

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1315
DOCKET NO. E-7, SUB 1288

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition of Duke Energy Progress, LLC, and)	PUBLIC STAFF'S
Duke Energy Carolinas, LLC, Requesting)	COMMENTS
Approval of Clean Energy Impact Program)	

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, pursuant to the Commission's Order Requesting Comments issued in the above-captioned dockets on February 9, 2023 (Order), and respectfully submits the following comments on the petition (Petition) of Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP) (collectively, Duke or the Companies), for approval of the Clean Energy Impact Program (CEI Program).

BACKGROUND

1. On January 27, 2023, Duke filed the Petition, in which the Companies state that the CEI Program was developed to fulfill the directives of S.L. 2021-165, Section 5 (HB 951),¹ and in response to feedback gathered at a series of stakeholder meetings.

¹ Section 5 of HB 951 requires the Commission to:

[E]stablish a rider for a voluntary program that will allow industrial, commercial, and residential customers who elect to purchase from

2. On February 9, 2023, the Commission issued its Order, which allowed parties to file initial comments on the Companies' CEI Program by March 28, 2023, and reply comments by April 11, 2023.

3. On March 24, 2023, the Public Staff filed a motion seeking to extend the time for filing initial comments until April 25, 2023; and reply comments until May 16, 2023. The Commission granted the Public Staff's extension motion on March 28, 2023.

4. The Attorney General's Office, the North Carolina Sustainable Energy Association, the Southern Alliance for Clean Energy, and the Carolinas Clean Energy Business Association have intervened in the above-captioned dockets.

PROGRAM DESCRIPTION

5. The Companies state that the CEI Program would provide eligible residential and small business customers the option to purchase locally-sourced Clean Energy Environmental Attributes (CEEAs), which Duke asserts are

the electric public utility renewable energy or renewable energy credits, including in any program in which the identified resources are owned by the utility in accordance with sub-subdivision b. of subdivision (2) of Section 1 of this act, to offset their energy consumption, which shall ensure that customers who voluntarily elect to purchase renewable energy or renewable energy credits through such programs bear the full direct and indirect cost of those purchases, and that customers that do not participate in such arrangements are held harmless, and neither advantaged nor disadvantaged, from the impacts of the renewable energy procured on behalf of the program customer, and no cross-subsidization occurs.

comprised of both Renewable Energy Certificates (RECs), as defined by N.C. Gen. Stat. § 62-133.8(a)(6),² and carbon emission reduction attributes that are not included in the statutorily defined REC. Duke states that this offering is consistent with: (1) HB 951's intent to allow customers to support the use and development of renewable energy and to help reduce their carbon footprint; and (2) the Commission's Order Granting Optima's Request for Declaratory Relief issued on December 20, 2022, in Docket No. E-100, Sub 113, wherein the Commission interpreted N.C.G.S. § 62-133.8(a)(6) to require that emission credits be separate from the renewable energy attributes of RECs.

6. Under the proposed CEI Program, CEEAs would either be generated by Duke-owned assets or purchased by Duke from renewable energy facilities interconnected to the Companies' North Carolina and South Carolina systems. Duke explains that these renewable energy facilities are facilities that generate electric power through Renewable Energy Resources³ that are registered as renewable energy facilities under Commission Rule R8-66 and with the North Carolina Renewable Energy Tracking System (NC-RETS) to facilitate the issuance

² A REC is defined as a "tradable instrument that is equal to one megawatt hour of electricity or equivalent energy supplied by a renewable energy facility, new renewable energy facility, or reduced by implementation of an energy efficiency measure that is used to track and verify compliance with the requirements of this section as determined by the Commission" and "does not include the related emissions reduction, including, but not limited to, reductions of sulfur dioxide, mercury, or carbon dioxide." N.C.G.S. § 63-133.8(a)(6).

