



**NORTH CAROLINA  
PUBLIC STAFF  
UTILITIES COMMISSION**

May 23, 2023

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

**Re: Docket No. E-7, Sub 1281 – Application of Duke Energy Carolinas, LLC, for Approval of CPRE Program Compliance Report and CPRE Cost Recovery Rider Pursuant to N.C.G.S § 62-110.8 and Commission Rule R8-71**

Dear Ms. Dunston:

Attached for filing on behalf of the Public Staff in the above-referenced docket is a Motion for Substitution of Witness and Adoption of Testimony, along with the public version of the testimony of James S. McLawhorn, Director of the Energy Division of the Public Staff – North Carolina Utilities Commission.

By copy of this letter, we are forwarding a copy of the redacted version to all parties of record by electronic delivery. Confidential information is located on pages 4-5, 10-13, and 14-15 of the testimony. Confidential McLawhorn Exhibit 1 is confidential in its entirety. The confidential version of the testimony and Confidential McLawhorn Exhibit 1 will be provided to those parties that have entered into a confidentiality agreement.

Sincerely,

Electronically submitted  
/s/ Robert B. Josey  
Staff Attorney  
[robert.josey@psncuc.nc.gov](mailto:robert.josey@psncuc.nc.gov)

/s/ Thomas J. Felling  
Staff Attorney  
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**Attachments**

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STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. E-2, SUB 1300

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	<b>MOTION FOR</b>
Application of Duke Energy Carolinas, LLC,	)	<b>SUBSTITUTION OF</b>
for Approval of CPRE Program Compliance	)	<b>WITNESS AND ADOPTION</b>
Report and CPRE Cost Recovery Rider	)	<b>OF TESTIMONY</b>
Pursuant to N.C.G.S § 62-110.8 and	)	
Commission Rule R8-71	)	

NOW COMES the Public Staff – North Carolina Utilities Commission (“Public Staff”) pursuant to North Carolina Utilities Commission (“Commission”) rules R1-5 and R1-7, and respectfully moves to substitute James S. McLawhorn as the sponsor of the testimony and exhibit pre-filed in the above-captioned proceeding by Jeff Thomas.

In support of this motion, the Public Staff respectfully shows the Commission the following:

1. On February 28, 2023, Duke Energy Carolinas, LLC (DEC) filed its Application for Approval of CPRE Cost Recovery Rider and 2022 CPRE Compliance Report.
2. On March 16, 2023, the Commission issued an Order scheduling this matter to be heard on May 30, 2023, at 2:00 P.M.

3. On May 3, 2023, DEC filed its supplemental testimony, exhibits, and supporting work papers.

4. On May 9, 2023, the Public Staff filed the testimony and exhibits of witnesses Jeff Thomas and Darrus Cofield.

5. On May 19, 2023, DEC filed the Rebuttal Testimony of Angela M. Tabor and Matthew Holstein.

6. Witness Jeff Thomas will not be available to testify at the May 30, 2023 expert witness hearing.

7. James McLawhorn, the Director of the Energy Division of the Public Staff, is familiar with the subject matter of this CPRE proceeding and with the content of Mr. Thomas's pre-filed testimony. Additionally, he will be able to answer questions from DEC, the intervenors, and the Commission at the expert witness hearing in the same capacity as Mr. Thomas.

8. Given that Mr. McLawhorn would adopt the testimony and exhibit previously pre-filed by Mr. Thomas in this docket, no party will be prejudiced by this Motion.

9. The Public Staff notified DEC and all intervenors regarding this motion and no party objected to this motion or the relief requested herein.

WHEREFORE, the Public Staff respectfully requests that Mr. McLawhorn be substituted as the sponsor of the testimony and exhibits of Jeff Thomas pre-

filed in this proceeding and that he be permitted to testify in place of Mr. Thomas at the hearing on this matter.

Respectfully submitted this 23rd day of May, 2023.

PUBLIC STAFFFF  
Christopher J. Ayers  
Executive Director

Lucy E. Edmondson  
Chief Counsel

Electronically Submitted  
/s/ Robert Josey  
Staff Attorney

/s/ Thomas Felling  
Staff Attorney

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## CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing motion on all parties of record in accordance with Commission Rule R1-39, by United States mail, postage prepaid, first class; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This, the 23rd day of May, 2023.

