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September 8, 2017

VIA ELECTRONIC FILING

Ms. M. Lynn Jarvis, Chief Clerk
North Carolina Utilities Commission
Dobbs Building
430 North Salisbury Street
Raleigh, North Carolina 27603

Re: Docket No. E-100, Sub 150

Dear Ms. Jarvis:

On behalf of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, enclosed for filing in the above-referenced docket is their *Reply Comments and Amended Proposed Rule to Implement N.C. Gen. Stat. § 62-110.8*.

Please do not hesitate to contact me if you have any questions. Thank you for your assistance in this matter.

Very truly yours,

/s/E. Brett Breitschwerdt

EBB:kjg

Enclosure

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 150

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Implement G.S. 62-110.8	)))))	**DUKE ENERGY CAROLINAS, LLC'S AND DUKE ENERGY PROGRESS, LLC'S REPLY COMMENTS AND AMENDED PROPOSED RULE TO IMPLEMENT N.C. GEN. STAT. § 62-110.8(h)**

In accordance with the North Carolina Utilities Commission's ("Commission") July 28, 2017 *Order Initiating Rulemaking*, and August 30, 2017 *Order Granting Additional Extension of Time*, Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (collectively, the "Companies") hereby respectfully submit these reply comments and amended proposed competitive procurement of renewable energy program ("CPRE Program") rule ("CPRE Program Rule" or the "Rule"), attached hereto as Attachment A, to the Commission to implement the requirements of N.C. Gen. Stat. § 62-110.8. The Companies' Reply Comments and proposed modifications to the draft CPRE Program Rule respond to certain comments filed on August 16, 2017, by intervenors Public Staff—North Carolina Utilities Commission ("Public Staff"), North Carolina Clean Energy Business Alliance ("NCCEBA"), and the North Carolina Sustainable Energy Association ("NCSEA"), as well as certain public comments filed by Southern Environmental Law Center ("SELC"), Spencer Mountain Hydroelectric ("SM Hydro")[1], and Jordan Hydroelectric Project ("Jordan Hydro").

[1] The Commission denied SM Hydro's petition to intervene by Order issued September 5, 2017.

REPLY COMMENTS

As discussed in the Companies' Initial Comments, the proposed CPRE Program Rule was designed to provide a framework for Commission oversight of future CPRE Program implementation, while maintaining the flexibility delegated to the Companies by the General Assembly to develop and file CPRE Programs that meet the overall objectives of N.C. Gen. Stat. § 62-110.8 and the Public Utilities Act. The Companies explained that the proposed CPRE Program Rule is similar in design to the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard ("REPS") rule, providing for Commission oversight of annual planning, reporting, and cost recovery of CPRE Program costs and "authorized revenues" for utility-owned assets.[2] The Companies' Initial Comments also explained that the Companies are diligently working to develop a CPRE Program framework and guidelines to be filed with the Commission on or before November 27, 2017 ("November CPRE Program Filing"), for review by the Commission.

No other parties filed proposed CPRE rules. The comments filed by other parties generally fall into three categories: 1) comments focused on ongoing Commission oversight of the CPRE Program, which could reasonably be incorporated into a Commission rule; 2) more granular details of CPRE Program implementation that should be considered by the Companies in designing the November CPRE Program Filing; and 3) other legal and policy issues that may require further review and interpretation by the Commission either during this rulemaking, through the CPRE Program implementation process, or in other related proceedings. Through these Reply Comments, the Companies first identify proposed amendments and additions to the CPRE Program Rule based upon

[2] Companies' Initial Comments, at 4-5.

the Public Staff's and other intervenors comments as well as subsequent informal discussions regarding the Rule design.[3] The Companies then address plans for the November CPRE Program Filing. Finally, the Companies identify certain legal and policy issues that may warrant further consideration by the Commission. Intervenor or public comments not specifically addressed in these reply comments and not otherwise incorporated into the amended proposed CPRE Program Rule were reviewed by the Companies and deemed not to warrant modification of the proposed CPRE Program Rule at this time.

I. COMMENTS ADDRESSING CPRE PROGRAM RULE

a. Oversight of CPRE Program Implementation

As initially designed, the Companies' proposed CPRE Program Rule aligns with a number of recommendations presented by the Public Staff and other intervenors. For example, the CPRE Program Rule is consistent with the Public Staff's recommendation that the REPS rule would provide a good starting framework for designing the cost recovery mechanism.[4] The annual CPRE Program Plan and Compliance Report filings also accomplish NCSEA's recommendation that DEC and DEP should be required to update the Commission during the 45-month CPRE procurement period ("CPRE Procurement Period") regarding the Companies' ongoing plans to meet the aggregate 2,660 MW requirement mandated by N.C. Gen. Stat. § 62-110.8(a) ("CPRE Total Obligation"), as well as provide the Commission with information about previous competitive

[3] The Companies have engaged with the Public Staff in developing the proposed CPRE Program Rule, as amended. The Companies also shared the amended proposed CPRE Program Rule with NCCEBA and NCSEA on September 6, 2017, offering these parties an opportunity to provide input prior to the Companies filing Reply Comments. No comments were received from these other parties.

[4] Public Staff Initial Comments, at 11.

procurement solicitations (now defined as "CPRE RFP solicitations").[5] The annual CPRE Program Plan filings also address NCSEA's recommendation that the Companies be required to produce forecasted avoided cost and identify the allocated amount of renewable energy facilities to be procured within DEC's and DEP's respective service territories annually during the planning period.[6] Similarly, the CPRE Program planning requirements address NCCEBA's and NCSEA's recommendation that the Companies be required to explain how DEC and DEP have determined the locational allocation of renewable energy facilities within their balancing authority areas, if designated.[7]

The Companies' CRPE Program Reporting requirements also address Commission oversight of the potential use and sharing of non-publicly available transmission and distribution system information where the soliciting utility bids a utility-developed renewable energy facility into a CPRE RFP solicitation. Subsection (h)(iv) of the proposed Rule, as amended, provides that a public utility must report to the Commission how any such non-publicly available transmission or distribution system operations information was used in preparing a utility-sponsored proposal, as well as how the utility made that information available to third parties that notified the utility of their intention to submit a proposal in the same CPRE Program solicitation.

In further response to the comments of the Public Staff and other parties, the Companies have also reorganized certain sections of the CPRE Program Rule, as well as identified certain additions and refinements to specific aspects of the Rule that will also facilitate effective Commission oversight of the Companies' CPRE Programs.

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[5] NCSEA Initial Comments, at 15.
[6] *Id.*
[7] NCCEBA Initial Comments, at 5; NCSEA Initial Comments, at 7.

First, the Companies have moved the initially-proposed subsection (g), addressing the planned November CPRE Program Filing of program guidelines ahead of the Program Plan and Program Compliance Report subsections in the Rule. The Companies have also included more detailed filing requirements to provide more clarity and transparency regarding the planned November CPRE Program Filing.

The Companies have also incorporated three new subsections that: further clarify Commission oversight of the CPRE Program as it relates to the process for selecting the independent third-party evaluator ("IE") required by N.C. Gen. Stat. § 62-110.8(d); provide procedures to be followed by the Companies and the IE in implementing CPRE RFP solicitations; and establish transparency requirements and limits on affiliate communications between the electric public utility's "evaluation team" managing the CPRE RFP solicitation and any Duke Energy affiliate acting as a market participant bidding into the CPRE Program solicitation.

In addition, the Companies have incorporated the Public Staff's recommendation that the Commission "periodically review the contract with the independent evaluator selected by the Commission to oversee the competitive procurement" in the modified proposed CPRE Program Rule.[8] Specifically, the Companies have amended the CPRE Program Compliance Report requirement to require the electric public utility to file a copy of the contract then in effect with the third-party evaluator entity hired to administer the CPRE RFP solicitations, as well as supporting information regarding the administrative fees collected from market participants in the CPRE RFP solicitations during the reporting

[8] Public Staff Initial Comments, at 5.

year. This addition to the CPRE Program Compliance Report will better facilitate the ongoing oversight recommended by the Public Staff.

NCCEBA and NCSEA both generally advocate for establishing a published schedule of planned CPRE Program solicitations, including target dates and the anticipated volume of generation to be procured through each CPRE RFP solicitation during the full 45-month CPRE Procurement Period. The Companies have amended subsection (c)(1) of the proposed Rule to present these details in the initial November CPRE Program Filing. Further, the CPRE Program Plan proposal filed with the Companies' Initial Comments contemplated a planning period covering the calendar year in which the plan is filed and the immediately subsequent calendar year. Recognizing that the CPRE Program Plan would be filed on September 1 annually pursuant to subsection (g)(1) of the amended CPRE Program Rule, the Companies agree that it is reasonable to extend the CPRE Program planning period for the full duration of the 45-month CPRE Procurement Period, and have revised the proposed CPRE Program Rule to reflect this change.

In response to NCSEA's comments seeking additional filings at the conclusion of the CPRE Procurement Period,[9] the Companies have also added a CPRE Program Plan filing in the calendar year following the end of the CPRE Program Procurement Period, which will identify any additional CPRE Program procurement requirements. *See* subsection (g)(3)-(4). These filings will continue to provide the Commission updated information regarding procurement requirements and outcomes during and immediately following the expiration of the CPRE Program Procurement Period until the Companies

[9] NCSEA Initial Comments, at 15.

determine, subject to Commission oversight, that the CPRE Program requirements have been fully met.

The Companies have also added clarifying definitions of certain terms and made certain wording modifications throughout the Rule.

b. Waiver of Regulatory Conditions and Code of Conduct Requirements

Subsections (c)(2) and (m) of the draft amended CPRE Program Rule modify the Companies' approach to implementing the requirements of N.C. Gen. Stat. § 62-110.8(h)(3). This statutory section provides for waiver of regulatory conditions and Code of Conduct requirements[10] "that would unreasonably restrict a public utility or its affiliates from participating in the competitive procurement process, unless the Commission finds that such a waiver would not hold the public utility's customers harmless." N.C. Gen. Stat. § 62-110.8(h)(3).

As set forth in subsection (I) of the initial CPRE rule proposal filed with the Companies' Initial Comments, the Companies requested all regulatory condition and Code of Conduct provisions be expressly deemed waived as part of the CPRE Rule with the goal of allowing the electric public utility's affiliate(s) to participate in the CPRE Program process on virtually equal terms with non-affiliated third-party developers of renewable energy facilities.[11] The Companies' Initial Comments identified and provided support for the regulatory conditions and Code of Conduct requirements to be prospectively waived as part of the proposed rule, explaining that provisions related to the filing and content of affiliate agreements, prescriptive asymmetrical pricing requirements, and conditions

[10] *Order Approving Merger Subject to Regulatory Conditions and Code of Conduct*, Docket Nos. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682, issued Sept. 29, 2016.
[11] Companies' Initial Comments, at 7.

related to transferring non-public information from DEC or DEP to their affiliates could unreasonably restrict participation by the Companies' affiliates in the competitive CPRE Program.[12] The Companies also proposed a procedure for Commission review of power purchase agreements ("PPAs") with affiliate counter-parties procured through a CPRE RFP solicitation under N.C. Gen. Stat. § 62-153(a), as well as a process for interested parties to file an objection within 30 days after such a filing was made.

