

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 190**

In the Matter of:	)	JOINT COMMENTS IN RESPONSE
	)	TO DUKE’S REQUEST FOR
Biennial Consolidated Carbon Plan	)	DEVELOPMENT OF
and Integrated Resource Plans of	)	SUPPLEMENTAL PORTFOLIOS
Duke Energy Carolinas, LLC, and	)	AND ADJUSTMENT TO
Duke Energy Progress, LLC,	)	PROCEDURAL SCHEDULE ON
Pursuant to N.C.G.S. § 62-110.9	)	BEHALF OF SOUTHERN ALLIANCE
and § 62-110.1(c)	)	FOR CLEAN ENERGY, SIERRA
	)	CLUB, NATURAL RESOURCES
	)	DEFENSE COUNCIL, AND NORTH
	)	CAROLINA SUSTAINABLE
	)	ENERGY ASSOCIATION

The Southern Alliance for Clean Energy, Sierra Club, and Natural Resources Defense Council, jointly with the North Carolina Sustainable Energy Association (Joint Intervenors), respectfully submit these comments in response to Duke’s Request for Development of Supplemental Portfolios and Adjustment to Procedural Schedule.

Joint Intervenors respectfully urge the North Carolina Utilities Commission (Commission) to: (1) order that Duke’s August 2023 resource portfolios are unreasonable for planning purposes because those portfolios are no longer sufficient to meet expected load and clarify that the Public Staff and other intervenors shall not be expected to address those portfolios; (2) order Duke to submit supplemental portfolios that comply with the substantive requirements of Commission rules by providing a range of different pathways for complying with the requirements of House Bill 951 under its updated load forecast, including a 2030 compliant portfolio; and (3) preserve as well as it can the procedural timelines

that the Commission instituted to ensure that there is a thorough vetting of Duke's portfolios and opportunity to present the Commission with reasonable alternatives.

1. INTRODUCTION

In its December 18 update letter to the Commission, Duke Energy Carolinas, LLC (DEC) and Duke Energy Progress, LLC (DEP) (collectively, Duke) proposed a new schedule for this Carbon Plan and Integrated Resource Plan (CPIRP) proceeding. Duke's proposed schedule and supplemental modeling (Duke's Proposal) violate the CPIRP process that the Commission just approved in the CPIRP rules proceeding in multiple ways, as described below. Order Adopting Commission Rule R8-60A, Docket No. E-100, Sub 191 (Nov. 20, 2023) (Order Adopting CPIRP Rules). Duke's Proposal would undermine the integrity of the proceeding and threaten its outcome because it would give intervenors too little time to assess Duke's proposed portfolios and generate viable alternatives. Duke's proposal would also interfere with the Commission's ability to fully and fairly evaluate competing CPIRP portfolios. Duke's Proposal risks introducing unnecessary confusion and inefficiency into the docket by continuing to rely on Duke's August 2023 portfolios, which would not reliably meet Duke's updated load forecast and thus, are unreasonable for planning purposes on their face. The Commission should not sanction such confusion and wasted effort.

Without prejudging whether Duke's updated (or original) load forecast is accurate, Joint Intervenors recognize the need to grapple with the updated load forecast and its implications for a compliant resource mix that can maintain system reliability. But instead of adopting Duke's proposed schedule, the Commission

should chart a path forward that maintains the integrity of key elements of its CPIRP Rules while also providing an opportunity for a full review of all relevant proposed portfolios that are designed to meet expected load. Joint Intervenor remain amenable to working with Duke, the Public Staff, and other parties to come up with an alternative procedure that will allow for a thorough review of all relevant portfolios that comply with substantive CPIRP rules and that are informed by Duke's updated load forecast (while also allowing time for scrutinizing whether Duke's updated load forecast is reasonable or accurate). While Joint Intervenor believe that the Commission should retain the 180 days it originally established for review of Duke's Carbon Plan filing, we outline a compromise schedule that more closely aligns with the Commission's rules than Duke's December 18 proposal. See Section 3.C, *infra*.

2. BACKGROUND

On November 30, 2023, ten days after the Commission formally adopted Rule R8-60A and ninety-one days into the Public Staff's and intervenors' timeline to review, Duke filed supplemental testimony upending the CPIRP procedural framework. In that filing, Duke indicated that its expectation is "to finalize the Updated 2023 Fall Load Forecast the *first week of December*, at which point it will be made available to Public Staff and all intervenors." Supp. Test. at 5. On Friday evening, December 8, 2023, Duke uploaded its Updated 2023 Fall Load Forecast to its Datasite platform without informing Joint Intervenor or directing them to the subfolder where the Companies had posted the new forecast. Furthermore, even though the Public Staff requested Duke's updated load forecast and load modifiers

by December 11, 2023, the Companies failed to provide all the requested information until December 18.

