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January 3, 2021

VIA ELECTRONIC FILING

Ms. A. Shonta Dunston
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

**RE: Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's
Motion for Leave to File Supplemental Reply Comments
Docket No. E-100, Sub 177**

Dear Ms. Dunston:

Enclosed for filing in the above-referenced docket, please find *Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Motion for Leave to File Supplemental Reply Comments.*

If you have any questions, please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

Jack E. Jirak

Enclosure

cc: Parties of Record

OFFICIAL COPY

Jan 03 2022

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 177

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Rulemaking Proceeding to Implement)	DUKE ENERGY CAROLINAS,
Securitization of Early Retirement of)	LLC’S AND DUKE ENERGY
Subcritical Coal-Fired Generating Facilities)	PROGRESS, LLC’S MOTION FOR
)	LEAVE TO FILE SUPPLEMENTAL
)	REPLY COMMENTS

NOW COME Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively, the “Companies”), by and through legal counsel and pursuant to Rule R1-7 of the Rules and Regulations of the North Carolina Utilities Commission (the “Commission”), to hereby request leave to file supplemental reply comments on or before January 12, 2022, to respond to proposed rules and rule provisions submitted by certain parties as specifically identified in Paragraphs 9-11 of this Motion that were newly presented in the reply comments of the identified parties but which could have been raised in initial comments. Without the relief requested herein, the parties to this docket will not have the opportunity to comment on these newly presented materials.

In support of this Motion, the Companies state as follows:

1. On October 14, 2021, the Commission issued an order initiating a rulemaking proceeding to establish rules for the securitization of costs associated with the early retirement of subcritical coal-fired generating facilities as authorized by House Bill 951 (S.L. 2021-165) (“Rulemaking Order”). DEC and DEP were specifically made parties to the docket in the Rulemaking Order.

2. The Rulemaking Order specified that “parties may file comments and proposed rules on or before November 22, 2021” and may “file reply comments on or before December 20, 2021.”

3. On November 22, 2021, the Companies submitted a proposed coal retirement securitization rule in accordance with the Rulemaking Order. In addition, the following parties submitted initial comments and/or proposed rules: the Public Staff—North Carolina Utilities Commission (“Public Staff”), Carolina Industrial Group for Fair Utility Rates II and III (“CIGFUR”); Carolina Utility Customers Association, Inc. (“CUCA”); Sierra Club together with the National Resources Defense Council (collectively, “Sierra Club/NRDC”); and Apple Inc. together with Meta Platforms, Inc., and Google LLC (collectively, “Tech Customers”). The North Carolina Sustainable Energy Association (“NCSEA”) filed a letter in lieu of initial comments. North Carolina Retail Merchants Association (“NRMC”) petitioned to intervene in the docket but elected not to file initial comments and/or proposed rules by the November 22, 2021 deadline.

4. On December 20, 2021, the Companies, CIGFUR, CUCA, Sierra Club/NRDC, Tech Customers, and NCSEA filed reply comments. The Public Staff also filed reply comments and included for the first time a newly proposed coal retirement securitization rule. NRMC, although not having submitted initial comments, also filed reply comments.

5. The efficiency of the regulatory process is undermined where parties wait until reply comments to introduce new legal arguments or policy positions that could have been raised during initial comments by necessitating motions such as this. This approach further unfairly deprives the Companies (and other parties) of the opportunity to respond

to such new legal arguments and policy positions and creates an incomplete record upon which the Commission must base its decisions.

6. In those cases where parties have newly proposed rules or rule provisions in reply comments that could have been raised in initial comments, the Companies believe that it would be equitable to allow the Companies and other parties to submit supplemental reply comments.

7. The Commission's Rulemaking Order also specifically requested "comments and *proposed rules*" during the initial comment cycle and only "reply comments" during the reply comment cycle. See Rulemaking Order at Ordering Paragraphs 3 and 4 (emphasis added). The Rulemaking Order did not contemplate that proposed rules would be permitted to be filed during the reply comment cycle, presumably in light of the equity concerns raised herein. Such equity concerns are also rooted in common sense—to allow parties the opportunity to submit entirely new recommendations and rules during the reply comment phase creates an incentive to do just that in order to deprive other parties of the opportunity to respond.