The Public Staff's initial comments suggest that both Section 2.3 of the regulatory conditions and Section II of the Code of Conduct contemplate the potential for waivers, and that the Companies should request waivers from the Commission in a timely fashion.[13] However, the Public Staff did not advocate that any express waiver should be included in a Commission rule to implement the CPRE Program requirements.[14] NCCEBA also advocated that the Companies should be obligated to specifically establish the need for any waivers of regulatory conditions and Code of Conduct requirements as an exception to the general imposition of these requirements.[15]

After review of the Public Staff's comments and subsequent discussions, the Companies continue to support wavier of the regulatory condition and Code of Conduct requirements discussed in the Companies' Initial Comments as appropriate and consistent with the standard established in N.C. Gen. Stat. § 62-110.8(h)(3). For the reasons generally described in the Companies' Initial Comments, imposition of these regulatory conditions and Code of Conduct requirements under the competitive framework of the CPRE RFP

[12] Companies' Initial Comments, at 8-11.
[13] Public Staff Initial Comments, at 6.
[14] *Id.* at P 8.
[15] NCCEBA Initial Comments, at 16.

solicitation process would unreasonably restrict a public utility or its affiliates from participating. The Companies also reiterate that establishing a prospective waiver prior to the Companies' initiating the CPRE RFP solicitation process is important to allowing the Companies' affiliate(s) to participate in the CPRE RFP solicitations on virtually equal terms with non-affiliated third-party developers. However, at the same time, the Companies recognize the Public Staff's and NCCEBA's desire for more detailed information to be provided regarding the regulatory condition and Code of Conduct provisions to be waived and explanation of the need for waiver. In response, subsection (c)(2) of the amended Rule provides that the Companies may petition the Commission for wavier of any regulatory condition or Code of Conduct requirement as part of the November CPRE Program Filing. This process will create additional transparency regarding the waiver request, while also allowing the Companies to obtain the requested waiver in a timely fashion prior to the CPRE RFP solicitation process commencing in 2018.

Subsection (m) of the amended CPRE Program Rule has also been modified to aggregate all requirements related to power purchase agreements entered into as part of the CPRE Program within the Rule. Subsection (m)(3) now requires that all PPAs that are competitively procured through a CPRE RFP solicitation be filed with the Commission for informational purposes not later than 30 days after execution by the electric public utility. Specifically, PPAs with affiliates of the electric utility are to be filed pursuant to N.C. Gen. Stat. § 62-153(a).

c. Certificates of Public Convenience and Necessity for Utility-Owned Renewable Energy Facilities Procured through the CPRE Program

The Companies are not proposing any material changes to the expedited certificate of public convenience and necessity ("CPCN") review section (now subsection (k)) of the

proposed CPRE Program Rule based upon the initial comments filed by the Public Staff and other parties. The Companies note that both the Public Staff and NCCEBA recognize that interpreting N.C. Gen. Stat. § 62-110.8(h)(3) to require issuance of a Commission Order approving a new CPCN within 30 days is not easily reconciled with the public notice and hearing requirements of N.C. Gen. Stat. §§ 62-110.1(e) and 62-82(a), respectively.[16] As the General Assembly did not modify or exempt the expedited review procedure for CPRE Program CPCNs from these otherwise-applicable public notice and hearing requirements, the Companies' position is that these requirements continue to apply. Accordingly, the Companies have designed the procedure for new CPCN applications in subsection (k)(4) of the CPRE Program Rule to comport with the Public Utilities Act's otherwise-applicable public notice and hearing requirements, in a manner similar to existing NCUC Rule R8-64 requirements for third-party Qualifying Facility ("QF") CPCN applications.

To best achieve the General Assembly's directive to "establish a procedure for expedited review" of CPRE-procured CPCNs, the Companies find merit in the Public Staff's recommendation that the Commission could direct the Public Staff to complete an expedited investigation and present its findings to the Commission at Staff Conference, in a manner similar to the current procedure followed today to approve third-party QF CPCN applications filed under NCUC Rule R8-64.[17] Upon receiving the Public Staff's recommendation, the Commission could "issue an order not later than 30 days after a petition" for a CPCN was filed, as required by N.C. Gen. Stat. § 62-110.8(h)(3). Depending

[16] Public Staff Initial Comments, at 9; NCCEBA Initial Comments, at 17-18.
[17] Public Staff Initial Comments, at 9.

on the Public Staff's recommendation, this order could either conditionally approve the CPCN if no complaints are received during the public notice period, or require a hearing or other additional review to further consider the CPCN application, as contemplated by subsection (k)(4)(iii) of the amended Rule.

The Companies anticipate that more petitions for expedited review of CPCN transfers will be submitted during CPRE Program implementation than petitions for new expedited CPCNs for utility-developed assets. Consistent with N.C. Gen. Stat. § 62-110.8(h)(3), Commission approval of a CPCN transfer should be achievable within 30 days of the transfer request, as the public notice and hearing requirements applicable to new CPCNs do not apply to transferring an already-awarded CPCN.

Finally, the Companies have considered NCCEBA's concern that the expedited CPCN procedures for public utility-owned renewable energy facilities procured under the CPRE Program could "create an unlevel playing field for other bidders" and do not find this concern to be well-grounded.[18] N.C. Gen. Stat. § 62-110.8(h)(3) clearly evinces the General Assembly's intent that this procedure applies to renewable energy facilities "owned by the public utility and procured pursuant to this section." This means that the renewable energy facility would have already been competitively bid into a CPRE Program solicitation and been selected as of the time the petition for CPCN approval or CPCN transfer is filed with the Commission. Today, third-party QF developers obtain CPCNs earlier in the project development process than the Companies through a more expedited review procedure under NCUC Rule R8-64. Subsection (h) of the CPRE Proposed Rule is designed to facilitate a similar expedited Commission review by providing for CPCN

[18] NCCEBA Initial Comments, at 17.

transfers or approval of new CPCNs for renewable energy facilities within 30 days, but only if the facility is competitively selected by the electric public utility – subject to IE review and Commission oversight – through a CPRE RFP solicitation. The Companies' CPRE Program Rule will therefore not disadvantage third-party bidders participating in the CPRE Program and appropriately achieves the General Assembly's directive for expedited review set forth in N.C. Gen. Stat. § 62-110.8(h)(3).

d. CPRE Cost Recovery Mechanism

The Companies are not proposing any material changes to the cost recovery mechanism (now subsection (j)) of the proposed CPRE Program Rule based upon the initial comments filed by the Public Staff and other parties. The Companies agree with the Public Staff's comment that the cost recovery mechanism should be designed to prevent any double counting of the costs of utility-owned assets between the rider mechanism and base rates.[19] As designed, the cost recovery mechanism, in conjunction with the annual CPRE Program Compliance Report, will identify all costs of third-party PPAs (including both independent power producer and affiliate counter-parties), as well as "authorized revenues" for competitively-selected utility-owned assets to be recovered through the annual CPRE rider mechanism. As 100% of CPRE Program procurement costs are intended to be recovered under the annual CPRE rider mechanism authorized by N.C. Gen. Stat. § 62-110.8(g), both the authorized revenues for utility-owned assets as well as the cost of third-party PPAs will be recovered through this new rider mechanism, and otherwise excluded from the fuel factor and REPS rider recovery as well as from future adjustments to base rates.

[19] Public Staff Initial Comments, at 11.

NCSEA raises a related issue questioning whether third-party renewable energy purchased power costs and the cost of RECs procured through the CPRE Program to be used for REPS compliance would be recovered under the NCUC Rule R8-55 fuel factor and NCUC Rule R8-67 REPS cost recovery mechanisms, respectively.[20] As noted above, the Companies do not believe any CPRE Program procurement costs should be recovered through the fuel factor or the REPS Rider, as N.C. Gen. Stat. § 62-110.8(g) authorizes 100% of the CPRE Program procurement costs to be recovered under this new rider mechanism. Therefore, the Companies do not agree with NCSEA's suggestion that the scope of the CPRE Program cost recovery mechanism should be limited to the authorized revenues of utility-owned assets that are procured under the CPRE Program, as well as the cost of purchases of environmental and renewable attributes from third-party renewable energy facilities that are not used for REPS compliance.[21]

Specific to the interrelationship with REPS, the Companies do not anticipate any CPRE Program costs being recovered through the REPS rider because N.C. Gen. Stat. § 62-110.8(b)(2) caps CPRE Program PPA purchases, including the cost of RECs, at or below the Companies' avoided cost. Therefore, the full cost of bundled CPRE Program RECs would be recovered through the CPRE Program rider mechanism. Similar to the approach used today for energy efficiency credits applied towards REPS compliance, the cost of RECs associated with renewable energy resources procured under the CPRE Program would simply be assigned $0 cost for REPS compliance.

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[20] NCSEA Initial Comments, at 19.
[21] *Id.*

The Companies also do not agree with NCCEBA's proposal to limit the scope of the CPRE Program cost recovery mechanism. NCCEBA suggests that the "utilities should not be able to recover any capital costs greater than the equivalent of the capacity payments made to small power producer bidders" if recovery occurs on a cost-of-service basis.[22] NCCEBA also asserts that "cost recovery for a renewable facility [that the electric public utility] constructs and owns should be limited to the amount of its bid regardless of whether cost recovery is on a cost of service basis or on a market basis."[23] First, if CPRE Program costs are recovered under a traditional cost-of-service ratemaking methodology, the Public Utilities Act has long allowed for full recovery of all reasonable and prudent costs of used and useful utility plant actually incurred and placed in service. Limiting recovery to the capacity payment paid to third parties under a PPA would be inappropriate under a cost-of-service methodology, as the capacity payments made to third-party market participants is not relevant to the costs actually incurred by the electric public utility.

