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**VIA Electronic Filing**

Kimberley A. Campbell, Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4300

**Re: Initial Comments of Duke Energy Carolinas, LLC and Duke Energy  
Progress, LLC  
Docket Nos. E-2, Sub 1159 and E-7, Sub 1156**

Dear Ms. Campbell:

Please find enclosed for filing the *Initial Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC* in connection with the above-referenced proceedings.

If you have any questions, please let me know.

Sincerely,

Jack E. Jirak  
Deputy General Counsel

Enclosure

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-2, SUB 1159  
DOCKET NO. E-7, SUB 1156

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Joint Petition of Duke Energy Carolinas, LLC ) INITIAL COMMENTS OF DUKE  
and Duke Energy Progress, LLC for Approval ) ENERGY CAROLINAS, LLC AND  
of Competitive Procurement of Renewable ) DUKE ENERGY PROGRESS, LLC  
Energy Program )

Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) and together with DEC, “Duke” or “the Companies”) by and through counsel, and pursuant to the North Carolina Utilities Commission’s (“Commission”) June 2, 2021 *Order Requesting Update*, respectfully submit the following initial comments and update to the Commission regarding the status of the Competitive Procurement of Renewable Energy (“CPRE”) Program, the need for CPRE Tranche 3, and the Companies’ interpretation of the 45-month CPRE procurement period requirements.

**COMMENTS**

**I. BACKGROUND**

Pursuant to N.C. Gen. Stat. § 62-110.8 (the “CPRE Statute”) enacted through North Carolina Session Law 2017-192 (“HB 589”), Duke is required to add a total of 6,160 megawatts (“MW”) of renewable energy through a combination of (1) CPRE Program procurement (“CPRE Program MW”) and (2) the execution of power purchase agreements (“PPAs”) and interconnection agreements for renewable energy capacity within its Balancing Authority Areas that are not subject to economic dispatch or curtailment and

were not procured pursuant to the Green Source Advantage program authorized under N.C. Gen. Stat. § 62-159.2 (projects satisfying such criteria, “Transition MW”).

Under N.C. Gen. Stat. § 62-110.8(a), 2,660 MW of this 6,160 MW total was specifically targeted to be procured through the CPRE Program. However, the CPRE Statute expressly requires that the Commission adjust the CPRE targeted amount of 2,660 MW based on the actual amount of Transition MW procured prior to November 21, 2021,<sup>1</sup> which is the end of the 45-month timeframe established in N.C. Gen. Stat. § 62-110.8(a) (such period of time, the “CPRE Procurement Period”).

Pursuant to the CPRE Statute, the Commission issued Rule R8-71. Rule R8-71(g) requires DEC and DEP to file with the Commission on September 1<sup>st</sup> of each year a CPRE Program Plan, which is required to include, among other things, the total amount of Transition MW and the total number of CPRE Program MW to be procured (which amount is based on the amount of Transition MW and the amount of CPRE Program MW already procured). Rule R8-71(g) also specifies that upon the expiration of the CPRE Program Procurement Period, DEC and DEP are required to file an additional CPRE Program Plan in the following calendar year identifying any additional CPRE Program procurement requirements (or CPRE Program MW needed for compliance), as provided for in N.C. Gen. Stat. § 62-110.8(a). Finally, the rule also specifies that in any year in which Duke determines that it has fully complied with the CPRE Program requirements set forth in N.C. Gen. Stat. § 62-110.8(a), that DEC and DEP shall notify the Commission in its CPRE

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<sup>1</sup> This date is 45 months from the date of the Commission’s approval of DEC and DEP’s CPRE Program. See N. C. Gen. Stat. § 62-110.8(a); *Order Modifying and Approving Joint CPRE Program*, Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 (Feb. 21, 2018).