Electronically submitted  
/s/ Thomas Felling

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

**DOCKET NO. E-7, SUB 1281**

In the Matter of	)	<b>TESTIMONY OF</b>
Application of Duke Energy Carolinas,	)	<b>JAMES S. MCLAWHORN</b>
LLC, for Approval of CPRE Program	)	<b>PUBLIC STAFF –</b>
Compliance Report and CPRE Cost	)	<b>NORTH CAROLINA</b>
Recovery Rider Pursuant to N.C.G.S §	)	<b>UTILITIES COMMISSION</b>
62-110.8 and Commission Rule R8-71	)	

**MAY 23, 2023**

1   **Q.    Please state your name, business address, and present**  
2       **position.**

3    A.    My name is James S. McLawhorn. My business address is 430 North  
4        Salisbury Street, Dobbs Building, Raleigh, North Carolina. I am the  
5        director of the Energy Division of the Public Staff – North Carolina  
6        Utilities Commission.

7   **Q.    Briefly state your qualifications and duties.**

8    A.    My qualifications and duties are included in Appendix A.

9   **Q.    What is the purpose of your testimony?**

10   A.    The purpose of my testimony is to make recommendations to the  
11        Commission regarding the Public Staff's investigation of the application  
12        for recovery of costs associated with the implementation of the  
13        Competitive Procurement of Renewable Energy (CPRE) Program filed  
14        by Duke Energy Carolinas, LLC (DEC or the Company) on February 28,  
15        2023. My review also includes the supplemental testimony and exhibits  
16        filed by DEC on May 3, 2023 (Supplemental Filing).

17        The Public Staff Energy Division's specific responsibilities in this  
18        CPRE rider proceeding are to: (1) review the Company's application  
19        and proposed rates for compliance with N.C. Gen. Stat. § 62-110.8  
20        and Commission Rule R8-71; (2) review the CPRE Compliance  
21        Report and address any deficiencies pursuant to Commission Rule  
22        R8-71(h) and Commission Orders; and (3) make recommendations

1 regarding changes to the Company's calculations of the proposed  
2 rates.

3 **Q. How is your testimony organized?**

4 A. My testimony summarizes the CPRE Program Rider request and the  
5 CPRE Compliance Report and presents the results of the Public  
6 Staff's investigation.

7 **Q. Are you recommending any adjustments in your testimony?**

8 A. Yes. I am recommending that a portion of liquidated damages  
9 associated with a contested Power Purchase Agreement (PPA)  
10 termination be credited to ratepayers in the Experience Modification  
11 Factor Period (January 1, 2022, through December 31, 2022) (EMF  
12 Period).

13 A. Overview of DEC's CPRE Rider Request

14 **Q. What costs does DEC seek to recover associated with the CPRE**  
15 **program implementation?**

16 A. As described in the direct and supplemental testimony of DEC  
17 witness Walker, DEC seeks to recover a net total of \$365,777 in  
18 implementation costs (system) incurred during the EMF Period  
19 These costs include internal company labor and associated costs,  
20 outside consulting and legal services, and a \$75,767 credit reflecting  
21 Independent Administrator (IA) fees associated with Tranche 3 that



were inadvertently included in DEC's 2022 CPRE Rider. DEC has also included a \$5.4 million credit to ratepayers reflecting: (1) liquidated damages associated with projects that had their PPAs terminated; and (2) Change Of Control fees collected from market participants (MPs) in the EMF Period.<sup>1</sup> DEC forecasts ongoing system implementation costs of \$388,648 from September 1, 2023, through August 31, 2024, (Billing Period) associated with internal labor and external consulting.

9     **Q.     Please explain the liquidated damages credit DEC proposes to**  
10     **flow back to customers.**

11 A. During the EMF Period, one Tranche 2 facility terminated its PPA,  
12 and pursuant to the terms of the PPA, provided liquidated damages

to DEC. [BEGIN CONFIDENTIAL] [REDACTED]

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19 [REDACTED]

<sup>1</sup> Section 24.6 of the Power Purchase Agreement (PPA) states that "Without limiting Buyer's rights under this Section 24, to the extent Buyer agrees to a request from Seller for one or more consent(s) to Assignment or Change of Control under this Agreement, Seller shall pay Buyer ten thousand dollars (\$10,000) prior to Buyer processing Seller's request."