It is also important to recognize that utility-owned investments competitively procured through the CPRE Program are fully recoverable as "authorized revenues" under the CPRE cost recovery mechanism. N.C. Gen. Stat. § 62-110.8(g) provides that authorized revenues for utility-owned renewable energy facilities may be set on "a market basis in lieu of cost-of-service based recovery, using data from the applicable competitive procurement to determine the market price . . ." The provision for a market-based cost recovery methodology in Section (j)(2) of the proposed CPRE Program Rule squarely aligns with the General Assembly's direction to allow recovery based upon a market-

[22] NCCEBA Initial Comments, at 19.
[23] NCCEBA Initial Comments, at 18.

derived price – versus a predetermined bid amount offered by the electric public utility – upon a finding by the Commission that such recovery is in the public interest. This market price-based recovery could apply to both resources bid into the CPRE Program solicitation by the electric public utility or, alternatively, renewable energy facility offers procured through the CPRE Program solicitation from a third-party offer and selected to be owned by DEC or DEP. As defined at subsection (b)(7) of the amended Rule, the "market price" used to establish authorized revenues would be derived based upon the "price offered by third parties at which an electric public utility elects to procure renewable energy, capacity and environmental and renewable attributes through a CPRE Program solicitation administered under this section."

The Companies have proposed one new cost recovery-related provision in subsection (m)(4) addressing cost recovery after the initial PPA term expires for both third-party-owned generators and utility-owned assets where the Commission determines that comparable market-based recovery using the market price is in the public interest. This provision recognizes that the useful life of renewable energy facilities will likely extend beyond the initial 20-year tenor of PPAs entered into during the CPRE Procurement Period. In recognition of this "residual value," the amended Rule clarifies that both third-party-owned PPA facilities and utility-owned assets being recovered on a market basis will be authorized to continue recovery based on updated market-based revenues or at the utility's avoided cost rate at the conclusion of the initial PPA term. The Companies anticipate that this provision will allow both third-party developed proposals and utility-owned project development proposals to more effectively compete within the CPRE RFP solicitation process.

e. Procedure to Modify or Delay CPRE Program Requirements

The Companies are not proposing any material changes to subsection (i)(2) of the amended proposed CPRE Program Rule based upon the initial comments filed by the Public Staff and other parties. The Public Staff generally identifies the REPS "off-ramp" provision established in NCUC Rule R8-67(c)(5) as providing a good template for the analogous CPRE provision.[24] The Companies similarly recognized and relied upon this REPS rule language in developing subsection (i)(2). The Companies note that the proposed Rule does not include the more detailed "reasonable efforts" requirement in NCUC Rule R8-67(c)(5) as that language was not expressly set forth in N.C. Gen. Stat. § 62-110.8(h)(5), as compared to N.C. Gen. Stat. § 62-133.8(i)(2).

The Companies do not agree with NCSEA's and NCCEBA's related argument that modification or delay can only be shown to be warranted and "in the public interest" based upon a finding that responses bid into the CPRE RFP solicitation do not meet the cost effectiveness criteria of N.C. Gen. Stat. § 62-110.8(b)(2).[25] If that were the case, there would have been no need for the General Assembly to add a provision providing the Commission broad discretion to modify or delay the CPRE Program upon a finding that it is in the public interest to do so. The Commission should not prospectively limit its own authority and discretion under this section. However, the Companies also do not anticipate that the Commission will need to exercise this authority in light of the flexibility afforded to the Companies to design and modify the CPRE Program, if needed, to successfully achieve the CPRE Total Obligation. As suggested by NCSEA, N.C. Gen. Stat. §

[24] Public Staff Initial Comments, at 12.
[25] NCCEBA Initial Comments, at 21; NCSEA Initial Comments, at 20.

62-110.8(b)(3) also provides the Commission authority to approve CPRE Program solicitations for PPAs for longer than the initial 20-year term if the Commission determines that it is in the public interest to do so.[26]

II. PLANNING FOR THE NOVEMBER CPRE PROGRAM FILING

The Companies appreciate the thoughtful comments and input offered by the Public Staff, NCCEBA, NCSEA, and SELC regarding the design and procedures of the CPRE Program to be filed with the Commission in November. As noted above, the Companies are diligently working to develop a CPRE Program framework and guidelines to be filed with the Commission on or before November 27, 2017. In addition to the proposed CPRE Program rule revisions discussed above and set forth in Attachment A, the Companies offer the following comments regarding the issues to be presented to the Commission in the November CPRE Program Filing.

a. Transparency, Fairness, and Stakeholder Input

Many of NCCEBA's, NCSEA's, and SELC's comments and rulemaking recommendations speak generally to the competitive nature of the CPRE Program enacted by the General Assembly and to these parties' goal of ensuring the CPRE Program review process allows for transparency and stakeholder input prior to Commission approval, and, ultimately, provides a "level playing field" for independent power producers to participate effectively with the Companies and the Companies' affiliates in the CPRE Programs.[27]

The Companies agree with the Public Staff and other intervenors and commenters that the CPRE Program implementation should be a fair and transparent process and should

[26] NCSEA Initial Comments, at 21.
[27] NCSEA Initial Comments, at 4, 6; NCCEBA Initial Comments, at 2; SELC Letter, at 2.

not provide any undue advantages to any potential CPRE Program market participants, including the Companies, affiliates, or third-party independent power producers. Transparency, Commission oversight, and independent third-party evaluation were clearly contemplated by the General Assembly in enacting the CPRE Program requirements in order to assure equitable evaluation of all renewable energy facility offers bid into the CPRE Program. The Companies similarly recognize that robust market participation in the CPRE Program will be important to ensuring DEC and DEP can cost-effectively procure 2,660 MW of new renewable energy resources generation to serve customers, and the Companies are approaching the November CPRE Program Filing with these considerations in mind.

The Companies also recognize NCCEBA's point that the potential for the Companies' affiliate(s)' participation in the CPRE Program solicitations implicates certain Federal Energy Regulatory Commission ("FERC") guidelines and requirements designed to ensure that requests for proposals ("RFP") like the CPRE Program are designed and implemented in a competitive, transparent, and equitable manner.[28] Specifically, FERC has established standards and guidance for wholesale power procurement RFP design and implementation relating to transparency, independent evaluation, and oversight to ensure the electric public utility's affiliate does not receive any undue preference at any stage of the CPRE Program process.[29] The Companies are reviewing this guidance and are working

[28] NCCEBA Initial Comments, at 9.

[29] As noted in Footnote 4 of the Companies' Initial Comments, certain PPAs between DEC/DEP and affiliate QFs procured under the CPRE Program would be subject to FERC review and approval under Section 205 of the Federal Power Act. *See Edgar Elec. Energy Co*., 55 FERC ¶ 61,382 (1991); *Allegheny Energy Supply Co*., 108 F.E.R.C. ¶ 61,082 (2004); *Southern Power Co*., 153 F.E.R.C. ¶ 61,068 (2015).

to design the CPRE Program in a manner that meets the transparency and "level playing field" objectives identified therein.

The Companies also plan to share CPRE Program details and receive feedback from the Public Staff and market participants prior to submitting the November CPRE Program Filing. This informal CPRE Program design review process will contribute to the transparency objective discussed above and, ultimately, should make the Commission's formal review less complex and more efficient. Accordingly, the Companies have developed the following schedule for designing the CPRE Program guidelines and receiving input from the Public Staff and market participants prior to filing the CPRE Program with the Commission.

CPRE Program Schedule	
ACTIVITY	**DATE**
Publish Draft CPRE Program Guidelines on Companies' Website	November 3, 2017
Review Draft CPRE Program Guidelines with Public Staff and Potential Market Participants	November 8, 2017
Informal Comment Period on Draft CPRE Program Guidelines Closes	November 15, 2017
CPRE Program Filed with the Commission	November 27, 2017
Formal Comment Period for Draft CPRE Program Guidelines	TBD by Commission
Commission Issues Order in CPRE Program	On or before February 26, 2018

The Companies also recognize that the Public Staff, market participants, intervenors, and other parties have a significant interest in the procedure for selecting the IE entity that will "develop and publish the methodology used to evaluate responses received pursuant to a competitive procurement solicitation and to ensure that all responses are treated equitably." N.C. Gen. Stat. § 62-110.8(d). The Companies agree with the Public Staff that "full independent oversight is needed to ensure the integrity of the process

and to ensure market participants that a fair evaluation will be afforded to all." [30] After discussions with the Public Staff, the Companies have incorporated proposed subsection (d) into the proposed CPRE Program Rule proposing a process for the Commission's selection and oversight of the IE. Subject to further direction from the Commission, the Companies plan to present a third-party IE recommendation as part of the November CPRE Program Filing to be "approved by the Commission." *See* N.C. Gen. Stat. § 62-110.8(a); (d). Subsection (d) of the proposed CPRE Program Rule also provides that the Public Staff and other parties may also provide the Commission with comments and recommendations regarding the IE.

The Companies contemplate that a proposed IE services contract for the scope of work identified in Subsection (d)(5) will be included in the November CPRE Program Filing, and, after Commission approval, the Companies would then operate under this approved contract for the duration of the CPRE Procurement Period. Subsections (d)(3)-(4) address the process for the Companies to contract with the IE after Commission approval and subsection (d)(6) then sets the timeframe and procedure for the IE to develop and publish the methodology to be used to independently evaluate all proposals offered in to the initial CPRE RFP solicitation. As noted above, the CPRE Program contract would also be filed annually with the Commission as part of the annual CPRE Compliance Report along with information regarding the administrative fees collected from market participants in the CPRE RFP solicitations held during the reporting year.

[30] Public Staff Initial Comments, at 5.

b. Implementation Details for November CPRE Program Filing

The Companies recognize that numerous "implementation details" will require more thorough consideration by the Commission in the future, once the November CPRE Program Filings have been filed. Issues raised by NCCEBA and NCSEA relating to CPRE Program design, bidder qualifications and eligibility criteria, such as site control, interconnection request submittal, and performance assurance requirements, as well as the terms and conditions of PPAs will need to be addressed as part of the CPRE Program design to be submitted for Commission approval in the November CPRE Program Filing.[31] However, these issues go beyond the level of detail required to establish rules for effective Commission oversight of the CPRE Program, as directed by the General Assembly. The Companies' view on this issue is informed by REPS, the demand-side management and energy efficiency requirements established in N.C. Gen. Stat. § 62-133.9(b), and other regulatory mandates imposed by the General Assembly where Commission oversight through formalized rules does not extend to every granular aspect of the electric public utilities' policy implementation and program design. As noted by the Public Staff, the Companies have recently gained experience issuing competitive RFPs to solicit renewable energy products to achieve various aspects of REPS compliance.[32] The Companies also note the comments of the Public Staff and NCCEBA highlighting other jurisdictions, including Georgia, Oregon, and Massachusetts that have recently implemented third-party-administered renewable energy procurement programs.[33] As the Companies continue to

[31] As noted above, the Companies have more fully enumerated these requirements in amended subsection (g)(1).
[32] Public Staff Initial Comments, at 4.
[33] Public Staff Initial Comments, at 3-5.

work toward the November CPRE Program Filing, consideration will be given to these existing program designs, as well as the competitive procurement "best practices" identified by the Public Staff.[34]

III. LEGAL AND POLICY ISSUES FOR FURTHER CONSIDERATION BY THE COMMISSION

As with any complex new legislative mandate under the Public Utilities Act, legal and policy issues are likely to arise during the CPRE Program development and implementation process that may require further consideration and specific guidance by the Commission outside of the context of the CPRE Program Rule itself. Similar to the Commission's implementation of REPS in Docket No. E-100, Sub 113, these issues can be considered through requests for declaratory judgment and/or clarification, or the Commission can direct the Companies and other interested parties to evaluate such issues within the CPRE Program review framework or through other ongoing proceedings. At this stage the Companies have identified the following legal and policy issues that warrant further consideration and likely will require clarification or further direction by the Commission:

a. Interconnection Policies to Facilitate Effective CPRE Program Participation

NCSEA and NCCEBA have appropriately identified the interrelationship between the planned CPRE Program and the current North Carolina Interconnection Procedures applicable to all state-jurisdictional requests to interconnect generating facilities to the Companies' systems in North Carolina as an issue requiring further analysis.[35] All generator interconnection requests must be processed and studied under the North Carolina

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[34] *Id.*

[35] NCSEA Initial Comments, at 11. NCCEBA Initial Comments, at 6, 13.

