and the PPA Track. Under the Utility Ownership Track, Duke-developed projects bid directly against third-party developed projects. 55% of the solar generation will be acquired through that track.²⁰

Despite Duke's statement that it "value[s] transparency and recognize[s] the importance of promoting effective and fair market participation,"²¹ much of the data underlying the proposal has not been shared. For example, the final procurement amount will be based on the "Carbon Plan Solar Reference Cost," which is the assumed cost of solar capacity and energy and any related system upgrades.²² Duke has not shared these assumed costs or the preliminary target volumes with stakeholders.²³

Under the Competitive Procurement of Renewable Energy (CPRE) program, the total MW obligation was set statutorily and was known to bidders before bidding began. Additionally, Duke announced planned procurement amounts for each CPRE tranche prior to approval of the program.²⁴ Finally, the procurement obligations were capped at each utility's avoid cost rate—a rate that is both known and calculated using a known methodology. Here, neither the

²⁰ House Bill 951 § 1(2)(b).

²¹ Duke Plan at 3.

²² Duke Plan at 14.

²³ The AGO notes the Commission has ordered Duke release some preliminary information inputs and assumptions prior to the filing of the Carbon Plan. At the time these comments are being filed, it is not clear what inputs and assumptions will be included. Order Regarding Data Inputs and Assumptions, and Scheduling Additional Update on Stakeholder Process Sufficiency, Docket No. E-100, Sub 179 (Mar. 22, 2022).

²⁴ Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Petition for Approval of Competitive Procurement of Renewable Energy Program to Implement N.C. Gen. Stat. §62-110.8, Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 at (Nov. 27, 2017).

procurement amounts nor the cost assumptions are known to any party other than Duke. The Commission should be careful to ensure that Duke provides sufficient information to enable third-party bidders to compete with Duke on a level playing field.

Finally, House Bill 951 authorizes the Commission to direct this procurement “after stakeholder participation and review of preliminary analysis developed in preparation of the initial Carbon Plan.”²⁵ No such “review of preliminary analysis” is possible because Duke has declined to share critical pieces of information with stakeholders and has not shared them in this filing. The Commission should require Duke to share sufficient information with both the Commission and stakeholders to enable this statutorily required preliminary analysis.

IV. CONCLUSION

The AGO respectfully recommends that the Commission require Duke to:

- 1) Set an initial target minimum that more closely aligns with the preliminary Carbon Plan analysis.
- 2) Share the preliminary Carbon Plan analysis and critical assumptions with potential bidders and interested stakeholders as soon as possible in order to allow informed bid development and robust stakeholder engagement.

Respectfully submitted this the 28th of March, 2022.

²⁵ House Bill 951 at § 2(c).

JOSHUA H. STEIN
ATTORNEY GENERAL

/s/ Tirrill Moore
Assistant Attorney General
temoore@ncdoj.gov

N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602
Telephone: (919) 716-6000
Facsimile: (919) 716-6050

CERTIFICATE OF SERVICE

The undersigned certifies that he has served a copy of the foregoing
COMMENTS OF THE ATTORNEY GENERAL'S OFFICE upon the parties of
record in this proceeding by email, this the 28th day of March, 2022.

/s/ Tirrill Moore
Assistant Attorney General

OFFICIAL COPY

Mar 28 2022