■ [REDACTED]  
■ [REDACTED] [END CONFIDENTIAL]. DEC states that because  
3 this one-time credit is not associated with ratepayer revenues, it is  
4 not included in the EMF Period interest calculation, pursuant to  
5 N.C.G.S. § 62-130(e).<sup>2</sup>

6 **Q. How does DEC allocate these implementation costs and one-**  
7 **time credits?**

8 A. In its application, DEC allocates implementation costs to NC retail  
9 customer classes using a weighted average of the energy and  
10 capacity allocation factors ("Composite Factor"), calculated  
11 separately for the EMF Period and the Billing Period, as described  
12 by witness Walker on page 9 of her direct testimony.

13 **Q. What costs does DEC seek to recover that are associated with**  
14 **purchases of energy and capacity from winning projects?**

15 A. Within the EMF Period, DEC seeks recovery of \$19.9 million in  
16 system purchased power costs associated with operational Tranche  
17 1 and 2 projects, which generated 525,629 MWh (an increase of  
18 271% over DEC's 2022 CPRE Rider), which equates to an average

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<sup>2</sup> "In all cases where the Commission requires or orders a public utility to refund moneys to its customers which were advanced by or overcollected from its customers, the Commission shall require or order the utility to add to said refund an amount of interest at such rate as the Commission may determine to be just and reasonable; provided, however, that such rate of interest applicable to said refund shall not exceed ten percent (10%) per annum."

1 cost of \$37.87 per MWh. The North Carolina retail portion of this total  
2 revenue requirement is \$13.3 million.

3 DEC estimates that during the Billing Period it will incur a total of  
4 approximately \$37.3 million (system) in purchased and generated  
5 power costs, consisting of \$5.3 million in capacity and \$32 million in  
6 energy costs associated with an estimated 962,960 MWh of  
7 generation from Tranche 1 and Tranche 2 projects, which equates to  
8 an average cost of \$38.69 per MWh. The North Carolina retail portion  
9 of these total costs is approximately \$24.9 million. The Public Staff  
10 has reviewed DEC's forecasts of Billing Period expenses and finds  
11 them reasonable, while also noting that continued project delays  
12 associated with Tranche 2 facilities may result in over-recovery in  
13 DEC's 2024 CPRE rider EMF Period.

14 **Q. Please provide an overview of DEC's CPRE compliance report.**

15 A. DEC filed its 2022 CPRE Compliance Report pursuant to  
16 Commission Rule R8-71(h) and included information required for  
17 calendar year 2022. The Compliance Report provides an overview  
18 of activity in Tranches 1, 2, and 3. The Compliance Report also  
19 provides average pricing for each of the selected proposals, avoided  
20 cost thresholds, costs and authorized revenue, network upgrade  
21 costs on a per-project basis, and a certification from the IA stating  
22 that its evaluation process for Tranche 3 treated all participants

1 equitably and was unaware of any bias towards or against any  
2 participant.

3 **Q. Does the Compliance report provide any information on the**  
4 **status of the 30% utility-owned limit in N.C.G.S. § 62-110.8(b)(4)?**

5 A. Yes, the Compliance Report designates each facility as either a PPA  
6 or utility-owned; however, it does not identify Duke Energy affiliates,  
7 which are to be included within the 30% limit.<sup>3</sup> The Public Staff found  
8 that in Tranches 1, 2, and 3, approximately 14% of capacity procured  
9 is owned by DEC, Duke Energy Progress, LLC (DEP; collectively  
10 with DEC, Duke), or Duke Energy affiliates. When considering the  
11 facilities that have terminated their CPRE PPAs, that figure rises to  
12 approximately 19%. The Public Staff finds that Duke has not  
13 exceeded the 30% statutory limit, and further, that even if additional  
14 projects withdraw that cause the 30% limit to be exceeded, the  
15 statute would not be violated.

16 **Q. Does the Public Staff believe DEC's CPRE compliance report**  
17 **satisfies the requirements of Commission Rule R8-71(h)?**

18 A. Yes. Based upon the Public Staff's review, DEC's CPRE Compliance  
19 Report provides adequate information that satisfies both the  
20 requirements of Commission Rule R8-71(h) and the Commission's

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<sup>3</sup> See the Commission's February 21, 2018 Order Modifying and Approving Joint CPRE Program in Dockets E-7 Sub 1156, and E-2 Sub 1159, at 3.

1 February 21, 2018 *Order Modifying and Approving Joint CPRE*  
2 *Program* in Docket Nos. E-7, Sub 1156, and E-2, Sub 1159 (CPRE  
3 Order).