8. Despite the Commission's specific directives in the Rulemaking Order, the Public Staff and Sierra Club¹ filed newly proposed rules and/or rule provisions as part of the reply comment cycle. These newly proposed rules and rule provisions could have been

¹ Although Sierra Club/NRDC filed a proposed coal retirement securitization rule as part of its initial comments, Sierra Club/NRDC's reply comments include an "addition" to the Companies' proposed coal retirement securitization rule that was not raised or included in Sierra Club/NRDC's initial comments and proposed rule. Specifically, Sierra Club/NRDC propose a new "post-financing order pre-bond issuance process" provision that was not included or addressed whatsoever in Sierra Club/NRDC's initial comments or proposed rule. For purposes of supplemental reply comments, the Companies request parties be allowed to specifically respond to Sierra Club/NRDC's new addition of a "post-financing order pre-issuance bond issuance process" as such addition was not included in Sierra Club/NRDC's initial comments or proposed rule. The Companies believe that the remaining revisions and/or additions advocated for by Sierra Club/NRDC in reply comments were otherwise appropriately raised in reply to the Companies' proposed coal retirement securitization rule submitted in the initial comment cycle.

raised in initial comments and cannot reasonably be characterized as responsive (*i.e.*, a *reply*) to issues and rules identified and proposed in initial comments. As a result, the Companies and other parties will effectively be foreclosed from addressing these new rules, rule provisions, and positions unless the relief requested herein is granted.

9. CUCA and CIGFUR also proposed new definitions to the term “subcritical coal-fired generating facilities,” which could have similarly been raised in initial comments. Although CUCA raised the issue of defining “subcritical coal-fired generating facilities” in its initial comments, it waited until reply comments to specifically propose a definition for “subcritical coal-fired generating facilities,” and attempted to require the Companies to first propose a definition prior to reply comments.² As a result, the Companies and other parties were also specifically foreclosed from commenting on proposed definitions for the term “subcritical coal-fired generating facilities”.

10. Accordingly, the Companies respectfully request the opportunity to respond to the narrow set of new proposed rules and rule provisions identified in Paragraphs 8-9 of this Motion on or before January 12, 2021 through supplemental reply comments. Absent such opportunity, the Companies and other parties will be disadvantaged by being denied the opportunity to respond, parties that chose to withhold material rules and rule provisions until reply comments (contrary to the spirit and letter of the Rulemaking Order) will be

² Although the Companies believe CUCA made this proposal in an attempt to preempt the necessity of supplemental reply comments, CUCA’s proposal, in effect, circumvented the established procedural process prescribed in the Commission’s Rulemaking Order—that is, for all parties to propose specific rules and rule provisions through initial comments in order for other parties to evaluate and comment on such rules and rule provisions in reply comments. The Companies also realize that they themselves proposed a new rule provision in reply comments, a definition for “subcritical coal-fired generating facilities,” but note that this definition was created in direct response to CUCA’s request contained in its initial comments. However, the Companies do not oppose also granting parties the opportunity to file supplemental reply comments on the Companies’ proposed “subcritical coal-fired generating facilities” definition if the Commission deems necessary.

advantaged, and the Commission will be deprived of a full record for the decisions it must make.

11. North Carolina precedent supports granting a party's request to file supplemental reply comments in response to new materials and purported reply comments that relied upon those new materials. *See Order Granting Motion to File Supplemental Reply Comments*, Docket No. E-100, Sub 165 (June 21, 2021); *Order Allowing Supplemental Reply Comments*, Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 (July 13, 2021).

WHEREFORE, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC respectfully request that the Commission grant their motion and allow parties to file supplemental reply comments on or before January 12, 2022 to respond to the new rules and rule provisions proposed in reply comments as described in Paragraphs 8—9 of this Motion, as well as grant any other relief the Commission deems reasonable and appropriate.

Respectfully submitted, this the 3rd day of January, 2022.

/s/ Jack E. Jirak

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