Interconnection Procedures to ensure continued system safety, power quality, and reliability. However, the Companies agree with NCSEA that issues such as queue processing, queue priority, and the logistics about how existing projects moving through the Companies' interconnection queues may be impacted by the new CPRE Program need to be considered, both as part of the ongoing interconnection procedures review process in Docket No. E-100, Sub 101, as well as through CPRE Program design and implementation. The Companies also agree with NCSEA that issues related to allocation and recovery of system upgrade costs to interconnect generators selected through the CPRE Program should be evaluated further.[36] The Companies anticipate that the timeframe for market participants to bid proposed renewable energy facilities into a CPRE Program solicitation could precede the System Impact Study and Facilities Study steps in the interconnection process, through which the Companies analyze and determine the detailed cost of interconnection facilities and system upgrades. Requiring market participants to accept the risk of unknown and potentially significant system upgrades could increase the cost of renewable energy facilities bid into the CPRE RFP solicitation, thereby increasing the competitive procurement cost to the Companies and customers. Such issues will need to be evaluated further through the future CPRE Program design to ensure clear rules are established that will facilitate robust market participation, while also ensuring that the CPRE Program continues to align with the North Carolina Interconnection Procedures. The Companies recommend these issues be further discussed in the ongoing North Carolina Interconnection Procedures stakeholder process and plan to propose clear interconnection-related eligibility criteria in the November CPRE Program Filing.

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[36] NCSEA Initial Comments, at 11.

b. Capping "Cost Effectiveness" at Companies' Avoided Cost

The General Assembly designed the CPRE Program to ensure long-term cost savings for customers by, among other requirements, imposing a "cost-effectiveness" standard in N.C. Gen. Stat. § 62-110.8(b)(2). This section provides:

> To ensure the cost-effectiveness of procured new renewable energy resources, each public utility's procurement obligation shall be capped by the public utility's current forecast of its avoided cost calculated over the term of the power purchase agreement. The public utility's current forecast of its avoided cost shall be consistent with the Commission-approved avoided cost methodology.

NCCEBA and NCSEA suggest that a "mismatch" or "apples to oranges comparison" exists between the bundled renewable energy resource product to be procured under N.C. Gen. Stat. § 62-110.8(b) and the traditional Commission-approved avoided cost methodology, which has been applied to derive the Companies' avoided costs applicable to both renewable and non-renewable QF resources.[37]

As an initial matter, the Companies agree with NCCEBA and NCSEA that the Commission's traditional avoided cost methodology does not take the individual characteristics of renewable energy resource technologies into account. The Commission has traditionally viewed the electric public utilities' avoided costs as determined pursuant to the peaker method as comprising the cost of a peaking combustion turbine unit plus the marginal running costs of the generating system,[38] with those avoided costs paid to QFs on an energy and capacity basis.[39] Traditionally, unless otherwise agreed upon by contract, the value of environmental attributes and renewable energy credits have been retained by

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[37] NCCEBA Initial Comments, at 19; NCSEA Initial Comments, at 10.
[38] *See Order Setting Avoided Cost Input Parameters* at 30, Docket No. E-100, Sub 140 (Dec. 31, 2014).
[39] NCCEBA Initial Comments, at 19; NCSEA Initial Comments, at 10.

renewable energy resource-fueled QFs (as opposed to non-renewable co-generation QFs) and independently procured by the electric public utilities under REPS.

This traditional approach was discussed in the 2005 avoided cost order cited by NCCEBA at page 19 of its comments.[40] The Commission found in the Sub 100 Order that "[t]he sale of power by QFs at avoided cost rates does not convey the right to renewable energy credits or green tags."[41] The Commission relied in making that finding on a 2003 FERC order that concluded that avoided cost rates were not intended to compensate a QF for more than capacity and energy.[42] Notably, FERC also stated in *American Ref-Fuel* that "[w]hile a state may decide that a sale of power at wholesale automatically transfers ownership of the state-created RECs, that requirement must find its authority in state law," and that "avoided cost rates for capacity and energy sold under contracts entered into pursuant to PURPA do not convey the RECs, *in the absence of an express contractual provision.*"[43]

FERC's guidance therefore contemplates that avoided cost rates may convey RECs in addition to energy and capacity when a state determines that conveyance to be appropriate. In addition, subsequent to the Sub 100 Order, FERC determined that it can be appropriate for a state to determine an avoided cost rate that accounts for the particular characteristics of renewable energy when a utility is required by state law to procure a specified amount of renewable energy.[44] In *CPUC*, FERC addressed a state regulatory

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[40] *See Order Establishing Standard Rates and Contact Terms for Qualifying Facilities* at 35, Docket No. E-100, Sub 100 (Sept. 29, 2005) ("Sub 100 Order").
[41] Sub 100 Order, at 5.
[42] *American Ref-Fuel Co*., 105 FERC ¶ 61,004 (2003) ("*American Ref-Fuel*").
[43] *Id*. at PP 3, 18.
[44] *See, e.g., Calif. Pub. Utils. Comm'n*, 133 FERC ¶ 61,059 (2010) ("*CPUC*").

authority's request for clarification that it could implement a two-tiered avoided cost rate structure, under which combined heat and power QFs that met certain efficiency and emissions standards would receive a higher avoided cost rate reflecting those more stringent standards, and QFs that did not meet those requirements received another avoided cost rate.[45] FERC concluded that

> the concept of a multi-tiered avoided cost rate structure can be consistent with the avoided cost rates requirements set forth in PURPA and our regulations … the question, then, is what costs the electric utility is avoiding. … in determining the avoided cost rate, just as a state may take into account the cost of the next marginal unit of generation, so as well the state may take into account obligations imposed by the state that, for example, utilities purchase energy from particular sources of energy or for a long duration.[46]

FERC concluded further that, "where a state requires a utility to procure a certain percentage of energy from generators with certain characteristics, generators with those characteristics constitute the sources that are relevant to the determination of the utility's avoided cost for that procurement requirement."[47]

Subsequent to the Sub 100 Order, the General Assembly enacted the REPS, and now has enacted S.L. 2017-192, both of which require the Companies to procure energy or RECs produced by renewable energy facilities. The traditional avoided cost framework has been consistent with the REPS framework, because RECs procured to meet the REPS requirements were considered to be "incremental" and in excess of the utilities' avoided cost. *See* N.C. Gen. Stat. § 62-110.8(h)(1). Under the CPRE framework mandated by N.C. Gen. Stat. § 62-110.8, however, the sources relevant to determining the Companies'

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[45] *Id*. at P 21.
[46] *Id*. at P 26.
[47] *Id*. at PP 27, 29.

avoided costs are those bundled renewable energy resources that can bid into the CPRE Program. Consistent with FERC's clear recognition that, in cases such as these, it is appropriate to determine an avoided cost rate based on the type of facility eligible to provide the energy the utility is required to procure, the avoided cost methodology required by N.C. Gen. Stat. § 62-110.8(b)(2) should include both traditional avoided costs as well as the specific characteristics, including renewable attributes, of CPRE-specific resources. To that end, the Companies intend to develop a solar energy-specific avoided cost framework for determining the costs to be avoided by the Companies under the CPRE Program, which can be used to set the future cost effectiveness standard mandated by N.C. Gen. Stat. § 62-110.8(b)(2). Until this new solar-specific avoided cost framework is established and approved by the Commission, the Companies plan to rely upon the Commission's traditionally approved avoided-cost methodology as the appropriate cost-effectiveness standard to be applied in future CPRE RFP solicitations.

c. Capping Companies' Participation at 30% of CPRE Total Obligation

NCSEA also raises N.C. Gen. Stat. § 62-110.8(b)(4)'s limit on the Companies' CPRE Program participation as an issue for legal determination by the Commission. Specifically, NCSEA recommends the Commission interpret this subsection to limit the Companies to 30% of the nameplate capacity acquired in an individual CPRE Program solicitation, suggesting that it would be "counter to legislative intent for the utilities to be awarded more than 30% of any individual competitive procurement."[48] The Companies do not agree with this interpretation, as it is inconsistent with the plain language and structure of N.C. Gen. Stat. § 62-110.8(b). The 30% limit in subsection (b)(4) applies to

[48] NCSEA Initial Comments, at 9.

"an electric public utility's ***competitive procurement requirement***," which is the same language used in subsection (b) to identify the aggregate CPRE Total obligation. *See* N.C. Gen. Stat. § 62-110.8(b) ("Electric public utilities may jointly or individually implement the ***aggregate competitive procurement requirements set forth in subsection (a)*** of this section . . ."). (Emphasis added). In contrast, the General Assembly separately and independently recognized that the Companies would likely offer multiple CPRE Program solicitations to meet the CPRE Total Obligation and required the Companies to file pro forma PPAs with the Commission "30 days prior to each competitive procurement solicitation." *See* N.C. Gen. Stat. § 62-110.8(b)(3). Thus, the General Assembly could have used similar language to limit the Companies to 30% participation in each competitive procurement solicitation, as recommended by NCSEA, but did not elect to do so. Imposing NCSEA's interpretation would not be consistent with the language used by the General Assembly and could also unfairly disadvantage the electric public utility if an individual CPRE Program solicitation requested more limited amount of capacity. For example, a CPRE Program solicitation to procure 100 MW would effectively cap the Companies' participation at a single 30 MW renewable energy facility proposal, even though all other participants could submit proposals up to 80 MW. This result would not be reasonable and would further limit the Companies' participation in the CPRE Program in a manner not contemplated by the General Assembly.

d. CPRE Program Participation by Small Hydroelectric Generators

The Companies have reviewed the public comments filed by SM Hydro and Jordan Hydro in this proceeding. While these parties do not propose any specific rules or rule revisions to implement Part II of S.L. 2017-192, they do raise questions and express

concerns regarding how S.L. 2017-192 and this rulemaking will impact hydroelectric ("hydro") generators in the State. The Companies recognize the favored status historically afforded to hydro QFs in North Carolina and that the recent legislative changes enacted by S.L. 2017-192 have caused uncertainty for certain existing small hydro QF generators. The Companies have engaged with representatives of the small hydro QF industry to provide additional information on the interrelationship between Part I and Part II of S.L. 2017-192.

