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January 3, 2024

VIA ELECTRONIC FILING

Shonta Dunston, Chief Clerk
The North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-432

**Re: Letter in Lieu of Comments
Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Plans for
Development of Supplemental Portfolio Analysis and Supporting Testimony
and Request for Adjustment to Procedural Schedule
Docket No. E-100, Sub 190**

Honorable Clerk and Commissioners:

The North Carolina Attorney General's Office (AGO) writes in response to Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's (together, Duke or the Companies) Plans for Development of Supplemental Portfolio Analysis and Supporting Testimony and Request for Adjustment to Procedural Schedule, which was filed with the Commission on December 18, 2023. While the AGO understands that extraordinary circumstances may sometimes call for supplemental modeling and even deviations from the proposed schedule, the office has significant concerns about Duke's proposed filing in this instance.

The Commission issued its *Order Adopting Initial Carbon Plan and Providing Direction for Future Planning* (Carbon Plan Order) on December 30, 2022, in Docket No. E-100, Sub 179. In the Carbon Plan Order the Commission set a procedural schedule for the current Carbon Plan proceeding that in part was meant to allow interested parties sufficient time to thoroughly analyze future proposals and also potentially reach consensus. This procedural schedule was reiterated by the Commission's *Order Adopting Commission Rule R8-60A and Amending Commission Rules R8-60, R8-67, and R8-71*, issued on November 20, 2023, in Docket No. E-100, Sub 191, which set forth rules for future Carbon Plan Integrated Resource Plan (CPIRP) filings. Duke now comes to the Commission several months after its original filing was due, asking to effectively redo that filing and to dramatically compress the amount of time others have to investigate and

respond. That ask comes with significant costs, both for the AGO and a range of other interested parties.

The AGO and numerous other intervenors have already spent vast amounts of time, energy, and financial resources analyzing Duke's initial proposal since it was filed on August 17, 2023. Expert witnesses have been hired, and discovery is well underway. Duke's new proposed submission—which will come on January 31, 2024, nearly six months after Duke's initial filing deadline—threatens to undo much of the work that has already been done.¹ It is very likely that Duke will significantly revise or alter its previously prefiled testimonies and exhibits. And intervenors cannot know at this time what, if any, portion of the work already done may be usable. Even if some of the work can be repurposed, the intervenors will inevitably incur significant additional costs—in the case of the AGO, costs that will necessarily be drawn from the State and its taxpayers.

Given these costs, before the Commission allows any supplemental modeling or testimony, it should be satisfied—by competent, substantive, and affirmative evidence—that there have been substantial, material changes that were not foreseeable at either the time of the Companies' original filing or at some moment materially earlier than their December 18, 2023 filing. The updates that Duke seems likely to submit in January also would seem to go well beyond what was justified by the Supplemental Direct Testimony of witness Glen A. Snider, filed with the Commission on November 30, 2023, which described Duke's need to update the load forecast. Duke's December filing forecasts that the Companies anticipate submitting changes “reflect[ing] additional information available and risks and opportunities identified since preparation of the Plan, including updated assumptions regarding natural gas fuel supply, resource availability, and financial assumptions, including resource costs.”² As the Commission will recall, these were the key issues litigated in the initial Carbon Plan proceeding and, if permitted, would constitute fundamental alterations to Duke's August filing. If Duke plans to make these kinds of fundamental changes, the need to do so at this late date must be justified by a substantial showing.

Any other approach would allow Duke to pick and choose when filing supplemental modeling and testimony is in its best interest and would undermine the Public Staff's and other intervenors' abilities to evaluate Duke's proposals. The Commission must be careful not to set a precedent where Duke may unilaterally update filings, without providing extraordinary justification for the need to do so. Otherwise, these types of supplemental analyses will simply serve as a one-way ratchet in the Companies' favor. For example, the Companies did not seek to supplement or update their modeling when the nation's first commercial Small Modular Reactor nuclear project was canceled—despite the

¹ The potential proposed changes are also likely to impact other dockets currently pending before the Commission, such as the avoided cost proceeding in Docket No. E-100, Sub 194.