Counsel for Duke reached out to counsel for Joint Intervenors on the evening of December 12 to discuss its procedural proposal. Joint Intervenors expressed many of the concerns set forth in these Comments. Without addressing those concerns, Duke notified counsel of its intention to file its proposal with the Commission at about noon on Friday, December 15, with a request for intervenors to state their position by noon on Monday, December 18. Several parties indicated that they would need additional time before they could fully respond to Duke's proposal and noted concerns with what counsel for Duke had outlined. But Duke disregarded those requests and proceeded to file its proposal in its December 18 update.

Duke's heavy-handed approach contrasts with the assurances that it gave to the Commission on November 30. In its supplemental testimony, Duke said that it would work with the Public Staff and other intervenors to come up with workable next steps concerning its updated load forecast. Supp. Test. at 9 ("The Companies intend to engage Public Staff and intervenors to assess reasonable next steps in light of the current procedural posture of the proceeding."). Instead, Duke's engagement with intervenors has been selective and not as transparent as necessary. Duke is attempting to force a significant procedural change that will prejudice any intervenor that is conducting independent third-party modeling and improperly limit the options available for Commission review.

3. DUKE'S PROPOSAL IS UNWORKABLE

a. Duke's Updated Load Forecast Renders the Portfolios in its August 17, 2023 Proposed CPIRP Unusable.

Because Duke's August 17, 2023 proposed CPIRP filing would not meet its December 18 updated load forecast, all parts of the filing that do not account for the updated load forecast cannot be relied upon. Nor can Duke rely on those August 17 portfolios to comply with the CPIRP Rules. The CPIRP Rules set forth "specific elements that the plan must include." Order Adopting CPIRP Rules at 5, *In the Matter of Rulemaking Proceeding Related to Biennial Consolidated Carbon Plan and Integrated Resource Plans of Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC, Pursuant to N.C.G.S. § 62-110.9 and § 62-110.1(c)*, Docket No. E-100, Sub 191 (Nov. 20, 2023). These elements include a load forecast. NCUC Rule R8-60A(d)(1), (f)(1). Furthermore, CPIRP Rules require Duke to provide a complete proposed CPIRP and underlying information by September 1, 2023. NCUC Rule R8-60A(e)(1).

An accurate load forecast is foundational to a reliable CPIRP. The Commission has declared that ensuring system reliability is "nonnegotiable for the continued health and well-being of all North Carolinians." Initial Carbon Plan Order, at 56. Ensuring the adequacy and reliability of the grid is a separate requirement in statute and CPIRP Rules. N.C. Gen. Stat. § 62-110.9(3) (stating CPIRP must "[e]nsure any generation and resource changes maintain or improve upon the adequacy and reliability of the existing grid."); NCUC Rule R8-60A(d)(6), (f)(9). Accordingly, all proposed CPIRP portfolios that the Commission considers must meet the most accurate and up-to-date load forecast available in the

proceeding. Now that Duke has provided intervenors an updated load forecast, the Commission cannot properly consider stale portfolios that are not expected to reliably meet the updated load forecast, nor should it require the Public Staff and intervenors to spend their limited time and resources evaluating the same.

Duke all but agreed. Duke stated that there have been “substantial, material changes in the Companies’ load forecast,” resulting in an updated forecast “that substantially exceeds even the high load case included in the Companies’ CPIRP filing in August.” (Supp. Test. at 2, 4). Duke has asserted that “this increased load will likely impact the pace, scope, and scale of resources needed in the Plan.” *Id.* at 7. In other words, Duke has conceded that its original portfolios would not reliably meet load and thus are no longer compliant with CPIRP Rules. However, contradictorily, Duke stated that its forthcoming supplemental portfolios “do not supersede or otherwise negate the Companies’ robust initial modeling provided in the initial CPIRP filing.” Update Letter at 2. But this cannot be right, for the reasons just set forth; the initial CPIRP filing no longer meets Duke’s expected load forecast and cannot ensure reliability. Taking Duke’s Proposal seriously requires deeming Duke’s previously submitted portfolios unreasonable for planning purposes.