4 B. CPRE Rider Investigation

5 **Q. Please summarize the overall status of CPRE projects.**

6 A. The CPRE Program has, unfortunately, experienced significant  
7 project delays, withdrawals, and terminations in recent years. Duke's  
8 PPA terminations are entirely in DEC, which procured the majority of  
9 CPRE capacity. As shown in Table 1 below, out of the 1,024 MW of  
10 projects that signed PPAs with DEC in Tranches 1 and 2, only 320  
11 MW (24%) have achieved commercial operation, and 350 MW (34%)  
12 have terminated their PPA. In addition, several other facilities have  
13 delayed their in-service dates.

14 *Table 1: Overview of DEC CPRE Project Status.*

DEC	Selected	Terminated	Active	Terminated %	In Service	In Service %
<b>Tranche 1:</b>	435	40	395	9%	270	62%
<b>Tranche 2:</b>	589	310	279	53%	50	8%
<b>Tranche 3:</b>	155	0	155	0%	0	0%
<b>Total</b>	<b>1,179</b>	<b>350</b>	<b>829</b>	<b>30%</b>	<b>320</b>	<b>27%</b>

1     **Q.     How are DEC ratepayers affected by these terminations and**  
2           **delays?**

3     A.     The cost of each CPRE facility, inclusive of network upgrades, was  
4           below the avoided cost as calculated at the time, pursuant to statute.  
5           Therefore, a withdrawal or delay in the commercial operation of a  
6           CPRE facility increases costs for ratepayers.<sup>4</sup> In addition, CPRE  
7           facilities are necessary to meet the carbon reduction targets from  
8           N.C.G.S. § 62-110.9 (HB 951); any delay in interconnecting these  
9           resources risks creating a cascading delay that may impact the  
10          interconnection of other Carbon Plan resources procured in the  
11          ongoing 2022 Solar Procurement, the 2023 Solar Procurement, and  
12          beyond.

13          However, CPRE facilities that terminate their PPA must pay  
14          liquidated damages, which flow back to DEC ratepayers in this  
15          proceeding, reducing the revenue requirement of the CPRE Rider.

16     **Q.     What liquidated damages has DEC included in this proceeding?**

17     A.     In its initial filing, DEC included liquidated damages and change of  
18          control fees in the EMF Period of approximately \$5.4 million.  
19          However, during its investigation the Public Staff found that DEC had

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<sup>4</sup> For example, the CPRE Tranche 3 Final Report, filed by the IA on April 17, 2023 in Docket No. E-7, Sub 1156, estimates nominal savings of \$9.7 million over 20 years associated with the 155 MW procured at an average cost of \$38.71 per MWh in Tranche 3.

1           assessed other facilities for liquidated damages in 2023. DEC's  
2           Supplemental Filing includes [BEGIN CONFIDENTIAL] [REDACTED]  
3           [REDACTED] [END CONFIDENTIAL] of liquidated damages that it has  
4           received in 2023 from [BEGIN CONFIDENTIAL] [REDACTED]  
5           [REDACTED] [END CONFIDENTIAL] as a credit to Billing Period  
6           costs. DEC included these liquidated damages in its Supplemental  
7           Filing at the request of the Public Staff, and the impact of these  
8           credits reduced the total CPRE rider by approximately 50% for each  
9           rate class.

10    **Q.    Is the Public Staff making any adjustments to the Company's**  
11           **Application in this proceeding?**

12    A.    Yes. [BEGIN CONFIDENTIAL] [REDACTED]  
13           [REDACTED]  
14           [REDACTED]  
15           [REDACTED]  
16           [REDACTED]  
17           [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
18           [REDACTED]  
19           [REDACTED]  
20           [REDACTED]  
21           [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
22           [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[illegible]

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— 10 —

[illegible]

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[REDACTED]

[REDACTED]

[REDACTED]



1     **Q.     Does the total revenue requirement DEC seeks to recover in this**  
2           **proceeding exceed the cost cap established by N.C.G.S. § 62-**  
3           **110.8(g)?**

4     A.    No. The total revenue requirements sought for recovery in this  
5           proceeding are less than 1% of DEC's total North Carolina retail  
6           jurisdictional gross revenues for 2022.