Specific to the CPRE Program, the Companies have advised that eligibility is statutorily limited to new renewable energy facilities placed in service after the date of the electric public utility's initial CPRE Program solicitation. N.C. Gen. Stat. § 62-110.8(a). Further, the amendments to N.C. Gen. Stat. § 62-156(b)(1) now limit standard contract eligibility to small power producer generators, including hydro QF generators, 1,000 kW or less. However, the Companies read the requirements of N.C. Gen. Stat. § 62-156(c) providing for negotiated power purchase agreements with QFs not eligible for the Companies' standard offers to be compatible with the 2014 *Stipulation of Settlement Among Duke Energy Carolinas, Duke Energy Progress, and NC Hydro Group*, as filed on June 24, 2014, in Docket No. E-100, Sub 140. Future capacity payments to hydro QFs could be levelized over the term of the PPA (thereby providing for a capacity payment in year 1 of the term), even though an electric public utility's future capacity need shall only be avoided in a year where the utility's most recent biennial integrated resource plan identified a projected capacity need, as mandated in N.C. Gen. Stat. § 62-156(b)(3). Going forward, N.C. Gen. Stat. § 62-156(c) also provides that the individual characteristics of small hydro QF generators should be taken into account in determining just and reasonable and nondiscriminatory rates for purchases from these small QF generators.

WHEREFORE, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC respectfully submit these Reply Comments and the modified proposed CPRE Program Rule set forth in Attachment A for the Commission's consideration.

Respectfully submitted, this the 8th day of September, 2017.

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R8-XX COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY

(a) Purpose. The purpose of this rule is to implement the provisions of G.S. 62-110.8, and to provide for Commission oversight of the CPRE Program(s) designed by the electric public utilities subject to G.S. 62-110.8 for the competitive procurement and development of renewable energy facilities in a manner that ensures continued reliable and cost-effective electric service to customers in North Carolina.

(b) Definitions. Unless listed below, the definitions of all terms used in this rule shall be as set forth in G.S. 62-110.8. The following terms shall be defined as:

(1) "Affiliate" – is defined as provided in G.S. 62-126.3(1).

(2) "Avoided cost rates" – means an electric public utility's calculation of its avoided costs based upon the methodology most recently approved or established by the Commission as of 30 days prior to the date of the upcoming CPRE RFP Solicitation for purchases of electricity from qualifying facilities pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978, as amended. The electric public utility's avoided cost rates shall be used for purposes of determining the cost effectiveness of renewable energy resources procured through a CPRE RFP Solicitation. For example, where an electric public utility solicits a pro forma CPRE Program contract offering a term of 20 years, the avoided cost rate applicable to that contract would be a 20-year, levelized long-term rate calculated based upon the Commission's approved avoided cost methodology in effect at the time the solicitation is held.

(3) "Competitive Procurement of Renewable Energy (CPRE) Program" – Program(s) established by G.S. 62-110.8 requiring Duke Energy Carolinas, LLC and Duke Energy Progress, LLC to jointly or individually procure an aggregate 2,660 megawatts (MW) of renewable energy resource nameplate capacity subject to the requirements and limitations established therein.

(4) "CPRE Program Procurement Period" – The initial 45-month period in which the aggregate 2,660 MW of renewable energy resource nameplate capacity is required to be procured under the CPRE Program(s) approved by the Commission.

(5) "CPRE RFP Solicitation" – shall mean the request for proposal solicitation process to be followed by the electric public utilities under this Rule to competitively procure renewable energy resource capacity pursuant to the CPRE Program.

(6) "Independent Evaluator" – Third-party entity to be approved by the Commission that shall develop and publish the methodology used to evaluate all responses received in a given CPRE RFP Solicitation to ensure the transparency of the CPRE Program process established by this Rule and to ensure that all responses are treated equitably.

(7) "Market price" – The price offered by third parties at which an electric public utility elects to procure renewable energy, capacity, and environmental and renewable attributes through a CPRE RFP solicitation administered under this section. The market price may be used to derive authorized revenues to be recovered by the electric public utility for any utility-owned assets procured in the same CPRE RFP Solicitation where the product offered and procured by the electric public utility is

the same as the product procured from the third parties, and the CPRE RFP Solicitation is determined to be based on an arm's length transaction between a buyer and a seller having a reasonable knowledge of the relevant facts. The market price shall not exceed the electric public utility's avoided cost rates established for the same CPRE RFP Solicitation.

(8) "Renewable energy certificates" – are defined as provided in G.S. 62-133.8(a)(6).

(9) "Renewable energy facilities" – are as defined in G.S. 62-133.8(a)(7), but as used in this Rule and the CPRE Program, shall be limited to renewable energy facilities with a nameplate capacity rating of 80 MW or less that have obtained Qualified Facility status, if required, under 18 C.F.R. 292.207, and that are placed in service after the date of the electric public utility's initial CPRE RFP solicitation.

(10) "Renewable energy resources" – are as identified in G.S. 62-133.8(a)(8).

(c) Initial CPRE Program Filings and Program Guidelines

(1) An electric public utility shall develop guidelines to support implementing the CPRE Program and to inform market participants regarding the terms and conditions and process for participating in the CPRE Program. The utility shall initially file CPRE Program guidelines at the time it initially proposes a CPRE Program for Commission approval and shall thereafter publicize and maintain the its then-current CPRE Program guidelines on its website. The CPRE Program guidelines should, at minimum, include the following:

(i) Planned allocation between the electric public utilities of the 2,660 MW required to be procured during the CPRE Program Procurement Period;

(ii) Proposed timeframe for each electric public utility's initial CPRE RFP Solicitation(s) and planned initial procurement amount, as well as plans for additional CPRE RFP Solicitation(s) during the CPRE Program Procurement Period;

(iii) Minimum bidder requirements for participation in the initial CPRE RFP Solicitation(s); and

(iv) Proposed bid criteria for product(s) to be procured under initial CPRE RFP Solicitation(s).

(2) At the time an electric public utility files its proposed CPRE Program guidelines with the Commission, it shall also identify any regulatory conditions and/or provisions of the electric public utility's code of conduct that the electric public utility seeks to waive for the duration of the CPRE Program Procurement Period as provided for in G.S. § 62-110.8(h)(2), unless the Commission finds that such waiver does not hold the electric public utility's customers harmless.

(d) Selection and Role of Independent Evaluator.

(1) At least thirty (30) days prior to the electric public utilities' initial CPRE Program filings required by subsection (c) of this Rule, the Commission shall invite and consider comments and recommendations from the electric public utilities, the Public Staff, and potential market participants regarding the selection of the independent third-party entity to serve as the Independent Evaluator. In addition to

meeting the requirements set forth in this Rule, the Commission may establish additional minimum qualifications and requirements for an Independent Evaluator responsible for administering the electric public utilities' planned CPRE RFP Solicitation(s) for renewable energy resource capacity under the CPRE Program.

(2) Any entity requesting to be considered by the Commission for the Independent Evaluator role shall be required to disclose any financial interest involving the electric public utilities implementing CPRE Programs or any potential market participant reasonably anticipated to participate in the CPRE Program, including but not limited to all substantive assignments for any Duke Energy affiliate or any other potential bidder during the preceding three (3) years.

(3) At least seventy-five (75) days prior to the electric public utilities' initial CPRE RFP Solicitation(s), the Commission shall select and approve the third-party entity to serve as Independent Evaluator to administer the CPRE RFP Solicitation(s) under the CPRE Program. From the date the Independent Evaluator is selected, no bidder or potential market participant shall have any communication with the Independent Evaluator or the electric public utility pertaining to the CPRE RFP Solicitation, the RFP documents and process, or the evaluation process or any related subjects except as those communications are specifically allowed by this Rule or as are made publicly through the Independent Evaluator's website.

(4) The Independent Evaluator will be retained by the electric public utility for the duration of the CPRE Program Procurement Period under a contract to be filed with the Commission at least sixty (60) days prior to the electric public utilities' initial CPRE RFP solicitation(s) and remains subject to ongoing Commission oversight as part of the Commission's review of the electric public utilities' annual CPRE Program Compliance Reports.

(5) The Independent Evaluator's duties shall include:
- (i) Monitors standards of conduct.
- (ii) Reviews draft program guidelines and other documents.
- (iii) Facilitates and monitors communications.
- (iv) Develops and publishes independent evaluation methodology.
- (v) Receives and transmits bids.
- (vi) Independently evaluates the bids.
- (vii) Monitors post-bid negotiations.
- (viii) Evaluates the utility's self-build proposals for the Commission.
- (ix) Provides an independent assessment to the Commission.
- (x) Certification of the CPRE Compliance Report.

(6) At least 30 days prior to the initial CPRE RFP Solicitation, the third party Independent Evaluator entity shall develop and publish the methodology to be used to independently evaluate all proposals offered in the CPRE RFP Solicitation. Prior to developing and publishing the methodology to be used to independently evaluate all bidder proposals, the Independent Evaluator shall meet with the electric public utility Evaluation Team to share evaluation techniques and practices.

(7) The Independent Evaluator shall maintain a website to support implementing the CPRE Program (the "IE website") and shall post the CPRE RFP Solicitation

documents, the Independent Evaluator's evaluation methodology, bidder FAQs and any other pertinent documents on the IE website.

(8) The Independent Evaluator shall be supervised by and report to the Commission. In carrying out its duties, the Independent Evaluator shall work in coordination with the electric public utilities' Evaluation Team(s) with respect to CPRE Program implementation and the CPRE RFP Solicitation bid evaluation process.

(9) If the Independent Evaluator becomes aware of a violation of any requirements of the RFP Process as contained in the RFP Rule, the Independent Evaluator shall immediately report that violation, together with any recommended remedy, to the Commission.

(10) The Independent Evaluator's fees shall be funded through reasonable bid fees collected by the electric public utility. The electric public utility shall be authorized to collect bid fees up to $10,000 per bid to defray its costs of evaluating the bids and, in addition, may charge each bid an amount which shall be equal to the estimated total cost of the Independent Evaluator divided by the reasonably anticipated number of bids. To the extent that insufficient funds are collected through this method to pay all of the Independent Evaluator 's fees, the electric public utility shall pay the outstanding cost, which will which shall subsequently be recovered from the winning bidders in the CPRE RFP Solicitation.