The Commission should not treat Duke’s August 2023 portfolios as relevant to this proceeding. If it were to do so, Joint Intervenors and the Public Staff will need to continue thoroughly reviewing Duke’s now stale portfolios while simultaneously preparing alternative resource scenarios based on two different starting places—the originally filed portfolios from August 2023 and the revised supplemental portfolio or portfolios that Duke proposes to submit on January 31,

2024. The Commission should not require or sanction such a fruitless exercise. Were it to do so, Joint Intervenors cannot guarantee that they would be able to conduct effective modeling. In its inaugural Carbon Plan Order, the Commission noted that it “expects parties . . . to again present portfolios for the Commission’s consideration” that incorporate the Commission’s parameters and updated assumptions relating to economic conditions. Initial Carbon Plan Order, at 19. But conducting capacity expansion, production cost, and SERVVM modeling is time consuming, resource intensive, and computing intensive work. It is unreasonable to proceed with this modelling on two sets of portfolios based on radically different load forecasts. Duke can reasonably expect to recover all its costs for performing updated modelling from its ratepayers. Joint Intervenors are nonprofit organizations that do not have that same luxury.

Notably, parties to the parallel Duke IRP proceedings in South Carolina share similar concerns. On December 7, 2023, the South Carolina Office of Regulatory Staff (ORS) filed a letter with the Public Service Commission of South Carolina (PSC) expressing “significant concerns with [Duke’s] proposed update and its impact on the parties’ ability to perform the statutorily necessary review [of Duke’s IRP] within the established timeframe.” *Letter Regarding Supplemental Direct Testimony of Glen A. Snider*, In the Matter of Duke Energy Progress, LLC’s 2023 IRP and Duke Energy Carolinas, LLC’s 2023 IRP, PSC Docket Nos. 2023-8-E and 2023-10-E (“ORS Letter”). ORS explained that Duke’s updated load forecast could “render much of ORS’s current review meaningless and create a race against the clock that may prove untenable.” ORS Letter at 2. ORS concluded

Duke's proposed path forward fails to address these concerns and effectively "require[s] the parties to conduct two comprehensive reviews of the IRPs, which will negatively impact ratepayers with a considerable increase in costs associated with these dockets." *Id.*

Similarly, on December 22, 2023, the South Carolina Coastal Conservation League, Southern Alliance for Clean Energy, Upstate Forever, and Vote Solar filed a motion with the PSC to hold in abeyance the deadline for ORS and intervenors to file direct testimony. *Motion to Hold ORS and Intervenor Direct Testimony Deadline in Abeyance*, PSC Docket Nos. 2023-8-E and 2023-10-E ("SC Motion"). In their motion, those intervenors note that "the Companies' update is not limited to a higher load forecast; they are also adjusting numerous other assumptions that will affect selection of future resources in the model, such as resource cost, availability, and fuel supply, and proposing changes to their initial timelines for coal retirement and carbon emissions reductions." SC Motion at 3. ORS and several other parties each filed letters of support for the motion, further emphasizing ORS's "significant concerns that it, and the other parties of record, will be hindered from conducting an appropriately thorough review" of Duke's IRP. ORS Letter at 2.

b. Duke's Proposal to Submit Supplemental Modeling Contravenes Commission Rules.

Duke proposes filing one or more additional portfolios based on its updated load forecast and its revised fuel supply, resource availability, and financial assumptions put forward by the Public Staff. Update Letter at 2. Duke's updated load forecast and revised modelling assumptions render its prior modeling unusable for this proceeding, making revised portfolios necessary. However,

Duke's Proposal would likely not comply with the substantive requirements of Commission rules. The CPIRP rules require Duke to file "several resource portfolios" that evaluate paths to meet its updated load forecast. See NCUC Rule R8-60A(d)(4). In addition, the Commission mandates that "each CPIRP filed prior to 2030 shall include at least one resource portfolio that achieves the 70% reduction in carbon dioxide emissions by 2030." *Id.* Duke's December 18 filing is vague about the substance of its proposed updated portfolios, but as noted above, Duke has asserted that it can also rely on the August 17, 2023¹ portfolios. More disturbingly, Duke apparently plans only to update one of its portfolios—P3 Base—and not the others.

The Commission should not permit Duke to only file one or a limited set of updated portfolios based on its updated load forecast and a narrow set of revised modelling assumptions. To do so would sanction disregarding the Commission's rules and would allow Duke to limit the Commission to considering only a small set of updated, non-compliant portfolios. In the end, Duke's Proposal would have the Commission considering two different groups of portfolios, none of which likely comply with statute or this Commission's rules or orders.