³ Renewable Energy Resources, as defined in N.C.G.S. § 62-133.8(a)(8), include solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy resource; a biomass resource, including agricultural waste, animal waste, wood waste, spent pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane; waste heat derived from a renewable energy resource and used to produce electricity or useful, measurable thermal energy at a retail electric customer's facility; or hydrogen derived from a renewable energy resource. A "renewable energy resource" does not include peat, a fossil fuel, or nuclear energy resource.

and retirement of the REC portion of the CEEAs. The Companies expect that the Renewable Energy Resources used in this offering will likely be composed exclusively of solar energy resources at the outset but note that the tariff is open to participation from other types of renewable energy resources.

7. Duke asserts that the CEI Program would update, improve upon, and eventually replace the Companies' existing REC purchase program for residential and small business customers – the Renewable Advantage (RA) Program, which was approved by the Commission on October 15, 2019, in Docket Nos. E-2, Sub 1190; E-7, Sub 1185; and E-100, Sub 90. Currently, participants in the RA Program subscribe to purchase "blocks" of renewable energy that are sourced from within the continental United States.

8. Duke states that residential and nonresidential customers are eligible to participate in the CEI Program by contracting for a block or multiple blocks of CEEAs. Blocks of 250 kilowatt-hours (kWh) are available to both residential and nonresidential customers, while blocks of 1,000 kWh are available only to nonresidential customers who purchase at least ten blocks. The CEI Program does not require the customer to commit to a contract term; instead, customers may purchase a specified number of blocks of CEEAs on a month-to-month basis upon the condition that either party may terminate the contract by giving 30 days prior notice of such termination in writing.

9. The Companies propose to track, record, and retire the CEEAs on behalf of customers and state that, under the CEI Program, the RECs would be

retired on behalf of customers through NC-RETS but would not be used toward Duke's Renewable Energy/Energy Efficiency Portfolio Standard (REPS) compliance. While the carbon emission reduction attributes would not be retired through NC-RETS, Duke would provide documentation to customers to authenticate their retirement.

10. The Petition states that CEI Program costs would be recovered solely from participants and that non-participants would not bear any costs. Should the Commission approve the CEI Program, the Companies state that CEI Program costs would be set annually, from the date of approval, and would be based on the current market rate of national voluntary RECs, plus an administrative fee not to exceed 20% of the cost of the CEEAs. The administrative fee would cover expenses associated with tracking, banking, and recording the CEEAs.

11. The Petition states that a portion of customers' CEEA payments would be paid to NC GreenPower to support its Solar + Schools program which helps provide educational opportunities and solar installations to schools within North Carolina. The amount that NC GreenPower would receive under the CEI Program would be commensurate with the annual amount currently received under the RA Program.

12. If approved by the Commission, the Companies anticipate the transition from the RA Program to the CEI Program to occur in 2026, estimating that sufficient local renewable energy assets generating CEEAs will be online by that time.

THE PUBLIC STAFF'S REVIEW

13. The Public Staff participated in multiple stakeholder meetings, which occurred prior to the filing of this program and spanned the period roughly from June 2022 through February 2023. The Public Staff's role in those meetings was largely to monitor the viewpoints of potential customers and developers as to the attributes they were seeking through renewable energy purchase programs. The discussions generally focused on large commercial and industrial customers. Duke applied some of the input provided by these groups in developing the proposed CEI Program.

14. Customers in the residential and small commercial classes are most likely to take advantage of the CEI Program; however, it will be available to all customers who are currently in good financial standing with the Companies. Although the Petition states that the CEI Program would be limited to customers with less than 1,000 kW of contract demand, the Companies indicated in discovery that this limitation was incorrect and that there will be no cap on the size of a participant's demand. The CEI Program would allow customers who may not be eligible for or interested in participating in the proposed Green Source Advantage Choice (GSA Choice) program⁴ to be able to procure renewable energy.

⁴ See Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC's Joint Petition for Approval of Green Source Advantage Choice Program, filed in Docket Nos. E-7, Sub 1289 and E-2, Sub 1314, on January 27, 2023. The GSA Choice program, if approved, would be available to non-residential customers with a minimum average peak demand of at least 1 megawatt (MW) or aggregate demand at multiple service locations of at least 5 MW. Eligible customers would be able to sign a power purchase agreement that provides the customers with the rights to the energy and CEEAs from specific generating facilities.

