

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 179

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:	)	RESPONSIVE COMMENTS OF
Duke Energy Progress, LLC, and	)	REDTAILED HAWK COLLECTIVE,
Duke Energy Carolinas, LLC, 2022	)	ROBESON COUNTY COOPERATIVE
Biennial Integrated Resource Plans	)	FOR SUSTAINABLE DEVELOPMENT,
and Carbon Plan	)	ENVIRONMENTAL JUSTICE
	)	COMMUNITY ACTION NETWORK,
	)	AND DOWN EAST COAL ASH
	)	ENVIRONMENTAL AND SOCIAL
	)	JUSTICE COALITION

Pursuant to the North Carolina Utilities Commission’s (“Commission”) July 29, 2022 *Order Scheduling Expert Witness Hearing, Requiring Filing of Testimony, and Establishing Discovery Guidelines*, Intervenor the RedTailed Hawk Collective (“RTHC”), the Robeson County Cooperative for Sustainable Development (“RCCSD”), the Environmental Justice Community Action Network (“EJCAN”), and the Down East Coal Ash Environmental and Social Justice Coalition (“DECAESJC”) (collectively, “Environmental Justice Intervenor” or “EJ Intervenor”) respectfully submit these responsive comments on the draft Carbon Plan submitted by Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively, “Duke Energy”).

EJ Intervenor are all community-based nonprofit organizations in Eastern North that represent impacted communities that are overburdened by a disproportionately high number of adverse environmental and health stressors and impacts. RTHC and RCCSD are located in Robeson County, EJCAN is located in Sampson County, and DECAESJC is located in Wayne County. Though each region has distinct concerns and challenges, EJ

Intervenors submit these responsive comments jointly to highlight for the Commission the similarities and challenges involved with representing communities that are considerably impacted by energy and climate policies, procedures, and practices.

**A. Least cost applications must reflect the real world**

While the factual issues associated with least cost will be further debated during the Commission's evidentiary hearing, the Commission's July 29th Order and Duke Energy's July 22nd Issues Report lay out numerous aspects of least cost to be addressed in responsive comments. Some of these include, (1) ensuring enough variety in modeled portfolios to determine true least cost, (2) whether social costs of carbon and the costs of other emissions are adequately included and/or create a disproportionate impact on customer classes, (3) whether Duke sufficiently provides for the implementation of load reduction and demand-side management efforts and programs, and (4) consideration as to what factors the Commission *must* consider within their determination of least cost compared to ones they *may* consider.<sup>1</sup>

**1. Impacts from the Inflation Reduction Act on least cost determinations**

The passage of the Inflation Reduction Act ("IRA") on August 16, 2022 marks the largest investment the United States has ever made to combat climate change.<sup>2</sup> This federal infusion of capital, done in a variety of ways, must be included within the Commission's calculations of least cost within the Carbon Plan. Some of the features of

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<sup>1</sup> Least cost issues appropriate for responsive comments, as discussed above, are labeled as either "General/Other" or "Legal" within Duke Energy's Issues Report. Duke Energy, Issues Report Submitted on Behalf of Duke Energy Carolinas, LLC and Duke Energy Progress, E-100 Sub 179 (JULY 22, 2022) Attach. 1, pp. 18, 19, 24, 25, 30; NC. Util. Comm'n, Order Scheduling Expert Witness Hearing, Requiring Filing of Testimony, and Establishing Discovery Guidelines, E-100 Sub 179 (July 29, 2022) ¶ 6(f)-(g).

<sup>2</sup> Inflation Reduction Act Factsheet, U.S. DEP'T OF ENERGY (Aug. 2022), [https://www.energy.gov/sites/default/files/2022-08/8.18%20InflationReductionAct\\_Factsheet\\_Final.pdf](https://www.energy.gov/sites/default/files/2022-08/8.18%20InflationReductionAct_Factsheet_Final.pdf).

the IRA that may impact least cost determination include: decade-long tax credits to lower the cost of carbon-free technologies, stabilize their markets, and incentivize greater manufacturing efficiencies; investments in customer-owned generation (particularly targeting low-income and rural households); incentives for utilities that are not investor-owned; federal loan programs to invest in innovative and commercially-unproven technologies; and amending the Clean Air Act to label greenhouse gases (“GHGs”), including carbon dioxide, as “air pollutants.” The potential effect of these IRA aspects on least cost determinations are detailed below.

1.a. One of the most likely results of the passage of the IRA is to drastically reduce the cost of renewable energy over the next decade and beyond. The IRA does this in three ways—incentivizing the installation of more renewable generation resources, incentivizing the development of more renewable manufacturing capacity, and by providing market certainty and for the stability necessary for wide-spread public investment.<sup>3</sup> In order to achieve the truly least cost pathway to 70% carbon reduction by 2030 and decarbonization by 2050, taking advantage of these federal incentives is a must, at both utility and consumer levels.