First, Duke's Proposal would continue to rely on the stale portfolios filed last August, which, as already explained, do not meet Duke's updated load forecast and therefore would not comply with the statutory reliability requirement. Second, Duke's proposal limits consideration to one, or perhaps two, portfolios that respond to a narrow set of modeling recommendations from the Public Staff and meet Duke's updated forecast load, but likely do not achieve 70% reduction of carbon

emissions by 2030. Faced with that limited set of options and the nonnegotiable mandate to maintain reliability, the Commission would not be able to give the August 17, 2023, portfolios serious consideration. In practice, the Commission would almost certainly consider only the portfolios designed to meet the updated load forecast (in addition to any portfolios developed by the Public Staff and intervenors under insufficient time, as discussed below). And if that set of one or more updated portfolios does not include a portfolio that achieves the 70% reduction in carbon dioxide emissions by 2030, the Commission will be unable to enforce its CPIRP Rules and recent order or keep Duke on track towards compliance with House Bill 951.

Accordingly, the Commission must, at a minimum, require Duke's updated modeling to include at least one portfolio that achieves the 70% reduction in carbon dioxide emissions by 2030. In addition, the Commission should direct the Companies to work with other intervenors to model additional portfolio variants and/or sensitivities based on revised fuel supply, resource availability, and financial assumptions, similar to what the Companies on their own initiative have committed to doing with the Public Staff. Both the Commission and other intervenors would benefit from collaborative supplemental modeling that incorporates new data not otherwise available to or modeled by Companies when its August portfolios were filed.

c. Duke's Proposed Schedule Violates Commission Rules and Likely Makes Full Consideration Impossible.

Duke's Proposal plainly violates the scheduling requirements in the new CPIRP Rules. First, it violates the September 1, 2023, deadline to submit modeling

files and underlying information. The CIPRP Rules require that by September 1, Duke “shall make available *complete* CIPRP modeling input and output data files, as well as their method underlying the use of all modeling software and process steps utilized in the CIPRP, to the Public Staff and intervenors.” NCUC Rule R8-60A(e)(1) (emphasis added); see Initial Carbon Plan Order, p. 130. Duke’s updated load forecast and proposed additional modeling are unquestionably part of its proposed CIPRP. Accordingly, Duke has not provided its “complete” modeling to intervenors by September 1.

Second, it violates the requirement to provide the Public Staff and intervenors at least 180 days to review the complete proposed CIPRP and underlying information. The CIPRP Rules provide Public Staff and intervenors 180 days from the latter of Duke’s filing or September 1 to review the proposed CIPRP, including its complete modeling inputs, to develop expert witness testimony and/or propose alternative portfolios for the Commission’s consideration. NCUC Rule R8-60A(g)(2). This 180-day window was intended to “afford the intervenors more time to engage in discovery subsequent to Duke’s initial filing and to prepare and develop their own plans or analyses of Duke’s plan.” Order Adopting CIPRP Rules at 16.

Duke’s proposal violates this provision by compressing the time for validating, reviewing, and running any alternative modeling following the supplemental portfolios from 180 days to 77 days. In contrast, Duke proposes shaving only two days off its allotted time for rebuttal. Furthermore, as highlighted earlier, Duke’s December 18 filing is vague about the contents of its future

modeling. This makes it impossible for intervenors to agree to a dramatically reduced timeline for review of the supplemental modelling that Duke proposes to file by January 31 and timely prepare alternatives for Commission consideration.¹ The Joint Intervenors, who plan to prepare independent modeling, have discussed this issue with their consultants. We can represent that it is impossible at this time, knowing almost nothing about the contents of Duke's planned updated modeling, to estimate how long the consultants would need for a minimally adequate review. Joint Intervenors raised this concern with Duke but received no substantive response.

These rule violations will impair not just intervenors' consideration of Duke's CPIRP but also the Commission's. At least part of the Commission's reason for establishing the requirements to allow sufficient time for the Public Staff and intervenors to review Duke's proposed CPIRP filings is that the Commission values their analysis; their review is not simply an exercise in submitting paper to the Commission. Under Duke's Proposal, however, intervenors would have inadequate time to review Duke's-load-adjusted portfolios and to present the Commission with any alternatives that meet Duke's updated load forecast. The Commission should not allow Duke's Proposal to undermine this input.