15. As part of the Public Staff's investigation, the Public Staff engaged in discussions with intervenors in these dockets. The Public Staff has taken the comments and concerns noted by these parties into account in these comments.

16. The Public Staff has numerous concerns about the CEI Program, particularly with respect to customer benefits and the sources of the CEEAs. The Companies have indicated in discovery that they will source CEEAs from facilities that are part of the ongoing solar procurement process and will evaluate other avenues to obtain CEEAs if they become available. Additionally, the Companies have indicated that, in accordance with HB 951, the facilities that participate in the solar procurements are required to provide all environmental attributes to the Companies.

17. The CEEAs would be provided to the Companies as part of a single rate bundled transaction, which would also include the energy and capacity components. As such, to comply with the provisions of HB 951 – specifically, the requirements that participating customers bear the full indirect and direct costs of renewable energy purchase programs, and that non-participating customers be held harmless and neither advantaged nor disadvantaged (held neutral) – a fair price of the CEEAs must be determined if such attributes are to be sold. To set a fair price, the Companies have proposed to use information obtained by a REC broker to determine a national average REC price. The Companies state that this method keeps non-participants neutral because it assumes that the true value of the REC is what the national market would be willing to pay for it. However, values of RECs change based on factors such as REC type and region. Thus, the Public

Staff is unable to determine how those factors may have an impact on the REC price. The Public Staff suggests that a potential method for determining this value would be to use the weighted average price of RECs purchased by the Companies for REPS compliance as a proxy. This method would eliminate concerns about a national market, and it would be directly tied to the price that customers pay.

18. While the Companies have proposed to cap the administrative fees at 20% of the total CEEA cost, they have indicated to the Public Staff that once the program startup costs are recovered, the cap would drop to 10% of the total CEEA cost. Nevertheless, the caps may need to be adjusted if administrative costs are higher than expected, or if the CEEA price is lower than expected.

19. Based on the Company's filing, a customer would reasonably assume that the CEI Program, as designed, supports renewable energy and reduces carbon emissions. For instance, the Companies state in the Petition that "[t]hrough CEI, customers wishing to reduce their carbon footprint or otherwise support renewable energy could do so and document their practices through the purchase of [CEEAs]," and that, "[a]s proposed, CEI would provide eligible North Carolina residential and small business customers wishing to reduce their carbon footprint or otherwise support renewable energy the option to do so through the purchase of [CEEAs]."⁵ However, a review of the CEI Program makes clear that it

⁵ Petition, 1 and 5.

does not support development of renewable energy (i.e., "regulatory surplus" or, as some parties refer to it, "additionality").

20. The United States Environmental Protection Agency (EPA) defines "regulatory surplus" in the following way:

Buyers of green power want their purchases to make a difference and demonstrate exclusive use of renewable electricity. To do so, the renewable electricity that they purchase or generate must go beyond what otherwise would have been available through the standard electricity mix or what the law requires or mandates to meet a compliance obligation. This is referred to as regulatory surplus because the additional renewable electricity being purchased is surplus to regulatory requirements.⁶

21. As mentioned above, the CEEAs would be sourced from the already required solar procurement and, as such, would be created and provided to the Companies regardless of the CEI Program. With the proposed program structure, the only money that would go toward supporting the growth of renewable energy is the NC GreenPower contribution, yet customers are already able to donate directly to NC GreenPower if they desire. Moreover, no additional carbon reduction

⁶ EPA, Green Power Markets, Regulatory Surplus (last accessed Apr. 22, 2023) <https://www.epa.gov/green-power-markets/regulatory-surplus>. The EPA further explains that:

One key motivation for buying green power is the ability of a buyer to demonstrate to its customers, employees, and other stakeholders that its renewable electricity purchases are making a difference. To do this, buyers must be able to show that they contributed to demand for renewables beyond what is already required by policies.

would occur through the CEI Program for the same reasons. Therefore, the purchase of a CEEA does not result in a regulatory surplus.