7     **Q.     Does the Public Staff have any information regarding the**  
8           **accuracy of network upgrade costs used in the CPRE evaluation**  
9           **process?**

10    A.    Yes. While DEC is not seeking recovery of any network upgrade  
11           costs in this proceeding, the Public Staff has monitored the latest  
12           network upgrade costs for CPRE winning projects to determine if  
13           they are reasonably accurate relative to the initial estimates used in  
14           the evaluation process. Overall, the Public Staff found that the  
15           difference between network upgrade estimates used in the  
16           evaluation and the most recent network upgrade costs was  
17           significant.

18           Across all Tranche 1 and 2 winning projects that have not withdrawn,  
19           the total initial network upgrade cost estimates used in the evaluation  
20           process was **[BEGIN CONFIDENTIAL]** [REDACTED] [REDACTED] **[END**  
21           **CONFIDENTIAL]**. The most recent estimate to interconnect these  
22           same projects is **[BEGIN CONFIDENTIAL]** [REDACTED] [REDACTED]

1 [REDACTED] [END CONFIDENTIAL]. Across all  
2 Tranche 1 and 2 projects that have achieved commercial operation,  
3 the initial network upgrade cost estimates used in the evaluation  
4 process was [BEGIN CONFIDENTIAL] [REDACTED] [END  
5 CONFIDENTIAL], and the in-service upgrade costs for these in-  
6 service projects are [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED]  
7 [REDACTED] [END CONFIDENTIAL].

8 The Public Staff is investigating the reasonableness and prudence  
9 of these network upgrade costs associated with in-service projects  
10 in DEC's current general rate case in Docket No. E-7, Sub 1276.  
11 However, at this time it does not appear that any individual project's  
12 upgrade cost has exceeded 125% of its initial estimate, which would  
13 invoke the Commission's "limit in the nature of a presumption that  
14 costs in excess of 25% of the estimated costs, are unreasonably  
15 incurred and not recoverable."<sup>7</sup>

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<sup>7</sup> See the Commission's Order Modifying and Accepting CPRE Program Plan, filed in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156, at 18, on July 2, 2019.

1 C. Public Staff Recommendations

2 **Q. What are your recommendations to the Commission regarding**  
3 **DEC's application?**

4 A. The Public Staff recommends that the Commission accept the rates  
5 as proposed in Table 3 below, which are the rates filed by DEC in its  
6 Supplemental Filing plus the addition of the aforementioned  
7 liquidated damages credit.

8 **Q. What rates has DEC requested for its EMF and CPRE rider?**

9 A. In its Supplemental Testimony, DEC requested the following charges  
10 (excluding regulatory fee). The EMF Rate includes an interest  
11 component.

12 *Table 2: DEC's CPRE Rider Request - May 3, 2023 Supplemental Filing (cents per kWh)*

Customer Class	EMF Rate	CPRE Rider Rate	Total CPRE Rate
Residential	(0.0128)	0.0271	0.0143
General Service	(0.0141)	0.0261	0.0120
Industrial	(0.0093)	0.0253	0.0160

3     A.     The Public Staff recommends the Commission adopt the following  
4           CPRE rider rates, which reflect DEC's Supplemental Filing and the  
5           Public Staff's recommended adjustment, as discussed herein.

6 *Table 3: Public Staff's Proposed Rates (cents per kWh)*

Customer Class	EMF Rate	CPRE Rider Rate	Total CPRE Rate
Residential	(0.0153)	0.0271	0.0118
General Service	(0.0165)	0.0261	0.0096
Industrial	(0.0113)	0.0253	0.0140

8 A. Yes, it does.



**APPENDIX A****QUALIFICATIONS AND EXPERIENCE****JAMES S. MCLAWHORN**

I graduated with honors from North Carolina State University with a Bachelor of Science Degree in Industrial Engineering in May of 1984. I received the Master of Science Degree in Management with a finance concentration from North Carolina State University in December of 1991. While an undergraduate, I was selected for membership in both Tau Beta Pi and Alpha Pi Mu engineering honor societies.

I began my employment with the Electric Division of the Public Staff in November of 1988. I became Director of the Electric Division in October of 2006, and, with the merger of the Electric and Natural Gas Divisions, I assumed my present position as Director of the Energy Division in August of 2020. It is my responsibility to supervise the review of, and make policy recommendations to Public Staff senior management on, all electric and natural gas utility matters that come before the Commission.

I have testified previously before the Commission in numerous proceedings.



# **McLawhorn Exhibit 1 is Confidential**