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JUN 02 2022

June 2, 2022

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 Carolina, LLC and Duke Energy Progress, LLC's
Motion to Modify Issues Report Requirement
Docket No. E-100, Sub 179**

Dear Ms. Dunston:

Enclosed for filing in the above-referenced docket, please find Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Motion to Modify Issues Report Requirement.

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 Jirak", written in a cursive style.

Jack E. Jirak

Enclosure

cc: Parties of Record

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 179

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Duke Energy Progress, LLC, and)	
Duke Energy Carolinas, LLC, 2022)	MOTION TO MODIFY ISSUES
Biennial Integrated Resource Plans)	REPORT REQUIREMENT
And Carbon Plan)	
)	

Pursuant to N.C. Gen. Stat. § 62-80 and North Carolina Utilities Commission (“Commission”) Rule R1-7, Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP” and together with DEC, “the Companies” or “Duke Energy”), through counsel, hereby respectfully submit this Motion to Modify Issues Report Requirement.

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

1. On April 1, 2022, Commission issued its *Order Establishing Additional Procedures and Requiring Issues Report* (the “Issues Report Order”). The Issues Report Order recognized the unique challenges presented in this proceeding that require the Commission to approve a first-of-its kind Carolinas Carbon Plan (“Carbon Plan” or the “Plan”) within the short time period prescribed by Session Law 2021-165 (“HB 951”). Given the expedited nature of the proceeding, the Commission expressed an intent to resolve issues based on “public witness testimony, verified filings made by persons who would otherwise be qualified to present expert testimony in a formal hearing, and written comments.” *Issues Report Order*, at 1. Nevertheless, the Commission recognized that an

evidentiary hearing may be necessary to resolve certain issues given the breadth of material necessarily raised in the Carbon Plan filing.

2. Accordingly, in an effort to narrow the scope of issues to be addressed in an evidentiary hearing, the Commission directed the parties to confer, prior to the July 15, 2022 deadline for intervening parties to make responsive filings on the Carbon Plan, “with the goals of identifying and narrowing the issues in controversy and of identifying which issues merit consideration at an expert witness hearing.” *Id.* at 1-2. Intervening parties are directed to include a list of the substantive disputed issues in their July 15 filings, and all parties are directed to confer thereafter. Based on such feedback, the Companies must then file the “Issues Report” with the Commission no later than July 22, 2022. *Id.* at 2. The Issues Report must identify:

(1) those issues where agreement exists or can reasonably be expected to be reached; (2) those issues that are in controversy, but do not merit consideration at an expert witness hearing; and (3) those issues that are in controversy and merit consideration at an expert witness hearing.

Id.

3. Duke appreciates and supports the intent behind this procedural requirement. However, the Issues Report requirement creates an asymmetric comment opportunity. That is, under the procedural schedule established by the Commission, all parties will have the opportunity to file comments on the Companies’ Carbon Plan (with such comments due on July 15, 2022). The Companies anticipate that such July 15, 2022 comments will potentially include alternative Carbon Plans proposed by intervenors. However, under the Issues List Order, the Companies’ (and other parties’) only opportunity to comment on such alternative Carbon Plans (or to respond to any other issues raised in intervenor comments) is through an evidentiary hearing. Therefore, while all parties will

be provided a comment opportunity on the Companies' Carbon Plan outside of an evidentiary hearing, the Companies and other parties will not have a comment opportunity on intervenors' alternative Carbon Plans and substantive comments outside of an evidentiary hearing. All things being equal, this framework is likely to force more issues into an evidentiary proceeding even where a reply comment opportunity would be a more efficient way to address particular topics.

4. The Companies recognize and appreciate the accelerated procedural timeline required by HB 951 and believe that a simple modification to the Issues Report requirement will provide an efficient and equitable procedural framework that is consistent with the intent of the Issues Report Order. Specifically, the Companies respectfully request that, in the case of those issues that are in controversy but do not require an evidentiary hearing (*i.e.*, Issue List category (2)), all parties be provided an opportunity to file reply comments.

5. Given the scope and significance of the Carbon Plan, the Companies expect that the issues in controversy are likely to fall on a spectrum, with some potentially requiring expert testimony to reach resolution, while others may be adequately addressed through further responsive, explanatory verified comments filed by persons who would otherwise be qualified to present expert testimony in a formal hearing. Affording all parties the option to file responsive comments on certain issues as an alternative to identifying an issue as necessitating an evidentiary hearing will help achieve the Commission's interest in judicial economy, while ensuring the Companies and all parties have a full and fair opportunity to respond to and rebut any documents or evidence presented in the

proceeding. *See* N.C. Gen. Stat. § 62-65(a). Duke Energy supports this further comment opportunity also being extended to all parties.

