

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 179

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Duke Energy Progress, LLC, and	)	
Duke Energy Carolinas, LLC,	)	PARTIAL PROPOSED ORDER OF
2022 Biennial Integrated	)	PERSON COUNTY, NORTH CAROLINA
Resource Plans and Carbon Plan	)	
	)	
	)	

BY THE COMMISSION: On October 13, 2021, Governor Cooper signed into law House Bill 951 (S.L. 2021-165), directing the Commission to take all reasonable steps to achieve reductions in the emissions of carbon dioxide in this State from electric generating facilities owned or operated by certain electric public utilities. The Commission is directed to achieve a reduction of 70% from 2005 levels by the year 2030 and carbon neutrality by the year 2050. Session Law 2021-165 limits the applicability of this requirement to Duke Energy Progress, LLC (“DEP”), and Duke Energy Carolinas, LLC (“DEC,” together with DEP, “Duke”). The Commission is directed to develop by December 31, 2022, a plan (“the Carbon Plan”) to achieve these emission reductions and to review the plan every two years thereafter.

On November 19, 2021, the Commission issued an Order requiring Duke to file a Carbon Plan that is consistent with the requirements of Section 1 of S.L. 2021-165,<sup>1</sup> conduct stakeholder meetings, allowing the filing of petitions to intervene, and allowing intervenors to file a plan or report of its own and to comment on Duke’s proposed Carbon Plan.

---

<sup>1</sup> Section 1 of S.L. 2021-165 is now codified at N.C. Gen. Stat. § 62-110.9. The Commission will refer to House Bill 951 (HB 951), Section 1 of S.L. 2021-165, and N.C.G.S. § 62-110.9 interchangeably.

On and after November 29, 2021, the Commission issued numerous orders allowing parties to intervene, which Orders of the Commission are of record in this proceeding. In addition, the Commission issued several other orders that are procedural in nature, extending deadlines, clarifying the stakeholder process, and addressing other matters.

On May 16, 2022, Duke filed its verified petition for approval of the Carbon Plan along with a voluminous set of documents that make up Duke's proposed Carbon Plan.

On July 15, 2022, numerous parties filed comments in response to Duke's petition and proposed Carbon Plan.

On July 29, 2022, the Commission issued an Order scheduling this matter for expert witness hearing, requiring the filing of testimony in advance of the hearing, establishing discovery guidelines, and allowing the filing of responsive comments as to certain issues detailed in that Order.

On August 19, 2022, Duke filed its direct testimony and exhibits addressing those issues identified by the Commission for consideration at the expert witness hearing.

On September 2, 2022, the Public Staff and numerous intervenors filed their direct testimony and exhibits addressing those issues identified by the Commission for consideration at the expert witness hearing.

On September 9, 2022, numerous parties filed comments addressing those issues identified by the Commission for consideration based on written comments instead of based on expert witness testimony.

On September 13, 2022, this matter came on for hearing as scheduled. During and after the hearing, as directed by the Commission, several parties filed exhibits in Docket No. E-100, Sub 179A.

On September 29, 2022, the Chair of the Commission adjourned the hearing pending further order of the Commission. Pursuant to the ruling of the Chair of the Commission made in open hearing, the parties are permitted to file proposed orders and briefs on or before October 24, 2022.

Based upon the foregoing and the entire record herein, the Commission makes the following:

#### FINDINGS OF FACT

*[This space reserved for Findings of Fact related to various issues to be determined by the Commission.]*

##. It is appropriate and consistent with the public interest to require Duke to maintain operation of the Roxboro and Mayo generating facilities beyond the retirement dates proposed in the Carbon Plan to be available during emergency situations to support the adequacy and reliability of the existing grid.

##. It is appropriate and consistent with the public interest to require Duke to site one 1,200-MW combined cycle (CC) natural gas fueled generating facility in Person County.

##. In a proceeding to determine whether a certificate of public convenience and necessity (CPCN) should be issued to authorize the construction of a 1,200-MW CC natural gas fueled

generation facility to be located in Person County, it is appropriate to apply an irrebuttable presumption that the location selected is appropriate.