² Plans for Development of Supplemental Portfolio Analysis and Supporting Testimony at 2.

potential impact to the viability of some of their portfolio proposals.³ Nor did the Companies file any supplemental modeling in the initial Carbon Plan proceeding following the passage of the Inflation Reduction Act. Similarly, it seems unlikely that the Companies would have filed leave to submit supplemental modeling had their load forecast meaningfully *decreased* in the interim—leaving the Companies at risk of potentially overbuilding certain unnecessary generation resources in the short term.

Of course, the AGO understands that there is value in ensuring that every CPIRP is sufficiently accurate and reliable. But there will always be new information that could be considered during the course of a proceeding that might inform future planning or cast doubt upon prior predictions about resource investments. Just as there were potential changes to consider in November 2023, so might there be potentially meaningful changes to consider in March 2024. Nevertheless, at some point, we must “snap the chalk line” in order to have a meaningful proceeding.⁴ Ordinarily, that chalk line is to be snapped biennially with parties given sufficient time to prepare and participate.

Holding Duke to its prior filings, moreover, would not leave the company without any recourse. The Companies will have numerous opportunities to revise their plans in accordance with changing conditions. The Companies are to file their next CPIRP by September 1, 2025—about 19 months from the Companies’ proposed updates. Certificates of Public Necessity and Convenience (CPCN) applications will be filed between now and then. Indeed, unlike, for example, rate case proceedings, North Carolina courts have recognized that CPIRP “proceeding[s] should bear a much closer resemblance to a legislative hearing, wherein a legislative committee gathers facts and opinions so that informed decisions may be made at a later time.”⁵ Given this context, the Commission should permit Duke to withdraw and alter its original proposal only if it is convinced extraordinary circumstances warrant doing so.

At the very least, if Duke is permitted to file a new CPIRP, the Commission should allow the Public Staff and other intervenors significantly more time than Duke has provided for in their proposed revised schedule in order to avoid the truncated and hurried proceeding that occurred when considering the initial Carbon Plan. Under the current schedule, intervenors were to have 180 days to engage in discovery and prepare and file their direct testimony. Duke’s proposal shrinks that to just 50 days—even shorter than what was allowed in the initial Carbon Plan proceeding.

Finally, the Commission should direct Duke to ensure that any new filing complies with Commission Rule R8-60A, which was approved and effective as of November 20,

³ Timothy Gardner, *NuScale CEO defends modular nuclear plants after project cancellation*, Reuters (Nov. 14, 2023), <https://www.reuters.com/business/energy/nuscale-ceo-defends-modular-nuclear-plants-after-project-cancellation-2023-11-14/>

⁴ Direct Testimony of Snider, McMurry, Quinto, and Kalembe, Docket No. E-100, Sub 179, pp. 14, 176-77 (Aug. 20, 2022).

⁵ *State ex rel. Utils. Comm’n v. N.C. Elec. Membership Co.*, 105 N.C. App. 136, 141, 412 S.E.2d 166, 170 (1992).

2023.⁶ The Commission deemed Duke's initial filing compliant and outside the scope of the new rules because the Commission's order issued *after* Duke had made its initial filing. Duke and other intervenors are now fully capable of incorporating the Commission's guidance and new requirements into their subsequent filings.

Sincerely,

Electronically submitted
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⁶ *Order Adopting Commission Rule R8-60A and Amending Commission Rules R8-60, R8-67, and R8-71.*

CERTIFICATE OF SERVICE

The undersigned certifies that he has served a copy of the foregoing LETTER IN LIEU OF COMMENTS upon the parties of record in this proceeding by email, this the 3rd day of January, 2024.

/s/ Derrick C. Mertz
Derrick C. Mertz
Special Deputy Attorney General