

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1283

DOCKET NO. E-7, SUB 1259

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| In the Matter of: |) | |
| Joint Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC to Request the Commission to Hold a Joint Hearing with the Public Service Commission of South Carolina to Develop Carbon Plan |) | COMMENTS OF SOUTHERN ALLIANCE FOR CLEAN ENERGY, SIERRA CLUB, AND NATURAL RESOURCES DEFENSE COUNCIL |

PURSUANT TO the North Carolina Utilities Commission’s (“Commission”) Order Requesting Comments on Petition for Joint Proceeding, Southern Alliance for Clean Energy (“SACE”), the Natural Resources Defense Council (“NRDC”) and the Sierra Club file these comments on the Joint Petition to Request the Commission to Hold a Joint Hearing with the Public Service Commission of South Carolina to Develop Carbon Plan filed by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (together, “Duke”) on November 9, 2021 (the “Petition”).

In the Petition, Duke requests that the Commission and the Public Service Commission of South Carolina (“PSCSC”) conduct a joint proceeding to consider the impact on generation planning and related issues resulting from the requirement in Session Law 2021-165 that the Commission develop a Carbon Plan by December 31, 2022. Duke proposes that the Commission and the PSCSC hold a joint proceeding, at which both commissions would hear evidence and develop a record, with the Commission’s chair presiding. At the close of that proceeding, once the Commission has approved a final Carbon Plan, Duke proposes that the PSCSC issue its own decision

regarding the plan's implementation in South Carolina, with the idea that Duke would incorporate the Carbon Plan into its 2023 IRPs.

As detailed in the following paragraphs, the joint proceeding proposed by Duke would create numerous logistical and procedural headaches that render the proposal simply unworkable. Accordingly, SACE, NRDC and the Sierra Club oppose the Petition.

Different legal standards: Duke recognizes that due to its statutory mandate to adopt a Carbon Plan, the Commission would have a primary role in the joint proceeding.

With regard to the ruling sought from the PSCSC, Duke proposes the following:

After consideration of the record of the proceedings and issuance of a Commission order approving the Carbon Plan, the Companies will seek an Order from the PSCSC requiring that the Carbon Plan be incorporated into DEC's and DEP's comprehensive future IRPs to be filed in that State and to confirm that the Companies' plans and associated costs for executing the transition under the Carbon Plan will be fully shared and embraced between the States consistent with historic planning practices.

Duke's proposal presupposes that the PSCSC would support the Carbon Plan developed by the NCUC, but does not offer a path forward if the PSCSC reaches a different decision. The proposal also assumes that the PSCSC would in some way "pre-approve" the Duke IRPs, as well as any costs to be incurred in implementing the Carbon Plan. Duke fails to acknowledge that the Commission and the PSCSC operate under different legal standards—although it is entirely possible that the Carbon Plan and IRPs incorporating it would meet both the "least cost" requirement of North Carolina law and the "most reasonable and prudent" standard of South Carolina law, it is by no means a foregone conclusion. And if the PSCSC either reached a different decision from the Commission, or perhaps decided that due to its secondary role it did not have sufficient information to come to a decision, then it would need to conduct its own proceedings

anyway. Accordingly, Duke has failed to acknowledge that rather than promoting efficiency, its proposal is quite likely to create additional work.

Moreover, Duke's proposal is premised on the faulty assumption that implementation of the Carbon Plan will result in incremental costs to ratepayers. In fact, as demonstrated by the Synapse Report filed in Docket No. E-100, Sub 165, a resource portfolio that meets the very same carbon-reduction goals in Session Law 2021-165 can be the least-cost portfolio for ratepayers.

Simultaneous filings in both states: Duke proposes that all filings would be simultaneously made in both states. A joint proceeding is not necessary for this to occur, however: Parties may file with the PSCSC "Non-docketed Items," which are uncontested matters filed for informational purposes. In fact, Duke has availed itself of such an informational docket in order to keep the PSCSC and interested parties apprised of its Grid Improvement Plan activities (PSCSC Non-Docketed Item No. ND-2020-28-E). Duke could petition the PSCSC to open such an informational docket for the Carbon Plan, in which Duke and other parties could simultaneously file all filings made with the Commission in Docket E-100, Sub 179. This would allow Duke and the other parties in the Commission's Carbon Plan proceeding to keep the PSCSC informed during the development of the Carbon Plan.

Hearing logistics: Duke proposes that the hearing would be held in person in the Commission, with the Chair of the Commission presiding and the PSCSC participating virtually. Although it is true that both commissions and many practitioners now have extensive experience with virtual hearings, the same is not true for a "hybrid" approach. Anyone who has attempted to participate in a meeting by "dialing in" to the room where

other meeting participants have gathered in person understands the difficulty of meaningful remote participation.

Pro hac vice issues: Duke proposes that for pro hac vice purposes, the proceeding would be considered to be conducted in North Carolina and its rules relating to the admission of lawyers not admitted to practice in North Carolina would apply. To protect their clients' interests, attorneys for South Carolina-based organizations who are not licensed to practice in North Carolina would need to incur the time and expense associated with admission to practice pro hac vice.

Duke itself has recognized the need for the North Carolina process "to move forward expeditiously given the accelerated statutory deadlines under which the Commission and the Companies must develop the Carbon Plan pursuant to HB 951." November 22, 2021 Letter at 2 (pages unnumbered). The procedural and logistical difficulties discussed above would make an already complex proceeding even more unwieldy, and would undoubtedly slow down a process that is already likely to be cumbersome. For all of these reasons, SACE, NRDC and Sierra Club oppose the Petition.

By opposing the Petition, SACE, NRDC and Sierra Club in no way suggest that joint proceedings between the Commission and the PSCSC would never be appropriate. To the contrary, there may be situations in which coordination and cooperation between the jurisdictions would benefit ratepayers in both states. In this situation, however, any potential benefits are outweighed by logistical and procedural considerations, especially in light of the urgency of the task with which the General Assembly has entrusted the Commission.

Respectfully submitted this 20th day of December, 2021.

s/Gudrun Thompson

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Comments of Southern Alliance for Clean Energy, Sierra Club, and Natural Resources Defense Council as filed today in Docket Nos. E-2, Sub 1283 and E-7, Sub 1259 has been served on all parties of record by electronic mail or by deposit in the U.S. Mail, first-class, postage prepaid.

This 20th day of December, 2021.

s/Gudrun Thompson