Program Plan, and petition the Commission to discontinue the CPRE Program Plan filing requirements beginning in the subsequent calendar year.<sup>2</sup>

Pursuant to Rule R8-71(g), on September 1, 2020, Duke filed the Companies' most recent CPRE Program Plan as part of DEC's and DEP's 2020 Integrated Resource Plans filed in Docket No. E-100, Sub 165. The CPRE Program Plan explained that CPRE Tranches 1 and 2 were successful, and that DEC and DEP had procured approximately 1,210 CPRE Program MW. The CPRE Program Plan also stated that as of July 2020, there were approximately 4,480 MW of resources qualifying as Transition MW (comprised of 4,200 MW of solar capacity and 280 MW of non-solar capacity), but that Duke expected additional Transition MW to be obtained prior to the end of the CPRE Procurement Period. Based on its projection of Transition MW, Duke stated it would petition the Commission for approval of any proposed plan and confirmation of the appropriate adjustment to the required CPRE Program MW amount. The CPRE Program Plan also stated that Duke interprets N.C. Gen. Stat. § 62-110.8(a) "to require that the CPRE procurements need only be commenced prior to the end of the initial 45-month competitive procurement period (November 2021) and not complete."

Following Duke's most recent CPRE Program Plan, on June 2, 2021, the Commission issued its *Order Requesting Update*. The *Order Requesting Update* specifically requests Duke and the Public Staff to provide an update regarding (1) the most current status of the Transition MW, (2) the need for and appropriate timing of a CPRE Tranche 3, and (3) the parties' positions on statutory interpretation regarding what must be completed within the 45-month term and what actions the Commission may properly take

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<sup>2</sup> Rule R8-71(g)(4).

beyond the 45-month timeframe to ensure that the final procurement target is met. Duke hereby provides the following update to the Commission.

## II. UPDATE ON CPRE PROGRAM AND TRANSITION MW

As of May 31, 2021, DEC and DEP have procured 1,185 CPRE Program MW.<sup>3</sup> In addition, DEC and DEP have procured approximately 4,390 Transition MW. Taken together, Duke has procured 5,575 MW of the total 6,160 MW required under the CPRE Statute. In other words, as of June 2021, the maximum amount of MW that Duke would need to procure to achieve the targeted MW requirements under the CPRE Statute is 585 MW. But it is virtually certain that additional Transition MW will be procured prior to the end of the CPRE Procurement Period (at least partially due to projects that continue to progress under the terms of the Interconnection Settlement Agreement filed with the Commission in Docket No. E-100, Sub 101). The top end of the Companies' current projections for additional Transition MW that will be procured prior to the end of the CPRE Procurement Period is 473 MW. Based on such projection, there would only be 112 MW of additional projects to be procured through CPRE. Therefore, it is likely that the additional CPRE Program MW needed will be between 112 MW and 585 MW. But once again, the final actual amount of Transition MW and the resulting needed CPRE Program MW to achieve the 6,160 MW total required under the CPRE Statute will not be known until the end of the CPRE Procurement Period. Pursuant to Commission Rule R8-71(g), DEC and DEP will update the Commission on September 1<sup>st</sup> as part of the integrated resource plan update filing.

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<sup>3</sup> The CPRE Program Plan filed September 1, 2020, identified 1,210 MW of CPRE projects. On October 15, 2020, one winning bidder formally withdrew its proposal without executing a PPA, therefore forfeiting its Proposal Security and reducing the total CPRE Program MW under contract by 25 MW.