¹ CIGFUR II & III, in its letter in lieu of comments filed December 22, 2023, acknowledged that 1) the procedural schedule for the CPIRP is protracted compared to the Initial Carbon Plan and 2) the CPIRP Rules prescribe a Commission Order no later than December 31 of the year after the year in which the proposed CPIRP is filed. The Joint Intervenors respectfully remind the Commission that when interpreting administrative regulations, the rules of statutory construction apply. See *Luna v. Dep't of Env'tl. & Natural Res.*, 648 S.E. 2d 280, 282 (N.C. App. 2007) (citing *Ace-Hi, Inc. v. Department of Transp.*, 319 S.E. 2d 294, 297 (N.C. App. 1984) ("[a] basic rule of statutory construction is that unless the words used therein have acquired some technical meaning or the context otherwise dictates, they must be construed in accordance with their common or ordinary meaning . . . The same rule applies to administrative regulations.")). Accordingly, the Commission must give each provision in the CPIRP Rules its plain meaning and give equal weight to the 180-day allowance to review a CPIRP proposal as to its prescribed deadline to rule.

Joint Intervenors are sensitive to the Commission's need for sufficient time for a full review as well. As noted above, Joint Intervenors remain willing to work towards a viable schedule that allows all parties sufficient time for review and analysis of Duke's updated portfolio(s), updated load forecast, and any other filings that remain relevant to the Commission's decision. If the Commission rescheduled the evidentiary hearing for mid- to late-August, Joint Intervenors believe that the following procedural timeline would better align with the spirit and intent of the CPIRP Rules and allow their consultants adequate time to review and prepare alternative portfolios for Commission consideration: following Duke's January 31, 2024 supplemental filing, intervenors file direct testimony and alternative portfolios on May 30 (120 days) and Duke files rebuttal on July 1 (32 days). This alternative timeline would preserve the Commission's ability to review the record and prepare an order by December 31, 2024, and would shorten Duke's rebuttal in proportion to the reduced time for intervenors to prepare direct testimony.

With the limited information provided by Duke so far, however, it is impossible to know exactly how much additional time will be needed for review and alternative portfolio development. But given the updated load forecast and other changes that Duke proposes to make to key inputs and assumptions, our consultants would need more than the 77 days proposed by Duke to conduct a full review and prepare alternative portfolios. However, the time needed could be greater than the 120 days suggested as a compromise position above. For this reason, Joint Intervenors would respectfully ask to retain the right to request the full 180 days originally established by the Commission for intervenors to review

and provide alternative portfolios. Ultimately, the Commission retains flexibility to shape a procedural schedule that will ensure that it has the record it needs to develop an appropriate Carbon Plan, which must include sufficient time for intervenors to review and prepare alternative portfolios for Commission consideration. *See, e.g.,* Order Granting Continuance and Establishing Reporting Requirements, In the Matter of Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities – 2020, Docket No. E-100, Sub 167 (N.C.U.C. Oct. 30, 2020) (allowing for a revised schedule in the PURPA avoided cost proceeding to accommodate changed circumstances).

4. CONCLUSION

For the foregoing reasons, Joint Intervenors respectfully request that the Commission:

1. Reject Duke's proposed updated CPIRP schedule;
2. Order Duke to undertake modeling that complies with the requirements of the CPIRP rules based on its updated load forecast;
3. Allow Public Staff and intervenors 180 days from the filing of the updated portfolios to submit testimony and any alternative CPIRP modeling, or, in the alternative, provide a minimum of 120 days from January 31, 2024 (until May 30, 2024) for intervenors to file testimony and 32 days for Duke to file rebuttal (until July 1, 2024), with the goal of conducting the evidentiary hearing at some point in August 2024, subject to potential modification based on how many changes Duke makes to its portfolios in its January 31 filing;

4. Direct the parties to disregard Duke's originally filed portfolios as unreasonable for planning purposes; and

5. Other such relief as the Commission may deem appropriate.

Respectfully submitted this the 3rd day of January, 2024.

s/ David L. Neal

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Joint Comments in Response to Duke's Request for Development of Supplemental Portfolios and Adjustment to Procedural Schedule by the Southern Alliance for Clean Energy, the Sierra Club, the Natural Resources Defense Council, and North Carolina Sustainable Energy Association as filed today in Docket No. E-100, Sub 190 has been served on all parties of record by electronic mail or by deposit in the U.S. Mail, first-class, postage prepaid.

This the 3rd day of January, 2024.

s/ David L. Neal