22. As a result of these concerns, the Public Staff recommends that the CEI Program, as proposed, be denied, and recommends instead that the existing RA Program be expanded from its current form. Specifically, the Public Staff recommends that the RA Program be modified to provide an option to purchase exclusively in-state RECs that include a carbon credit purchase option. Modifying the RA Program to include an option for in-state procured RECs would give customers who seek to support renewable energy within North Carolina the ability to do so, but also would allow customers who do not desire to pay an additional premium for in-state RECs to still have the option to support renewable energy. Additionally, the inclusion of a carbon credit option provides similar benefits for customer choice, without increasing costs for customers who may not want to pay the premium to offset or reduce their carbon footprint. And, in light of the fact that the RA Program has been in place for a number of years and is currently available to customers, the initial development costs have already been incurred, thus reducing the overhead costs to customers of developing a new program.

23. The Public Staff notes that the RA Program is not without its own issues. Unlike the proposed CEI Program, the RA Program does not have a limit on administrative fees, which are currently well in excess of the cost of the RECs being purchased, meaning only a small percentage of the charges goes toward the purchase of RECs. In addition, the RA Program's per REC block rate charged to residential and small non-residential customers is twice the amount charged to

large customers. If the Companies modify the RA Program, the high administrative costs and the disparity in prices between classes should be addressed.

24. The Public Staff notes that the enrollments for the proposed CEI Program would not begin until after the facilities for the 2022 solar procurement begin to come online, which is expected to be no earlier than late 2025. Should the Commission deny the Companies' proposed CEI Program as filed, the Companies still have ample time to work with the parties to develop a program which better responds to ratepayer desires.⁷ In the meantime, modifying the RA Program would help bridge the gap until those facilities begin operation.

25. Finally, the Public Staff notes that, because of delays in Company responses to Public Staff discovery requests, the Public Staff may request to file supplemental comments based on new information in the pending discovery. The Public Staff has notified the Companies of the potential for a supplemental comment filing, and the Companies have indicated that they do not object.

⁷ For instance, the Public Staff believes that there is the potential for a workable solution that utilizes facilities that bid into the solar procurement similar to a recommendation made by the Public Staff in its initial comments for the GSA Choice program. A facility that submits a bid in the solar procurement and does not win because of the energy cost in its bid could still be built and be designated as a facility to supply the CEI program with the CEEAs. The price that a CEI customer would pay for the CEEA would be the incremental cost between the avoided cost and the bid price, with the avoided cost in this case being the weighted average cost of that tranche of the solar procurement. This would create additional renewable energy facilities that would have not otherwise been created in North Carolina. With appropriate constraints surrounding the maximum incremental cost, the CEEAs could be marketed at a desirable price.

THE PUBLIC STAFF'S CONCLUSIONS AND RECOMMENDATIONS

26. Based upon the foregoing, the Public Staff concludes that the CEI Program, as proposed, is not in the best interests of ratepayers. As a result, the Public Staff recommends that the Companies' Petition seeking approval of the CEI Program be denied. The Public Staff recommends, instead, that the Companies modify the existing RA Program to provide an option to purchase exclusively in-state RECs that include a carbon credit purchase option and, in doing so, address the high administrative costs and the disparity in prices between classes.

Respectfully submitted, this the 25th day of April, 2023.

PUBLIC STAFF
Christopher J. Ayers
Executive Director

Lucy E. Edmondson
Chief Counsel

Electronically submitted
/s/ Anne M. Keyworth
anne.keyworth@psncuc.nc.gov

4326 Mail Service Center
Raleigh, North Carolina 27699-4326
Telephone: (919) 733-0881

CERTIFICATE OF SERVICE

I certify that a copy of these Comments has been served on all parties of record or their attorneys, or both, in accordance with Commission Rule R1-39, by United States Mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 25th day of April, 2023.

Electronically submitted
/s/ Anne Keyworth
Staff Attorney