(e) Affiliate Communications.

(1) Any affiliate of the electric public utility that intends to submit a bid in response to the CPRE RFP Solicitation, as well as any other persons acting for that affiliate or on its behalf in support of the development and submission of such bid, shall be known collectively as the "Bid Team."

(2) The representatives of the electric public utility that will be evaluating the bids submitted in response to the RFP, as well as any other persons acting for or on behalf of the electric public utility regarding any aspect of the RFP Process, shall be known collectively as the "Evaluation Team."

(3) Within ten (10) days of the date an electric public utility announces the CPRE RFP Solicitation, the Bid Team shall be separately identified and physically segregated from the Evaluation Team for purposes of all activities that are part of the CPRE RFP Solicitation process. The names and complete titles of each member of the Bid Team and the Evaluation Team shall be reduced to writing and submitted to the Independent Evaluator.

(4) There shall be no communications, either directly or indirectly, between the Bid Team and Evaluation Team during the CPRE RFP Solicitation regarding any aspect of the CPRE RFP Solicitation process, except (i) necessary communications as may be made through the Independent Evaluator and (ii) negotiations between the Bid Team and the Evaluation Team for a final power purchase agreement in the event and then only after the Bid Team has been selected by the electric public utility as a winning bid. The Evaluation Team will have no direct or indirect contact or communications with the Bid Team or any other bidder, except through the Independent Evaluator as described further herein, until such time as a winning bid

or bids are selected by the electric public utility and negotiations for a final power purchase agreement(s) have begun.

(5) At no time shall any information regarding the CPRE RFP Solicitation process be shared with any bidder, including the Bid Team, unless the information is shared with all competing bidders contemporaneously and in the same manner.

(6) Within fifteen (15) days of the date an electric public utility announces a planned CPRE RFP Solicitation, each member of the Bid Team shall execute an acknowledgement that he or she agrees to abide by the restrictions and conditions contained in subsections (e)(3)-(4) of this Rule for the duration of the CPRE RFP Solicitation. If the Bid Team's bid is selected by the electric public utility after completion of the CPRE RFP Solicitation, each member of the Bid Team shall then also execute an acknowledgement that he or she has met the restrictions and conditions contained in subsections (e)(3)-(4). The electric public utility shall provide these acknowledgements to the Independent Evaluator and shall file the acknowledgements with the Commission in support of its annual CPRE Compliance Report.

(7) Should any bidder, including the Bid Team, attempt to contact a member of the Evaluation Team directly, such bidder shall be directed to the Independent Evaluator for all information and such communication shall be reported to the Independent Evaluator by the Evaluation Team member. Within ten (10) days of the date that the Independent Evaluator issues the CPRE RFP Solicitation, each Evaluation Team member shall execute an acknowledgement that he or she agrees to abide by the conditions contained in subsection (e)(3)-(5)for the duration of the CPRE RFP Solicitation. If the Bid Team's bid is selected by the electric public utility after completion of the CPRE RFP Solicitation, the Evaluation Team shall also execute an acknowledgement that he or she has met the restrictions and conditions contained in subsection (e)(3)-(5) above. The electric public utility shall provide these acknowledgements to the Independent Evaluator and shall file the acknowledgements with the Commission in support of its annual CPRE Compliance Report.

(f) CPRE RFP Solicitation Structure and Process.

(1) Identification of Bidders and Design of CPRE RFP Solicitation.

(i) The electric public utility will provide the Independent Evaluator with a list of potential market participants that have participated in recent renewable energy resource solicitations issued by the electric public utilities. Other potential market participants may contact the Independent Evaluator directly. The Independent Evaluator shall then be responsible for publishing notice of the draft CPRE RFP Solicitation on the IE website, as well as preparation of the final list of potential bidders to whom notice of the upcoming CPRE RFP Solicitation will be sent.

(ii) The electric public utility will be responsible for preparing an initial draft of the CPRE RFP Solicitation guidelines and documents, including RFP procedures, evaluation factors, credit and security obligations, a pro forma power purchase agreement, the avoided cost rate against which the RFP bids

will be evaluated, and a planned schedule for completing the CPRE RFP Solicitation and selecting winning bids. No later than sixty (60) days prior to the planned issue date of the CPRE RFP Solicitation, the electric public utility will supply the draft of the CPRE RFP Solicitation documents to the Independent Evaluator for posting on the IE website.

(iii) The CPRE RFP Solicitation guidelines shall identify all factors to be considered by the electric public utility in its evaluation of bids. In addition to the guidelines, a pro forma power purchase agreement containing all expected material terms and conditions shall be included in the CPRE RFP Solicitation documents provided to the Independent Evaluator and shall be filed with the Commission at least thirty (30) days prior to the planned CPRE RFP solicitation issuance date.

(iv) The Independent Evaluator, in coordination with the electric public utility, may conduct a pre-issuance bidders conference to publicly discuss the draft CPRE RFP Solicitation documents with interested parties, including but not limited to potential bidders. Potential bidders may submit written questions or recommendations to the Independent Evaluator regarding the draft CPRE RFP Solicitation documents in advance of the bidders' conference. All such questions and recommendations shall be posted on the IE website. The Independent Evaluator shall have no private communication with any potential bidders regarding any aspect of the draft CPRE RFP Solicitation documents.

(v) Based on the input received from potential bidders, and based on their own review of the draft CPRE RFP Solicitation documents, the Independent Evaluator will submit a report to the electric public utility at least twenty (20) days prior to the planned CPRE RFP Solicitation issuance date detailing market participant comments and any suggested recommendations from the Independent Evaluator for changes to the CPRE RFP Solicitation documents. This report shall also be posted on the IE website for review by potential bidders.

(vi) At least five (5) days prior to the planned CPRE RFP Solicitation issuance date, the electric public utility shall submit its final version of the CPRE RFP Solicitation documents to the Independent Evaluator to be posted on the IE website.

(vii) At any time after the CPRE RFP Solicitation is issued, through the time winning bids are selected by the electric public utility, the schedule for the solicitation may be modified upon mutual agreement of the electric public utility and the Independent Evaluator, with equal notice provided to all market participant bidders, or upon approval by the Commission. Any modification to the CPRE RFP Solicitation schedule will be posted to the IE website.

(2) Issuance of CPRE RFP Solicitation and Bidder Communications.

(i) The Independent Evaluator will transmit the final CPRE RFP Solicitation to the bidder list via the IE website. Upon issuance of the final CPRE RFP Solicitation, the only bidder communications permitted prior to submission of bids shall be conducted through the Independent Evaluator. Bidder questions

and Independent Evaluator responses shall be posted on the Independent Evaluator website. To the extent such questions and responses contain competitively sensitive information that a particular bidder deems to be a trade secret, this information may be redacted by the bidder.

(ii) The electric public utility may not communicate with any bidder regarding the RFP Process, the content of the CPRE RFP Solicitation documents, or the substance of any potential response by a bidder to the RFP; provided, however, the electric public utility shall provide timely, accurate responses to an Independent Evaluator request for information regarding any aspect of the CPRE RFP Solicitation documents or the CPRE RFP Solicitation process.

(iii) Bidders shall submit bids pursuant to the solicitation schedule contained in the CPRE RFP Solicitation documents, as determined by the electric public utility and the Independent Evaluator and posted to the IE website. The electric public utility and the Independent Evaluator shall have access to all bids and all supporting documentation submitted by bidders in the course of the CPRE RFP Solicitation process.

(iv) If the electric public utility wishes to consider an option for full or partial ownership of a self-build option as part of the CPRE RFP solicitation, the utility must submit its construction proposal ("Self-build Proposal") to provide all or part of the capacity requested in the CPRE RFP solicitation to the Independent Evaluator at the time all other bids are due. Once submitted, the Self-build Proposal may not be modified by the soliciting entity. Provided, however, that in the event that electric public utility demonstrates to the satisfaction of the Independent Evaluator that the Self-build Proposal contains an error and that correction of the error will not be harmful to the RFP Process, the soliciting entity may correct the error. Persons who have participated or assisted in the preparation of the Self-build Proposal in any way may not be a member of the affiliate Bid Team, nor communicate with the affiliate Bid Team during the RFP Process about any aspect of the RFP Process.

(3) Evaluation of Responses to CPRE RFP Solicitation.

(i) The evaluation stage of the CPRE RFP Solicitation process will proceed on two tracks. On one track, the electric public utility will evaluate all bids based upon an evaluation methodology set forth in the CPRE RFP Solicitation documents. The electric public utility will conduct this track in an appropriate manner, consistent with the principles and procedures contained in this Rule.

(ii) A second track will be conducted by the Independent Evaluator. The Independent Evaluator shall have discretion to utilize whatever approach they consider the optimum combination of auditing the electric public utility track and conducting its own independent evaluation based upon its own developed methodology in order to equitably evaluate all renewable energy resource options submitted to the electric public utility in response to the CPRE RFP Solicitation. The Independent Evaluator may consider and take into account the methodology utilized by electric public utility as part of conducting its independent evaluation.

(iii) The electric public utility or the Independent Evaluator may request further information from any bidder regarding its bid. Any communications between the electric public utility and a bidder in this regard shall be conducted through the Independent Evaluator. The electric public utility shall be informed of the content of any communications between the Independent Evaluator and a bidder. Should it be determined necessary by the Independent Evaluator, the electric public utility and the bidder, conference calls between the electric public utility and a bidder may be conducted for the sole purpose of clarification and understanding of a particular bid. All conference calls must be initiated by the Independent Evaluator and the Independent Evaluator will be present on each call for its duration. Communications will be conducted on a confidential basis between the Independent Evaluator and the bidder, and may include one face-to-face meeting between the Independent Evaluator, the electric public utility, and each bidder to discuss the bidder's proposal.

(iv) In order to conduct both its independent evaluation function and its auditing function, the Independent Evaluator shall have access to all information and resources utilized by the electric public utility in conducting its analysis. The electric public utility shall provide complete and open access to all documents and information utilized by the electric public utility, and the Independent Evaluator shall be allowed to actively and contemporaneously monitor all aspects of the electric public utility evaluation process. The electric public utility shall facilitate this access so that the electric public utility evaluation process is transparent to the Independent Evaluator. To the extent the Independent Evaluator determines that the evaluation processes of the two tracks are yielding different results, the Independent Evaluator shall notify the electric public utility and attempt to identify the reasons for the differences as early as practicable. Where practicable, the electric public utility and the Independent Evaluator shall attempt to reconcile such differences.

