



Jack E. Jirak
Deputy General Counsel

Mailing Address:
NCRH 20 / P.O. Box 1551
Raleigh, NC 27602

o: 919.546.3257

jack.jirak@duke-energy.com

OFFICIAL COPY

JUN 07 2022

June 7, 2022

VIA ELECTRONIC FILING

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

**RE: Response to Public Staff and Clean Power Suppliers
Association/Clean Energy Business Alliance Comments on 2022 Solar
Procurement Program RFP and pro forma PPA
Docket Nos. E-2, Sub 1297 and E-7, Sub 1268**

Dear Ms. Dunston:

Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP” and together with DEC, “Duke Energy” or the “Companies”) submit this letter for the North Carolina Utilities Commission’s (“Commission”) consideration¹ in response to the June 3, 2022 Comments of the Public Staff—North Carolina Utilities Commission (“Public Staff”) and Joint Comments of Clean Power Suppliers Association and Carolinas Clean Energy Business Alliance (“CPSA/CCEBA”) on the Companies’ 2022 Solar Procurement Program (“2022 SP Program” or the “Program”) request for proposal (“RFP”).

Based on the Companies’ review of the Public Staff’s and CPSA/CCEBA’s comments, Duke Energy hereby notifies the Commission that the Companies are not making any further modifications to the 2022 SP Program RFP and are providing this letter in response to CPSA/CCEBA’s two concerns with the bid refresh or “re-pricing” provisions included in Sections VI.C and VI.D of the RFP. Accordingly, the Companies renew their request for the Commission to expeditiously approve the RFP and pro forma power purchase agreement (“PPA”), so that the Companies and the 2022 SP Program

¹ The Commission’s May 26, 2022 *Order Authorizing a Competitive Procurement of Solar Resources Pursuant to House Bill 951 and Establishing Further Procedures* did not expressly provide for reply comments. Accordingly, the Companies specifically request the Commission accept this letter in response to the comments filed by the Public Staff and CPSA/CCEBA.

Independent Evaluator, Charles River Associates, Inc. (“CRA” or the “IE”), can open the Program to bidders.

a. Public Staff supports approval of RFP, as filed

The Public Staff is generally supportive of the 2022 SP Program RFP and pro forma PPA “as filed”² and specifically “supports the repricing mechanism, as described in the RFP.”³ The Public Staff appropriately recognizes that the bid refresh process is “designed to capture savings from any potential extension of the federal investment tax credit” (“ITC”), and accepts that the now-explicit re-pricing opportunity in Step 2 of the evaluation process is “one-way” such that refreshed bids cannot exceed the initial bid submitted at the start of the RFP. The Public Staff did note the risk of a potential adverse solar tariff ruling under the ongoing U.S. Department of Commerce Auxin Solar petition⁴ as having a major impact on the viability of the 2022 Solar Procurement. Importantly, however, the Public Staff did not suggest any change to the RFP bid refresh process and the Auxin Solar AD/CVD Petition risk has largely been mitigated by recent events as discussed below. More generally, the Public Staff emphasizes its focus on including “strong and reasonable ratepayer protections” in the RFP to control costs for ratepayers as Duke Energy procures needed new solar resources to achieve the Carbon Plan targets.⁵ The Companies submit that the two-part bid structure and one-way bid refresh opportunity in Step 2 of the evaluation process, developed in coordination with the IE, reasonably and appropriately achieve these objectives.

b. Duke Energy does not agree CPSA/CCEBA’s concerns warrant modification of the RFP’s Step 2 bid refresh provisions

CPSA/CCEBA commend the Companies for being generally responsive to stakeholder input on the RFP and are generally supportive of requiring PPA Track proposals to refresh their “Part A” bid in April 2023, but identify two specific concerns with the design of the Step 2 re-pricing mechanism that warrant a response.⁶ Duke Energy responds as follows.

1. Duke Energy continues to support one-way bid refresh and does not agree to an upward adjustment of initial pricing during the Step 2 bid refresh

CPSA/CCEBA oppose the one-way bid refresh commenting that allowing only a one-way adjustment may have the perverse effect of increasing the cost of solar procured

² Public Staff Comments, at 3.

³ Public Staff Comments, at 7.

⁴ See Department of Commerce Docket No. A-570-979, C-570-980 (“Auxin Solar AD/CVD Petition”).

⁵ Public Staff Comments, at 4.

⁶ CPSA/CCEBA Comments, at 2.

under the RFP.⁷ This conclusion is illogical, however, as the RFP provides clear guidance regarding the potential for the most competitive projects to be selected as “Early Winners”⁸ after Step 1 and provides that all project Proposals in Step 2 have the option to improve pricing through the Step 2 bid refresh. As designed, the RFP incentivizes Proposals to provide their most competitive price in both the initial bid window and bid refresh phases of the evaluation process. Moreover, the very recent June 6, 2022 announcement by the Biden Administration that it will not impose new tariffs on solar panels for a two year period and that it will launch an effort to expand domestic solar manufacturing⁹ should substantially if not completely mitigate CPSA/CCEBA’s primary concern about market uncertainty due to possible new tariff action during the bid window and counteracts the argument that a bid refresh in the upward direction will be warranted.