##. It is appropriate and consistent with the public interest to require Duke to consider siting an additional 1,200-MW CC gas fueled generating facility in Person County.

##. In a proceeding to determine whether a CPCN should be issued to authorize the construction of an additional 1,200-MW CC natural gas fueled electric generation facility to be located in Person County, it is appropriate to apply a rebuttable presumption that the location selected is appropriate.

##. It is appropriate and consistent with the public interest to require Duke to consider siting two (2) new combustion turbine (CT) natural gas fueled electric generation facilities in Person County.

##. In a proceeding to determine whether CPCNs should be issued to authorize the construction of two (2) new CT natural gas fueled electric generation facilities to be located in Person County, it is appropriate to apply a rebuttable presumption that the location selected is appropriate.

##. It is appropriate and consistent with the public interest to require Duke to provide annual community support and charitable contributions in Person County and other communities impacted by the retirement of Duke's coal fired generating facilities under the Carbon Plan, to maintain a significant corporate presence in Person County, and to continue certain operations in Person County in implementing the Carbon Plan.

*[This space reserved for Findings of Fact related to various issues to be determined by the Commission.]*

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOs. ## - ##**

The evidence for these findings of fact is contained in Duke's verified petition and Carbon Plan, the testimony of Duke witness Bowman, the testimony of Duke's Modeling and Near-Term Actions Panel, and the entire record herein. In addition, while not evidence, the Commission received and considered comments from Person County related to policy decisions imbedded within the approval of the Carbon Plan, which the Commission has considered in reaching its conclusions and making these findings.

On July 15, 2022, Person County filed comments detailing various policy decisions imbedded within the approval of the Carbon Plan. Person County's comments speak to both broad, high-level policy decisions and to the impact that those decisions have on the local community in Person County. The Commission finds highly persuasive Person County's comments on the following issues: the importance of maintaining the availability of the Roxboro and Mayo generating facilities to support reliability and adequacy of Duke's electric grid, the need for new natural gas fueled generating facilities, the justification for locating new generation in Person County, and the importance of furthering the public interest through the Carbon Plan implementation by mitigating the impacts to local communities like Person County where coal-fired generating plants are expected to be retired.

In its comments, Person County argues that the Commission should direct Duke to continue the operation of the Roxboro and Mayo generating facilities past the proposed retirement

dates for use during emergency situations.<sup>2</sup> The Commission agrees. As several of Duke's witnesses have testified, there is unique and critical importance of the Roxboro and Mayo generating facilities in maintaining the adequacy and reliability of Duke's electric system.<sup>3</sup> As commented by Person County,<sup>4</sup> HB 951 directs the Commission to develop the Carbon Plan in a manner that maintains or improves upon the adequacy and reliability of the existing grid.<sup>5</sup> In addition, HB 951 grants the Commission broad discretion to extend the de-carbonization goals to allow for the development of new, carbon-free generation technologies.<sup>6</sup> As also commented by Person County, these technologies are developing rapidly.<sup>7</sup> The benefit to Duke's customers of maintaining the availability of the Roxboro and Mayo generating stations is obvious: the plants have been in operation for decades and are able to continue operating with significantly less capital investment than construction of new generating facilities. In addition, as testified to by Duke witness Bowman, there is a general benefit to having firm generation resources like the Roxboro and Mayo generating stations available to support reliability and adequacy of the existing grid.<sup>8</sup> The Commission agrees.

Therefore, based on the foregoing and the entire record herein, the Commission concludes that it is appropriate and serves the public interest to require Duke to maintain operation of the Roxboro and Mayo generating facilities beyond the retirement dates proposed in the Carbon Plan to be available during emergency situations to support the adequacy and reliability of the existing

---

<sup>2</sup> Comments of Person County, North Carolina, p. 13-14, No. E-110, Sub 179 (*filed* Jul. 15, 2022).

<sup>3</sup> *See, infra.*, fn. 8, fn. 10-13, and fn. 14-18, and associated text.

