

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 176**

In the Matter of:)	
Petition to Revise Commission Rules R8-63)	NCSEA’S REPLY
and R8-64)	COMMENTS

NCSEA’S REPLY COMMENTS

NOW COMES the North Carolina Sustainable Energy Association (“NCSEA”), an intervenor in the above-captioned docket, and offers the following reply comments regarding the North Carolina Utilities Commission – Public Staff’s (“Public Staff”) Petition of the Public Staff to Amend Commission Rules R8-63 and R8-64 (“Petition”) filed in this docket on August 19, 2021. NCSEA notes that while no party filed initial comments antagonistic to NCSEA’s Initial Comments, some of the arguments made therein have evolved with the changing landscape of energy generation planning in North Carolina.

I. HOUSE BILL 951, THE CARBON PLAN, THE FERC ANOPR, AND LACK OF RIPENESS.

As stated in NCSEA’s Initial Comments, recently passed House Bill 951¹ greatly changes the calculus in determining what changes need to be made to Commission Rules R8-63 and R8-64. Following the passage of House Bill 951, the changes requested by the Public Staff to the respective Certificate of Public Convenience and Necessity (“CPCN”) rules are not yet ripe for consideration and, as proposed, represent changes that could be counterintuitive and require further revision soon.

¹ S.L. 2021-165 (herein “House Bill 951”).

Recent filings and orders made at the North Carolina Utilities Commission (“Commission”) highlight how the changing generation landscape is still developing and with it, the factors that the Commission must consider when deciding whether to approve or deny a CPCN request. NCSEA believes North Carolina’s generation resource planning docket is a good example of how the Commission is considering changes related to House Bill 951. In the most recent Integrated Resource Plan (“IRP”) docket, the Commission found that “With respect to the modeling, analysis and results of the base case and alternative resource portfolios in the [Duke Energy Carolinas, LLC] and [Duke Energy Progress, LLC]’s 2020 IRPs, the Commission receives these as presented but declines to accept them for future planning purposes.”² The Commission further explained:

The Commission’s position on this point is based on the recent enactment of S.L. 2021-165. That new statutory directive establishes an explicit goal for carbon emission reductions by 2030 for the Duke Utilities’ North Carolina generating assets and further establishes a requirement that the two utilities’ North Carolina resource portfolio be net neutral as to carbon emissions by 2050. The present record in this docket does not permit a conclusion at this time as to whether these new directives will change the schedule for coal plant retirements proposed in either the base case or any of the alternative case scenarios in the DEC and DEP 2020 biennial IRPs and, further, whether they will require revision of the two utilities’ technology screening and resource selection modeling for additional resources over the IRP planning period.³

The Commission further directed Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (DEC and DEP, collectively, “Duke”) to incorporate in the carbon plan filings mandated by House Bill 951 certain grid planning and other materials related to the presumptive new generation paradigm required by the House Bill 951 carbon

² *Order Accepting Integrated Resource Plans, REPS and CPRE Program Plans with Conditions and Providing Further Direction for Future Planning*, Commission Docket No. E-100, Sub 165, (November 19, 2021) (“2021 IRP Order”), p. 6.

³ *Id.*

emissions mandate.⁴ NCSEA agrees with Commission sentiment on this point and believes the same cautious approach should be applied to considering the requested changes to Commission Rules R8-63 and R8-64. As the regulatory landscape necessitated by House Bill 951 continues to develop, further changes to Commission Rules R8-63 and R8-64 will be required. The substance of these necessitated changes will be most efficiently and effectively determined later. To avoid multiple amendments to the same rules in a short period, NCSEA recommends the Commission “measure twice, cut once” and delay decision in this proceeding. It is simply too early to incorporate the proposed changes to Commission Rules R8-63 and R8-64.

While the Public Staff would likely argue that its proposed changes (1) may not directly affect the implementation of the carbon plan or adherence to the carbon emissions reduction mandate and (2) that these proposed rule changes expand beyond the scope of House Bill 951 and its carbon requirements for Duke Energy especially regarding the merchant generator rule proposals, such arguments fail to address NCSEA’s main concern. The carbon mandate as spelled out in House Bill 951 requires a comprehensive view of generation planning in the state as it focuses on *emissions from all Duke’s generation assets* within state lines and not just the emissions profile of Duke’s native customer load. This mandate therefore will almost certainly affect merchant generation within the state. House Bill 951 has changed the generation needs within the state going forward. Changing R8-63 and R8-64 now, without incorporating provisions in a new rule to reflect the new state energy paradigm, is premature. Until the carbon plan is proposed, analyzed, and ordered,

⁴ *Id.* at 15-16.

the future of North Carolina generation is uncertain, so changing related rules now, only to change them again soon, would be a wasted effort.