6. In addition, while the Companies are committed to fulsome engagement with all parties in advance of submission of the Issues List as contemplated by the Issues List Order, the Companies acknowledge the potential that there may be unresolvable differences in opinion regarding the Issues List. After discussing with other parties, the Companies also believe that all parties would benefit from clarity regarding the timing of a Commission decision regarding the Issues List to the extent that there are disputes regarding the same (*i.e.*, a final Commission determination regarding the issues that will be subject to the evidentiary proceeding, if any). Therefore, the Companies also respectfully request that the Commission confirm the date by which it would intend to rule on any disputes concerning the Issues List (subject to any necessary caveats).

7. Finally, the Companies request that, for those issues in controversy but not requiring an evidentiary proceeding, any parties electing to file reply comment be required to submit such reply comments six weeks from the date on which the Commission confirms the issues to be covered in the evidentiary proceeding (if any). While the development of any such reply comments in parallel with any required pre-filed testimony will undoubtedly be challenging for all parties, the Companies believe that such approach will nevertheless be more efficient and less burdensome on balance than the alternative in which a larger number of issues are forced into an evidentiary hearing.

8. This framework would be consistent with prior Commission procedural requirements. Specifically, in the 2018 biennial avoided costs proceeding in Docket No. E-100, Sub 158, the Commission oversaw a full comment proceeding on disputed issues

before ordering an evidentiary hearing on a narrower set of disputed issues. In that proceeding, Duke Energy, as the initiating party, was given a reply comment opportunity in addition to the evidentiary proceeding. While the hybrid comment / hearing approach the Companies are proposing in this proceeding would proceed on a parallel, rather than linear, track, the truncated schedule is unavoidable given the Commission's December 31, 2022 deadline to approve a Carbon Plan pursuant to HB 951.

9. In short, the Companies believe that proceeding along these dual paths will allow for the most efficient resolution of disputed issues. Such optionality would allow the parties to address disputed issues according to the significance of the further explanation and/or support required through the more appropriate of (1) a more complete comment proceeding in which the Companies and other parties may file reply comments addressing certain issues raised in intervenors' July 15, 2022 filings; or (2) an evidentiary proceeding where parties may present expert witnesses to support their position(s).

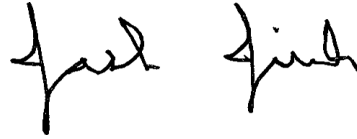
10. The motion was shared with counsel for all intervenors. Counsel for Public Staff and CIGFUR II and III provided constructive suggestions for improving this motion, which the Companies incorporated, and have further authorized the Companies to represent that each party supports the modifications proposed herein (though Public Staff consents to the 6-week deadline for comments as long as the Commission limits discovery to no later than 14 days after the filing of initial comments).¹ Respective counsel for Walmart, Person County, Broad River Energy, Carolinas Clean Energy Business Association, Clean Power Suppliers Association, Appalachian Voices, and the North Carolina Attorney

¹ The Companies do not agree that a 14-day limit on discovery is appropriate but do not believe that this issue needs to be resolved at this time and are confident that the parties can continue to collaboratively agree upon reasonable discovery parameters if needed.

General's Office have also indicated that each such party does not object to the modifications proposed herein and counsel for North Carolina Electric Membership Corporation ("NCEMC") has indicated that NCEMC supports the motion.

WHEREFORE, for all of the foregoing reasons, the Companies respectfully request that the Commission grant its motion and modify the Issues Report Order as described above in Paragraphs 4 - 7 and grant such further relief as the Commission deems necessary.

Respectfully submitted, this 2nd day of June, 2022.



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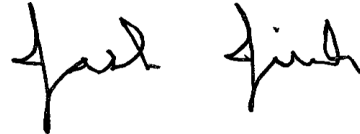
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*Counsel for Duke Energy Carolinas, LLC
and Duke Energy Progress, LLC*

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Motion to Modify Issues Report Requirement, in Docket No. E-100, Sub 179, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid, to parties of record.

This the 2nd day of June, 2022.

A handwritten signature in black ink, appearing to read "Jack Jirak", written in a cursive style.

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