<sup>4</sup> Comments of Person County, North Carolina, p. 9-14, No. E-110, Sub 179 (*filed* Jul. 15, 2022).

<sup>5</sup> *See* N.C. Gen. Stat. § 62-110.9(3).

<sup>6</sup> N.C. Gen. Stat. § 62-110.9(4).

<sup>7</sup> Comments of Person County, North Carolina, p. 22-23, No. E-110, Sub 179 (*filed* Jul. 15, 2022).

<sup>8</sup> Tr. Vol. 7, p. 131.

grid. The identification of the precise retirement dates for the Roxboro and Mayo generating stations will be deferred to a future biennial review and adjustment to the Carbon Plan, as the Commission is authorized and required to undertake pursuant to N.C.G.S. § 62-110.9(1). In addition to furthering the legislative requirement to maintain or improve upon the adequacy and reliability of the existing grid, this decision will allow additional time to achieve the least cost path to compliance with the mandates of HB 951 through “implementation of solutions that would have a more significant and material impact on carbon reduction.”<sup>9</sup> The Commission determines that the required continued operation of the Roxboro and Mayo plants, even if used only for emergency purposes, is an appropriate exercise of the discretion granted to the Commission in N.C.G.S. § 62-110.9(4).

On cross-examination by Person County, Duke witness Bowman testified that where feasible and practical, it’s always beneficial to site replacement generation at locations for retiring facilities, noting that transmission infrastructure is already present and that Duke has obtained a waiver from the Federal Energy Regulatory Commission (FERC) of certain interconnection requirements when Duke sites replacement generation at existing retiring plants.<sup>10</sup> She further testified that Duke believes that there is a benefit to siting replacement generating at the sites of retiring plants and where it is feasible and practical, Duke “will definitively strive to do that.”<sup>11</sup> She identified Person County as an example of the type place where those benefits would be present.<sup>12</sup> She also deferred to other Duke witnesses on questions about whether Duke could

---

<sup>9</sup> N.C. Gen. Stat. § 62-110.9(4)

<sup>10</sup> Tr. Vol. 7, p. 132-33.

<sup>11</sup> Tr. Vol. 7, p. 133.

<sup>12</sup> *Id.*

commit to siting replacement generation in Person County as a part of the approval of the Carbon Plan.<sup>13</sup>

On cross-examination by Person County, Duke's Modeling and Near-Term Actions Panel testified to those questions that witness Bowman deferred to them. Duke witness Snider testified that Duke plans to locate a new combined-cycle plant at the Roxboro Station, which would require new gas service on PSNC to be fed from Transco or Southgate, because PSNC's existing natural gas supply line is not large enough to meet any incremental Duke needs without expansion.<sup>14</sup> While witness Snider was unwilling to commit Duke to locating a CC plant in Person County, he testified that it is the Company's desire, for the benefit of customers, to use as much existing infrastructure that's already on the grid and that Person County is a reasonable location to place very high in Duke's planning priority to be able to put replacement generation there, although it is subject to being able to do that in the most prudent and reasonable manner.<sup>15</sup> With respect to the second CC plant proposed in the Carbon Plan, witness Snider testified that it would be a potential to locate this plant in Person County, but the Company would look at other places as well and try to determine the least-cost option for customers.<sup>16</sup> He further testified that support from the local community is a factor to be considered in making a siting decision.<sup>17</sup> He then testified with regard to siting decisions related to the CTs proposed in the Carbon Plan, stating that all the same relevant factors come into play and, as such, Person County has many benefits

---

<sup>13</sup> Tr. Vol. 7, p. 131-32.

<sup>14</sup> Tr. Vol. 11, p. 30.

<sup>15</sup> Tr. Vol. 11, p. 31.

<sup>16</sup> Tr. Vol. 11, p. 32.