(v) The Independent Evaluator may make reasonable requests for the electric public utility's Evaluation Team to conduct analyses concerning bids received to support the Independent Evaluator's evaluation methodology. Analyses provided to the Independent Evaluator shall be equivalent in quality and content as that developed by the electric public utility for purposes of its own evaluation.

(vi) No bidder, including any bidder that is an affiliate of the electric public utility, shall communicate with the electric public utilities' Evaluation Team during the course of the CPRE RFP Solicitation process regarding any aspect of the RFP.

(vii) The electric public utility shall perform its evaluation of the bids and shall develop a competitive tier that narrows the bids to a manageable number that the electric public utility believes are the best competitive options ("Utility Competitive Tier"). The Independent Evaluator shall independently evaluate the bids and develop its own competitive tier that narrows the bids to a

manageable number that the Independent Evaluator believes are the best competitive options ("IE Competitive Tier").

(viii) The electric public utility shall provide the Utility Competitive Tier to the Independent Evaluator. Simultaneously, the Independent Evaluator shall provide the IE Competitive Tier to the electric public utility.

(ix) If the Utility Competitive Tier and the IE Competitive Tier are identical, the Independent Evaluator shall create a single Competitive Tier ("the Combined Competitive Tier"). If there are differences between the Utility Competitive Tier and the IE Competitive Tier, the electric public utility, the Independent Evaluator, and the Public Staff shall meet to try to resolve such differences in order to agree on a Combined Competitive Tier.

(x) The Independent Evaluator shall post the Combined Competitive Tier list on the IE website showing each bidder's relative rank and the total evaluated cost of each bid. Each bidder on this list will be identified blindly so each bidder knows the identity of the bidder for only its bid but sees its rank compared to those of all other anonymous bidders who made the Competitive Tier. The Independent Evaluator shall notify all bidders on the Combined Competitive Tier lists that they have the opportunity to better their bids as final best offers.

(xi) Any refreshed bids received by the electric public utility and Independent Evaluator shall then be evaluated independently by the electric public utility and the Independent Evaluator, consistent with the process outlined above for initial bids.

(4) Selection of Resource(s).

(i) After it has completed its final evaluation of bids from the Combined Competitive Tier, and pursuant to the CPRE RFP Solicitation schedule, the electric public utility shall notify the Independent Evaluator and Public Staff of which resource(s) the electric public utility has selected to meet the renewable energy resource capacity requested in the CPRE RFP Solicitation.

(ii) The Independent Evaluator shall then notify the electric public utility whether it believes the resources selected by the electric public utility are reasonable and acceptable given the results of its independent evaluation. If the Independent Evaluator does not find the selected resources reasonable and acceptable, it shall meet with the electric public utility and the Public Staff to discuss its alternative recommendation(s) based upon its independent evaluation.

(iii) The electric public utility is responsible for determining which resource(s) it will select through the CPRE RFP Solicitation to either be submitted to the Commission for certification or to enter into a power purchase agreement. The electric public utility shall consider the Independent Evaluator's ranking and evaluation in making its decision, but the electric public utility remains ultimately responsible for the selection of renewable energy resource capacity to meet its obligations under the CPRE Program.

(g) CPRE Program Plan.

(1) Each electric public utility shall file its CPRE Program plan with the Commission on or before September 1 of each year, and may file its CPRE Program plan as part of its integrated resource plan filing. The CPRE Program plan filed pursuant to this rule will be reviewed in the same docket as the electric public utility's biennial integrated resource plan filing.

(2) Each year, beginning in 2018, each electric public utility subject to this rule shall file with the Commission an updated CPRE Program plan covering the remainder of the CPRE Program Procurement Period. At a minimum, the plan shall include the following information:

(i) an explanation of whether the electric public utility is jointly or individually implementing the aggregate CPRE Program requirements mandated by G.S. 62-110.8(a);

(ii) a description of the electric public utility's planned CPRE RFP Solicitations and specific actions planned to procure renewable energy resources during the CPRE Program planning period;

(iii) an explanation of how the electric public utility has allocated the amount of CPRE Program resources projected to be procured during the CPRE Program planning period relative to the aggregate CPRE Program requirements;

(iv) if designated by location, an explanation of how the electric public utility has determined the locational allocation within its balancing authority area;

(v) an estimate of renewable energy generating capacity that is not subject to economic dispatch or economic curtailment that is under development and projected to have executed power purchase agreements and interconnection agreements with the electric public utility or that is otherwise projected to be installed in the electric public utility's balancing authority area within the CPRE Program planning period;

(vi) the current and projected levelized avoided cost rates for a 20-year or other term, as determined by the Commission, for each year for solar and non-solar renewable energy facilities; and

(vii) a copy of the electric public utility's CPRE Program guidelines then in effect as well as a pro forma power purchase agreement used in its most recent CPRE RFP Solicitation.

(3) Upon the expiration of the CPRE Program Procurement Period, the electric public utility shall file a CPRE Program Plan in the following calendar year identifying any additional CPRE Program procurement requirements, as provided for in G.S. 62-110.8(a).

(4) In any year in which an electric public utility determines that it has fully complied with the CPRE Program requirements set forth in G.S. 62-110.8(a), the electric public utility shall notify the Commission in its CPRE Program Plan, and may also petition the Commission to discontinue the CPRE Program Plan filing requirements beginning in the subsequent calendar year.

(h) CPRE Program Compliance Report.

(1) Each electric public utility shall file its annual CPRE Program compliance report, together with direct testimony and exhibits of expert witnesses, on the same date that it files its cost recovery request under subsection (i) of this rule, which shall also be the filing date for the information required by Rule R8-55. The Commission shall consider each electric public utility's CPRE Program compliance report at the hearing provided for in subsection (i) of this rule and shall determine whether the electric public utility is in compliance with the CPRE Program requirements of G.S. 62-110.8. Public notice and deadlines for intervention and filing of additional direct and rebuttal testimony and exhibits shall be as provided for in subsection (j) of this rule.

(2) Each year, beginning in 2019, each electric public utility subject to this rule shall file with the Commission a report describing the electric public utility's competitive procurement of renewable energy resources under its CPRE Program and ongoing actions to comply with the requirements of G.S. 62-110.8 during the previous calendar year, which shall be the "reporting year." The report shall include the following information, including supporting documentation:

(i) a description of CPRE RFP Solicitation(s) undertaken by the electric public utility during the reporting year;

(ii) a description of the sources, amounts, and costs of third-party power purchase agreements and proposed authorized revenues for utility-owned assets for renewable energy resources procured through CPRE RFP Solicitation(s) during the reporting year, including the dates of all CPRE Program contracts or utility commitments to procure renewable energy resources during the reporting year;

(iii) the forecasted nameplate capacity and megawatt-hours of renewable energy and the number of renewable energy certificates obtained through the CPRE Program during the reporting year;

(iv) identification of all proposed renewable energy facilities under development by the electric public utility that were bid into a CPRE RFP Solicitation during the reporting year, including whether any non-publicly available transmission or distribution system operations information was used in preparing the proposal, and, if so, an explanation of how such information was made available to third parties that notified the utility of their intention to submit a proposal in the same CPRE RFP Solicitation;

(v) the electric public utility's avoided cost rates applicable to the CPRE RFP Solicitation(s) undertaken during the reporting year and confirmation that all renewable energy resources procured through a CPRE RFP Solicitation are priced at or below the electric public utility's avoided cost based upon the methodology approved by the Commission;

(vi) the actual total costs and authorized revenues incurred by the electric public utility during the calendar year to comply with G.S. 62-110.8;

(vii) the status of the electric public utility's compliance with the aggregate CPRE Program procurement requirements set forth in G.S. 62-110.8(a);

(viii) a copy of the contract then in effect between the electric public utility and third-party entity hired to administer the CPRE RFP Solicitations, supporting information regarding the administrative fees collected from market participants in the CPRE RFP Solicitation during the reporting year, as well as any cost incurred by the electric public utility during the reporting year to implement the CPRE RFP Solicitation; and

(ix) certification by the Independent Evaluator that all public utility and third-party bid responses were evaluated under the published CPRE Program methodology and that all bids were treated equitably through the CPRE RFP Solicitation(s) during the reporting year.

(i) Compliance with CPRE Program Requirements.

(1) An electric public utility shall be in compliance with the CPRE Program requirements during a given year where the Commission finds and determines that the electric public utility's CPRE Program plan is reasonably designed to meet the requirements of G.S. 62-110.8 and determines based on the utility's most recently filed CPRE Program report that the electric public utility is reasonably and prudently implementing the CPRE Program requirements.

(2) In any year, an electric public utility subject to this rule or other interested party may petition the Commission to modify or delay the provisions of G.S. 62-110.8 in whole or in part. The Commission may grant such petition upon finding that it is in the public interest to do so.

(3) Renewable energy certificates claimed by an electric public utility while complying with G.S. 62-110.8 must have been earned after January 1, 2018, and may be retired to meet an electric public utility's REPS compliance obligations under G.S. 62-133.8 or sold to another electric power supplier or other entity.

(4) Any facility selected through a CPRE RFP Solicitation shall register with the Commission as a renewable energy facility under Rule R8-66 within 60 calendar days of notification that it was selected and shall assure that renewable energy certificates contracted for under the CPRE Program shall be issued by, or imported into, the North Carolina Renewable Energy Tracking System.

(j) Cost recovery.

(1) Beginning in 2018, for each electric public utility subject to this Rule, the Commission shall schedule an annual public hearing pursuant to G.S. 62-110.8(g) to review the costs projected to be incurred by the electric public utility to comply with G.S. 62-110.8. The annual rider hearing for each electric public utility will be scheduled as soon as practicable after the hearing held by the Commission for the electric public utility under Rule R8-55.

(2) The Commission shall permit each electric public utility to charge an increment or decrement as a rider to its rates to recover in a timely manner the reasonable costs and authorized revenues prudently-incurred to implement its CPRE Program and to comply with G.S. 62-110.8. For utility-owned assets selected under the CPRE Program, the utility may propose a revenue requirement using the market price established in the same CPRE RFP Solicitation to calculate forecasted authorized

revenues over the equivalent term as the power purchase agreement solicited in the CPRE RFP Solicitation. Where the electric public utility proposes to determine authorized revenues based upon the market price of renewable energy resources procured through a CPRE RFP Solicitation, the Commission shall approve authorized revenue to be recovered under this section upon finding that such recovery is in the public interest.

(3) Unless otherwise ordered by the Commission, the test period for each electric public utility shall be the same as its test period for purposes of Rule R8-55.

(4) Rates set pursuant to this section shall be recovered during a fixed cost recovery period that shall coincide, to the extent practical, with the recovery period for the cost of fuel and fuel-related cost rider established pursuant to Rule R8-55.