### III. INTERPRETATION OF 45-MONTH CPRE PROGRAM TIMEFRAME

The CPRE Statute prescribes that Duke must “reasonably allocate” the CPRE procurement over the full 45-month timeframe. Specifically, the CPRE Statute provides that Duke “shall issue requests for proposals to procure and shall procure, energy and capacity from renewable energy facilities in the aggregate amount of 2,660 megawatts (MW), and the total amount shall be reasonably allocated over a term of 45 months beginning when the Commission approves the program.” N.C. Gen. Stat. 62-110.8(a). The CPRE Statute further provides that the Transition MW are to be determined by “the end of the initial 45-month competitive procurement period.” *Id.*

Duke continues to believe that because it is impossible to determine the final, actual amount of Transition MW until the end of the CPRE Procurement Period, it would be inappropriate to make final procurement decisions prior to such determination. Therefore, because the two statutory provisions must be interpreted in a manner that reconciles the provisions, the Companies’ view continues to be that the Tranche 3 procurement should be commenced within the 45-month period but need not be concluded during the 45-month period. This would allow the Tranche 3 RFP to be issued in the late summer or fall but with final procurement decisions made after the Commission confirms the final amount of CPRE Program MW to be procured.

This interpretation is further supported by the Commission’s CPRE Rule R8-71. Similar to the CPRE Statute, the Commission’s rule defines “CPRE Program Procurement Period” as 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).” There is no specific requirement that such procurement be completed prior

to the end of the initial 45-month period, nor does the use of this term in the rule contemplate that all needed procurement will be completed by the end of the 45 months. Indeed, under Rule R8-71(g)(3), a final CPRE Program Plan is still required “upon the expiration of the CPRE Program Procurement Period...in the following calendar year identifying any additional CPRE Program procurement requirements, as provided for in G.S. 62-110.8(a).” Duke interprets this provision of the CPRE Rule as contemplating that additional time to “complete” the CPRE Program MW requirements in N.C. Gen. Stat. § 62-110.8(a) even after the 45-month timeframe or CPRE Procurement Period has ended, since an evaluation of whether additional CPRE solicitations are required will take place in Duke’s final CPRE Program Plan to be filed in September 2022.

As contemplated by this rule, at that time, the Commission will have the power to rule upon Duke’s final CPRE Program Plan and determine that the requirements of HB 589 have been met, or require Duke to initiate additional procurements to meet the 6,160 MW target (or supplement procurements under GSA). In sum, the CPRE Statute considered together with the plain language of Rule R8-71 supports Duke’s interpretation that the CPRE procurements need only be commenced prior to the end of the initial 45-month competitive procurement period (November 2021) but not completed at that time.

As noted in the Companies’ most recent CPRE Program Plan, in light of the impossibility of knowing the final, actual Transition MW until November 21, 2021, the Companies solicited market participant feedback concerning two potential scenarios in which CPRE Tranche 3 was initiated sometime prior to November 21, 2021, but final decisions concerning selection are delayed until such time as the final needed amount of CPRE Program MW is determined by the Commission based on the final amount of

Transition MW. In response to such request for market participant feedback, the Independent Administrator received seven anonymized responses. Six of the seven responses were substantially identical and, rather than responding to the question posed, asserted that Tranche 3 should be issued “regardless of the Transition MW accounting.” That is, rather than addressing the mechanics of when Tranche 3 should be issued and procurement decisions finalized, the market participants submitting comments sought to advocate for further procurements without regard to the amount of MW required to be procured under the CPRE statute. The Companies note, however, that they do not have the authority under the CPRE Statute or the Commission’s implementing Rule R8-71 to conduct a Tranche 3 procurement “regardless of the Transition MW accounting” and have proceeded in a manner that Duke believes most closely achieves the General Assembly’s legislative intent in enacting the CPRE Statute.

### **CONCLUSION**

WHEREFORE, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC respectfully request that the Commission accept these initial comments as set forth herein.

Respectfully submitted, this the 15<sup>th</sup> day of June, 2021.

DUKE ENERGY CAROLINAS, LLC AND  
DUKE ENERGY PROGRESS, LLC

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*Counsel for Duke Energy Carolinas, LLC and  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Initial Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC as filed in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156, was served via electronic delivery or mailed, first-class, postage prepaid, upon all parties of record.

This, the 15<sup>th</sup> day of June, 2021.

/s/E. Brett Breitschwerdt

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