<sup>17</sup> Tr. Vol. 11, p. 32-33.



and is the type of location that would provide the advantage of producing cost savings for customers.<sup>18</sup>

Based upon the foregoing and the entire record herein, the Commission finds that it is appropriate and consistent with the public interest to require Duke to site one 1,200-MW CC natural gas fueled generating facility in Person County. Although Duke's witnesses were unwilling to make a commitment to do so, the Commission determines that the Company's plans are sufficiently developed and concrete to make siting a 1,200-MW CC facility in Person County a requirement and condition of approval of the Carbon Plan in this proceeding. The Commission notes that no persuasive evidence was presented that another specific location offered the same or more benefits to Duke and to its customers. The Commission finds it somewhat puzzling that despite Duke describing the plan to do just that in discovery responses and Duke's witnesses testifying as to the many benefits of doing so, the Company was unwilling to make a firm commitment to site a CC in Person County. Particularly so when witness Snider testified that the Company typically commits to a particular siting decision 12-18 months in advance of filing a CPCN application and the Carbon Plan proposes the filing of a CPCN application for the 1,200-MW CC in 2023. The Commission concludes that the successful implementation of the Carbon Plan (measured by the achievement of the carbon reduction goals within two years of the dates specified by HB 951) and the furtherance of the public interest (by mitigating impacts to local communities from Carbon Plan implementation) requires removing the uncertainty about this siting decision. The Commission will, therefore, require Duke to propose siting one 1,200-MW CC in Person County. The record evidence in this proceeding, the obvious necessity

---

<sup>18</sup> Tr. Vol. 11, p. 34-35.

to act with urgency in implementing the Carbon Plan to meet the carbon reduction goals, and the concerns raised by Person County with respect to its future being highly dependent on decisions made by Duke justify applying an irrebuttable presumption that the location of the facility is appropriate in the Commission's proceeding to review that CPCN application. Duke will be expected and required to prove the other elements of the public convenience and necessity standard to obtain a CPCN in that separate proceeding. However, absent failure of the Company to carry its burden on those elements or changed circumstances that would justify the Commission's reconsideration pursuant to N.C.G.S. § 62-80 with respect to the plant being located in Person County, the Commission will approve the location of a 1,200-MW CC in Person County as part of the implementation of the Carbon Plan.

With respect to the siting decisions related to the second 1,200-MW CC and the CTs proposed under the Carbon Plan, the Commission accepts the Company's representations and acknowledges that these decisions are less immediate and less urgent to the successful implementation of the Carbon Plan. However, the record evidence herein demonstrates that Person County offers the same benefits to Duke customers with respect to the location of these plants as was relevant to the siting of the first 1,200-MW CC. No persuasive evidence was presented that another specific location offered the same or more benefits to Duke and to its customers. Therefore, the Commission will apply a less stringent rebuttable presumption that the location of these generating resources in Person County is appropriate. Absent substantial evidence that the location of these plants is inappropriate, the Commission will presume that the benefits of locating generation in Person County has been demonstrated by the evidence in this proceeding, of which the Commission will take judicial notice in proceeding on Duke's CPCN application. Duke will

be required to justify any alternative location, if it proposes one, along with all of the other elements of the public convenience and necessity.

Also on cross-examination by Person County, witness Bowman testified that the Commission had previously approved requiring Duke to provide certain community benefits to the Raleigh community as a part of the Duke Energy Progress/Duke Energy Carolinas merger order or investigation docket.<sup>19</sup> The community benefits discussed in this portion of her testimony were also detailed in Person County's comments as including annual community support and charitable contributions, contributions to workforce development and low-income energy assistance, to maintain a corporate presence in downtown Raleigh following the close of the merger, and to continue certain operations in Raleigh following the merger.<sup>20</sup> The Commission takes judicial notice of its *Order Approving Merger Subject to Regulatory Conditions and Code of Conduct* and the evidence cited and relied upon therein. On consideration of the evidence in this proceeding, the Commission agrees with Person County's fundamental argument that the decisions made by public utilities impact local communities and the negative impacts should be mitigated to some extent to further the public interest. Thus, the Commission is disappointed that Duke was not better prepared to address this obvious and legitimate concern and to treat Person County in a manner that is equitable and fair as compared to the treatment that the Raleigh community received. The Commission notes that Person County detailed the potential negative impacts to its community in its comments filed two months prior to the hearing, including loss of tax base, jobs and employment, economic development activities, among others. Thus, it is left to

---

<sup>19</sup> Tr. Vol. 7, p. 133-34.