(5) The costs and authorized revenue will be further modified through the use of a CPRE Program experience modification factor (CPRE EMF) rider. The CPRE EMF rider will reflect the difference between reasonable and prudently-incurred CPRE Program projected costs, authorized revenue, and the revenues that were actually realized during the test period under the CPRE Program rider then in effect. Upon request of the electric public utility, the Commission shall also incorporate in this determination the experienced over-recovery or under-recovery of the costs and authorized revenue up to 30 days prior to the date of the hearing, provided that the reasonableness and prudence of these costs and authorized revenues shall be subject to review in the utility's next annual CPRE Program cost recovery hearing.

(6) The CPRE EMF rider will remain in effect for a fixed 12-month period following establishment and will carry through as a rider to rates established in any intervening general rate case proceedings.

(7) Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently-incurred costs to be refunded to an electric public utility's customers through operation of the CPRE EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.

(8) Each electric public utility shall follow deferred accounting with respect to the difference between actual reasonable and prudently-incurred costs or authorized revenue and related revenues realized under rates in effect.

(9) The annual increase in CPRE Program-related amounts to be recovered by an electric public utility in any cost recovery period from its North Carolina retail customers to comply with G.S. 62-110.8 shall not exceed one percent (1%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year determined as of December 31 of the previous calendar year. Any amount in excess of that limit shall be carried over and recovered in the next recovery period.

(10) Each electric public utility, at a minimum, shall submit to the Commission for purposes of investigation and hearing the information required for the CPRE Program compliance report for the 12-month test period established in subsection (3) consistent with Rule R8-55, accompanied by supporting workpapers and direct testimony and exhibits of expert witnesses, and any change in rates proposed by the

electric public utility at the same time that it files the information required by Rule R8-55.

(11) The electric public utility shall publish a notice of the annual hearing for 2 successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least 30 days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-110.8(g) and setting forth the time and place of the hearing.

(12) Persons having an interest in said hearing may file a petition to intervene setting forth such interest at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed at the discretion of the Commission for good cause shown.

(13) The Public Staff and other intervenors shall file direct testimony and exhibits of expert witnesses at least 15 days prior to the hearing date. If a petition to intervene is filed less than 15 days prior to the hearing date, it shall be accompanied by any direct testimony and exhibits of expert witnesses the intervenor intends to offer at the hearing.

(14) The electric public utility may file rebuttal testimony and exhibits of expert witnesses no later than 5 days prior to the hearing date.

(15) The burden of proof as to whether CPRE Program-related costs to be recovered under this section were reasonable and prudently-incurred shall be on the electric public utility.

(k) Expedited review and approval of Certificate of Public Convenience and Necessity ("CPCN") for generating facilities procured under the CPRE Program to be owned by an electric public utility.

(1) Where a renewable energy facility is selected through a CPRE RFP Solicitation and is either (i) proposed to be constructed, owned, and operated by an electric public utility requiring a CPCN; or (ii) is planned to be acquired from a third party to be owned and operated by the electric public utility requiring transfer of an existing CPCN, the electric public utility shall file a petition for the expedited review and approval or transfer of CPCN(s) to construct, own, and operate the generating facilities.

(2) Petitions for CPCN(s) filed and approved pursuant to this section shall satisfy the requirements of G.S. 62-110.1(a) and G.S. 62-82, and the electric public utility shall not otherwise be required to follow the procedures for obtaining a CPCN under Rule R8-61.

(3) An application to obtain a new CPCN for a renewable energy facility planned to be constructed by the electric public utility under this section shall be comprised of the following Exhibits:

(i) Exhibit 1 shall include:

(a) A color map or aerial photo showing the location of the generating facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks, with the proposed location of major equipment indicated on the map or photo, including: the generator, fuel handling equipment, plant distribution system, startup

equipment, site boundary, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities. A U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system is preferred;

(b) The E911 street address, county in which the proposed facility would be located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree; and

(c) Whether the electric public utility is the site owner, and, if not, providing the full and correct name of the site owner and the electric public utility's interest in the site.

(ii) Exhibit 2 shall include:

(a) The nature of the renewable energy facility, including the type and source of its power or fuel;

(b) A description of the buildings, structures and equipment comprising the renewable energy facility and the manner of its operation;

(c) The gross and net projected maximum dependable capacity of the renewable energy facility as well as the renewable energy facility's nameplate capacity, expressed as megawatts (alternating current);

(d) The projected date on which the renewable energy facility will come on line;

(e) The service life of the project;

(f) The projected annual production of the renewable energy facility in kilowatt-hours, including a detailed explanation of the anticipated kilowatt and kilowatt-hour outputs, on-peak and off-peak, for each month of the year; and

(g) The projected annual production of renewable energy certificates that is eligible for compliance with the State's renewable energy and energy efficiency portfolio standard.

(iii) Exhibit 3 shall include:

(a) A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the renewable energy facility and a statement of whether each has been obtained or applied for.

(b) A copy of those that have been obtained should be filed with the application; a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained.

(iv) Exhibit 4 shall contain the expected cost of the proposed facility.

(4) Procedure for Expedited Review of New CPCN. — Upon the filing of an application appearing to meet the requirements set forth above, the Commission will process it as follows:

(i) The Commission will issue an order requiring the applicant to publish notice of the application once a week for four successive weeks in a newspaper of general circulation in the county where the renewable energy facility is proposed to be constructed. The applicant shall be responsible for filing with

the Commission an affidavit of publication after the final publication of the notice.

(ii) The Chief Clerk will deliver 2 copies of the application and the notice to the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration for distribution by the Coordinator to State agencies having an interest in the application. The Chief Clerk will request comments from state agencies within 20 days of delivering notice to the Clearinghouse Coordinator.

(iii) If a written complaint is filed with the Commission within 10 days after the last date of the publication of the notice, the Commission will schedule a public hearing to determine whether a certificate should be awarded and will give reasonable notice of the time and place of the hearing to the applicant electric public utility and to each complaining party and will require the applicant to publish notice of the hearing in the newspaper in which the notice of the application was published. If no complaint is received within the time specified, the Commission may, upon its own initiative, order and schedule a hearing to determine whether a certificate should be awarded and, if the Commission orders a hearing upon its own initiative, it will require notice of the hearing to be published by the applicant in the newspaper in which the notice of the application was published.

(iv) If no complaint is received within the time specified and the Commission does not order a hearing upon its own initiative, the Commission will enter an order awarding the CPCN requested in the application.

(l) Procedure for Expedited Transfer of CPCN. — Where an electric public utility procures a renewable energy facility through a CPRE RFP Solicitation that will be owned and operated by the electric public utility and the renewable energy facility has been previously granted a CPCN by the Commission, the electric public utility shall apply to the Commission to assign or transfer the CPCN. The Commission shall issue an Order within 30 days of the electric public utility's filing of the application, either approving the transfer of the CPCN or directing further review of the CPCN transfer application if circumstances so require.

(1) In support of its application to transfer the CPCN, the electric public utility shall:

(i) Describe the terms and conditions of the electric public utility's procurement of the renewable energy facility under the CPRE Program;

(ii) Identify any significant changes to the information previously filed by the third party CPCN applicant that was reviewed and approved the Commission in granting the CPCN to be assigned or transferred.

(2) All applications to transfer an existing CPCN shall be signed and verified by the electric public utility applicant. An application to transfer an existing CPCN shall also be verified by the entity which was initially granted the CPCN that it intends to transfer the CPCN to the electric public utility.

(3) Procedure for Acquiring Project Development Assets. — Where an electric public utility purchases assets from a third party developer that has previously obtained a CPCN with the intent of further developing the project and submitting the

renewable energy facility in to a future CPRE RFP Solicitation, the electric public utility shall provide notice to the Commission in the docket where the CPCN was granted that the electric public utility has acquired ownership of the project development assets, but shall not be required to submit an application for transfer of the CPCN unless and until the project is selected through the CPRE process or the utility otherwise elects to proceed with construction of the renewable energy facility. An electric public utility proceeding under this section shall file an application and obtain Commission approval to transfer the CPCN prior to commencing the construction or operation of any renewable energy facility. No rights under the CPCN shall transfer to the electric public utility unless and until the Commission approves transfer of the CPCN.

(m) CPRE Program Power Purchase Agreement Requirements

(1) At least 30 days prior to holding a CPRE RFP Solicitation, the electric public utility shall post the pro forma contract to be utilized during the CPRE RFP Solicitation on its website to inform market participants of terms and conditions of the competitive solicitation. The electric public utility shall also file the pro forma contract with the Commission and identify any material changes to the pro forma contract terms and conditions from the contract used in the electric public utility's most recent CPRE RFP Solicitation.

(2) Each electric public utility shall include appropriate language in all pro forma contracts (i) providing the procuring public utility rights to dispatch, operate, and control the solicited renewable energy facilities in the same manner as the utility's own generating resources; (ii) defining limits and compensation for resource dispatch and curtailments; (iii) defining environmental and renewable energy attributes to include all attributes that would be created by renewable energy facilities owned by the electric public utility; and (iv) prohibiting the seller from claiming or otherwise remarketing the environmental and renewable energy attributes, including the renewable energy certificates being purchased by the electric public utility under power purchase agreements entered into under the CPRE Program. An electric public utility may redefine its rights to dispatch, operate, and control solicited renewable energy facilities, including defining limits and compensation for resource dispatch and curtailments, in pro forma contracts to be offered in future CPRE RFP Solicitations, and may also elect to solicit multiple products based upon differing rights to dispatch, operate, and control solicited renewable energy facilities through developing multiple pro forma contracts within a single CPRE RFP Solicitation.

(3) No later than 30 days after an electric public utility executes a power purchase agreement that is competitively procured pursuant to a CPRE RFP Solicitation, the electric public utility shall file the power purchase agreement with the Commission. If the power purchase agreement is with an affiliate, the electric public utility shall file the power purchase agreement with the Commission pursuant to G.S. 62-153(a).

(4) Upon expiration of the contract term of a power purchase agreement procured pursuant to this Section, the electric public utility may enter into a new contract with a generating facility owner at a negotiated rate not to exceed the electric public utility's avoided cost market rate set pursuant to G.S. 62-156. For resources owned by the electric public utility and procured pursuant to this Section, the electric public utility shall similarly be permitted to continue recovery based on an updated market based cost recovery mechanism or avoided cost rates calculated pursuant to G.S. 62-156 if market-based recovery is initially determined by the Commission to be in the public interest.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply Comments and Amended Proposed Rule to Implement N.C. Gen. Stat. § 62-110.8*, as filed in Docket No. E-100, Sub 150, was served electronically or via U.S. mail, first-class, postage prepaid, upon all parties of record.

This, the 8th day of September, 2017.

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