The Companies also disagree with CPSA/CCEBA’s comment that the risk of opening the bid refresh to upward adjustment would be mitigated by the Volume Adjustment Mechanism which would “serve to protect ratepayers from significant increases in PPA pricing[.]”¹⁰ The Volumetric Adjustment Mechanism is a reasonable and appropriate tool for lowering the overall procurement volume if bid prices are high relative to the Carbon Plan Solar Reference Cost; however, this mechanism is not a cap on procurement costs and would not fully protect customers from potentially overpaying for solar resources if an upward price adjustment in Step 2 is allowed. Recognizing that the Commission has now approved a 700 MW minimum target volume for the procurement, the Companies believe including a pre-announced bid refresh allowing an upward price adjustment would present opportunities for gaming, as bidders could provide very low initial bids in order to be invited to Step 2, and then sharply increase their bids in the refresh to essentially hold the RFP “hostage” and increase prices when the field of options has been limited.

2. Duke Energy continues to support the current UOT proposal repricing mechanism as reasonable and appropriate to achieve least cost UOT solar resources for customers

Turning to CPSA/CCEBA’s second identified concern, they argue that Duke Energy is unfairly advantaging potential Utility self-developed proposals by providing all Utility Ownership Track (“UOT”) Proposals, including both third-party and Utility Self-Developed projects, the same opportunity in Step 2 to refresh their bids as Controllable PPA Track projects. CPSA/CCEBA argue that this is unfair because the bid refresh will

⁷ CPSA/CCEBA Comments, at 2-3.

⁸ See RFP, Section VI.C. at 18.

⁹ See Fact Sheet: President Biden Takes Bold Executive Action to Spur Domestic Clean Energy Manufacturing, The White House, Jun. 6, 2022, available at <https://tinyurl.com/2p92eeaa8> (last visited Jun. 7, 2022).

¹⁰ CPSA/CCEBA Comments, at 4.

take place after the Duke Energy evaluation team has received and reviewed third party UOT bids in Step 1 and also received cost information on all projects from DISIS Phase 1.¹¹

While the Duke Energy evaluation team will have access to such information, Duke Energy does not believe these circumstances create the unfair competitive advantage that CPSA/CCEBA suggest. First, the Duke Energy Utility Ownership Team¹² would only have an opportunity to offer a downward adjusted bid if its Proposal is competitive and is selected to proceed to Step 2. Second, all proposals ranked in Step 2 will have the same independent opportunity to improve their bid such that the pricing offered in Step 1 may no longer be meaningful and, in any case, any market participant can elect how aggressively to improve its bid. Third, the RFP also clearly provides in Section IV.D that the IE's role includes independently evaluating and ranking all UOT Proposals to provide transparency that any Utility Self-Developed Proposals were fairly evaluated compared to third party acquisition bids. Finally, contrary to CPSA/CCEBA's comments,¹³ all market participants will receive the same information in the form of the DISIS Cluster Phase 1 Report before proceeding to Step 2 so CPSA/CCEBA's assertion that Duke Energy will have an interconnection cost and interdependency information advantage is not correct.

Relatedly, CPSA/CCEBA question Duke Energy's and the IE's statements in the IE Report that HB 951's required 55%/45% ownership allocation significantly reduces any financial motivation to advantage self-developed assets.¹⁴ For example, CPSA/CCEBA allege that "it is hard to understand why Duke would go to the significant effort and expense of developing UOT bids if there were nothing in it for the Companies." Despite prior explanations by Duke Energy and now the IE, CPSA/CCEBA continue to raise this concern while failing to understand why Duke Energy develops projects and, importantly, how the Companies are compensated for utility-owned solar investments. To address these issues, the Companies reiterate that the purpose of including self-developed bids in the RFP is not simply to win. Instead, the purpose is to leverage Duke Energy's experience and knowledge in siting, developing, procuring, constructing and operating solar facilities to enhance the growing solar market in the Carolinas and to increase pressure on third-party bidders to keep acquisition costs reasonable, which is in the best interest of customers. Put another way, Duke Energy pursues self-developed projects to create strong, viable and low-cost alternatives to the market to ensure customers pay the lowest possible costs for UOT solar projects.

While the Companies do not support changes to the RFP design, one option to eliminate CPSA/CCEBA's concerns would be to fully eliminate the bid refresh for the Utility Ownership Track and retain it only for the Controllable PPA Track.

¹¹ CPSA/CCEBA Comments, at 5.

¹² See RFP Section IV.D detailing the role of the Duke Energy Utility Ownership Team.

¹³ CPSA/CCEBA Comments, at 5 (asserting that Duke Energy will have an unfair advantage because it will have "receive[d] cost information on all projects from the DEC/DEP DISIS Phase 1 System Upgrade estimates, including interdependencies within Phase 1 and interdependencies with prior-queued projects.")

¹⁴ CPSA/CCEBA Comments, at 6.

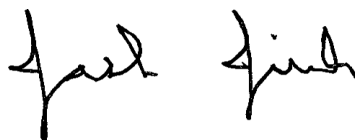
Importantly, if third-party UOT bids are allowed to lower their bids but self-developed projects are not, it reduces the competitiveness of the RFP and creates an opportunity where the projects selected are not actually the least-cost projects for customers. As the Companies have previously explained in stakeholder meetings and as recently identified by the IE Report, Duke Energy's future recovery of selected UOT projects is not based on whether the project is an acquisition from a third-party developer or a self-developed project. This is because utility cost of service-based recovery is based on the cost of the asset and not who developed the asset. As such, a bid refresh resulting in a lower installed cost would result in a reduced revenue requirement meaning customers pay less.

c. Conclusion

The Companies appreciate the Commission's consideration and acceptance of this letter. Based on the foregoing responses, and for reasons stated in the Companies' June 1, 2022 SP Program filing, the Companies appreciate the Commission's expedited consideration and approval of the 2022 SP Program RFP and pro forma PPA, so that the Companies and the IE can open the Program to bidders.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jack E. Jirak".

Jack E. Jirak

cc: Parties of Record