<sup>20</sup> See Comments of Person County, North Carolina, p. 6, No. E-100, Sub 179 (filed Jul. 15, 2022) (citing *Order Approving Merger Subject to Regulatory Conditions and Code of Conduct*, p. 110-111, No. E-2, Sub 998 and E-7, Sub 986 (N.C.U.C. 2012)).

the Commission to fashion a remedy that furthers the public interest through appropriate conditions on the approval of the Carbon Plan.

The Commission finds that it is appropriate and consistent with the public interest to require Duke to provide annual community support and charitable contributions in Person County and other communities impacted by the retirement of Duke's coal fired generating facilities under the Carbon Plan, to maintain a significant corporate presence in Person County, and continue operations in Person County as a part of implementing the Carbon Plan. Therefore, the Commission will require Duke to file a community benefits plan for Person County setting out in detail the Company's proposal for mitigating the potential negative impacts of plant closures in Person County. Duke shall file this community benefits plan within 30 days of the date of this Order, and it shall include at a minimum (i) identification of the amount of annual community support and charitable contributions to organizations in Person County, (ii) a specific commitment to maintain the current Duke employment levels in Person County for at least ten (10) years, and (iii) a commitment to continue to maintain a significant corporate presence in Person County for at least 15 years. The Commission expects and will require the Company to cooperate with Person

County in identifying the most important priorities for the local community and to explain how it took those priorities into consideration in developing its community benefits plan.

*[This space reserved for additional evidence and conclusions by the Commission.]*

IT IS THEREFORE ORDERED AS FOLLOWS:

*[This space reserved for additional ordering paragraphs.]*

##. That Duke shall maintain operation of the Roxboro and Mayo generating facilities beyond the retirement dates proposed in the Carbon Plan to be available during emergency situations to support the adequacy and reliability of the existing grid, and shall provide an update in future biennial reviews of the Carbon Plan with respect to the adjusted time frame for eventually retiring the Roxboro and Mayo generating facilities.

##. That Duke shall propose locating a 1,200-MW natural gas fired CC generating facility in Person County at the site of the Roxboro generating station as a part of its proposed CPCN application to be filed with the Commission in 2023. In the Commission's proceeding to review the CPCN application, the Commission will take judicial notice of the evidence and conclusions reached in this Order and apply an irrebuttable presumption that the location of the 1,200 MW CC in Person County is reasonable and appropriate, and consistent with the public convenience and necessity.

##. That Duke shall consider locating an additional 1,200-MW CC and two additional CT facilities, totaling 800 MW, in Person County. In the Commission's proceedings to review these

CPCN applications, the Commission will apply a rebuttable presumption that the location of the plants is reasonable and appropriate, and consistent with the public convenience and necessity.

##. That within 30 days of the date of this Order, Duke shall file in this docket a community benefits plan, setting out Duke's plan to provide annual community support and charitable contributions in Person County, to maintain a significant corporate presence in Person County, and continue certain operations in Person County in implementing the Carbon Plan.

Respectfully submitted this 24th day of October, 2022.

/s/ Patrick Buffkin

Patrick Buffkin  
NC Bar No. 44264  
Buffkin Law Office  
3520 Apache Dr.  
Raleigh, NC 27609  
[pbuffkin@gmail.com](mailto:pbuffkin@gmail.com)

### CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing PARTIAL PROPOSED ORDER OF PERSON COUNTY, NORTH CAROLINA has been duly served upon all persons on the docket service list by United States Postal Service or by electronic mail with the party's consent.

This the 24th day of October, 2022.

BUFFKIN LAW OFFICE

BY: /s/ Patrick Buffkin

*Attorney for Person County, North Carolina*