Several proceedings have opened, directly or indirectly, because of House Bill 951: a rulemaking proceeding for performance-based regulation,⁵ a rulemaking proceeding for the securitization of undepreciated coal plant costs,⁶ two separate proceedings related to the implementation of the carbon plan,⁷ and a filing to assess net energy metering.⁸ Each of these House Bill 951 proceedings will affect the discussion about generation assets, especially vis a vis the carbon mandate and related carbon plan which will include both generation and grid planning for the Duke utilities. Because these issues are still up in the air, the request to make these now out-of-date proposed changes to Commission Rules R8-63 and R8-64 is inappropriate. Further proceedings are still to arise from House Bill 951 as Duke, the Commission, the Public Staff, and intervenors work to comply with the new law. NCSEA does not dispute that changes will be needed for these rules, but the changes proposed by the Public Staff do not reflect the new paradigm and with House Bill 951 proceedings still unsettled, it makes most sense for the Commission to visit these rules *after* the House Bill 951 proceedings have advanced and the path forward post-coal generation is clearer.

Coincidentally, the Federal Energy Regulatory Commission (“FERC”) recently opened a proceeding that will directly affect some of the issues assessed within the Public Staff’s proposed rule changes. On July 15, 2021, the FERC issued the Advance Notice of Proposed Rulemaking in FERC Docket No. RM21-17-000 entitled *Building for the Future*

⁵ Docket No. E-100, Sub 178.

⁶ Docket No. E-100, 177.

⁷ Docket Nos. E-2 Sub 1283 & E-7 Sub 1259 and Docket No. E-100, Sub 179.

⁸ Docket Nos. E-7, Sub 1214; E-2, Sub 1219, and E-2, Sub 1076.

Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection (the “ANOPR”).⁹ In the summary of the ANOPR, the FERC states, in pertinent part that the ANOPR is “presenting potential reforms to improve the electric regional transmission planning and cost allocation and generator interconnection processes.”¹⁰ Within the ANOPR, the FERC directly pointed interested parties to provide comments on issues related to (1) transmission costs, including how local and regional transmission planning should occur, (2) potential changes to the federal crediting policy,¹¹ and as directly relates to this proceeding (3) reform of how state oversight is included in FERC transmission planning (“Another way to add oversight to the transmission planning and cost allocation processes could be to involve state commissions in those processes.”).¹² Similar to the discussion above, NCSEA believes it most prudent to wait on making changes to the respective CPCN rules while awaiting a new directive from the FERC.

II. CONCLUSION

As previously stated in its Initial Comments, NCSEA supports in concept some limited changes to Rule R8-63 and R8-64 as proposed by the Public Staff¹³ but believes that it is inappropriate to change the rules now, especially regarding Commission review of generation needs, as they are subject to further review and change pending state and federal proceedings. This rulemaking should be paused until a later time when it is more appropriate and the issues are ripe, to prevent inefficiency and regulatory burden and lag.

⁹ 176 FERC ¶ 61,024 (See <https://www.ferc.gov/media/e-1-rm21-17-000>).

¹⁰ *Id.*

¹¹ The Federal Crediting Policy is discussed at length in prior comments and dockets by both NCSEA and other intervenors as to how it relates to the consideration of the levelized cost of transmission metric proposed by the Public Staff.

¹² *Id.* at P 176 (2021).

¹³ See, *NCSEA's Initial Comments*, pp. 3-4.

Respectfully submitted, this the 14th day of December, 2021.

/s/ Benjamin W. Smith
Benjamin W. Smith
Regulatory Counsel for NCSEA
N.C. State Bar No. 48344
4800 Six Forks Road, Suite 300
Raleigh, NC 27609
919-832-7601 Ext. 111
ben@energync.org

CERTIFICATE OF SERVICE

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

This the 14th day of December, 2021.

/s/ Benjamin W. Smith
Benjamin W. Smith
Regulatory Counsel for NCSEA
N.C. State Bar No. 48344
4800 Six Forks Road, Suite 300
Raleigh, NC 27609
919-832-7601 Ext. 111
ben@energync.org