1.b. While the extent of demand reduction Duke Energy can achieve through energy efficiency, demand-side management, and other grid edge programs is a factual subject of much debate and included within topics for the evidentiary hearing, whether Duke Energy provides for the ability to access the additional resources provided by the IRA is an issue identified for responsive comments.<sup>4</sup> The IRA supports customer-sided

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<sup>3</sup> See generally *Relief Arrives for Renewable Energy Industry - Inflation Reduction Act of 2022*, NAT’L L. REV. (Aug. 16, 2022), <https://www.natlawreview.com/article/relief-arrives-renewable-energy-industry-inflation-reduction-act-2022>.

<sup>4</sup> See *supra* Footnote 1.

electrification in many different ways, including by supporting programs designed to reduce energy poverty in low-income and rural areas (such as the Weatherization Assistance Program and Low-Income Energy Assistance Program)<sup>5</sup>—to enhance affordability for at-risk ratepayers and ensure North Carolina is taking advantage of federal funds, the Commission should require Duke Energy to take all practicable steps to allow customers to fully participate in these federal programs.

1.c. The IRA provides for federal direct-pay credits, in lieu of tax credits, when nonprofit organizations develop new carbon emission-free energy technologies.<sup>6</sup> This is especially important in opening the door to more investment by utilities that are not investor-owned, such as electric cooperatives and municipal systems. Through long-term power purchase contracts, Duke Energy supplies many of North Carolina’s electric cooperatives and municipal utilities. In order to ensure that energy is provided in a least cost manner across *all* of North Carolina, the Commission should require Duke Energy to further coordinate with the utilities it has power supply contracts with to ensure they are able to take advantage of federal funding and reduce costs.

1.d. The increase in federal loans available for emerging technologies is another important aspect of the IRA that has least cost implications for the Carbon Plan. The “IRA appropriates approximately \$11.7 billion in total for the [Department of Energy’s] Loan Programs Office (LPO) to support issuing new loans. These amounts increase loan authority in LPO’s existing loan programs by approximately \$100 billion.”<sup>7</sup>

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<sup>5</sup> See *supra* IRA Factsheet; see also *What you should know about the Inflation Reduction Act*, ENERGY SAGE (Aug. 18, 2022), <https://news.energysage.com/inflation-reduction-act/>.

<sup>6</sup> *Id.*

<sup>7</sup> *Inflation Reduction Act of 2022*, LOAN PROGRAMS OFFICE, DEP’T OF ENERGY (Aug. 2022), <https://www.energy.gov/lpo/inflation-reduction-act-2022>.

Some of these loan programs, including the Innovative Clean Energy Loan Guarantees and Energy Infrastructure Reinvestment Program, may provide funding to technologies that Duke Energy has identified in its proposed Carbon Plan as requiring North Carolina ratepayer investments and cost assurances. With the passage of the IRA, the Commission should ensure that the risk of developing new technologies does not fall to North Carolina ratepayers when the federal government is willing to assume that risk.

1.e. Finally, the IRA includes several new sections for the Clean Air Act, each with new appropriated funding and each defined to include carbon dioxide as an “air pollutant.” While the IRA does not directly implicate the U.S. Environmental Protection Agency’s (“EPA”) ability to regulate emissions from power plants, Congress has now directly signaled its intention for the EPA to play a significant role in regulating GHGs.<sup>8</sup> Considering the EPA’s plans to publish new GHG regulations for existing power plants by March 2023,<sup>9</sup> the passage of the IRA has increased the risk that new regulations could significantly impact the economics of continuing to run certain fossil fuel-based plants—impacting least cost calculations as well. The Commission should consider this risk as it moves forward with its determinations.

2. Potential Underrepresentation of Costs Associated with Duke Energy’s Proposed Natural Gas Buildout

Based on the experience of EJ Intervenor and impacted communities in Eastern NC with the proposed Atlantic Coast Pipeline (“ACP”), there is significant potential for

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<sup>8</sup> See *Inflation Reduction Act: Environmental Provisions*, JDSUPRA (Sept. 2, 2022), <https://www.jdsupra.com/legalnews/inflation-reduction-act-environmental-6453850/>.

<sup>9</sup> *EPA Seen as Prepared for Big Challenges Ahead of Carbon Rules*, BLOOMBERG LAW (July 7, 2022), <https://news.bloomberglaw.com/environment-and-energy/epa-seen-as-prepared-for-big-challenges-ahead-of-carbon-rules>.

underrepresentation of costs associated with Duke Energy's proposed natural gas buildout.

When Dominion Energy and Duke Energy began work on the ACP in 2018, it was estimated to cost \$6 Billion - \$6.5 Billion. When cancelled in 2020, the cost of the pipeline had risen to \$8 Billion.<sup>10</sup> Arguments against the pipeline included the lack of need and the lowering costs of renewable energy production along with major environmental and environmental justice concerns. Given the further reduction in the costs of renewable energy production (both now and in the near future), the increased political and legal focus on environmental justice, the new IRA incentives, and the unequivocal rise in the impacts of the climate crisis over the last several years<sup>11</sup>—cost estimates and overruns for future natural gas infrastructure will undoubtedly rise, particularly as compared to new renewable energy projects. Other priorities further advancing the shift toward full electrification of the grid through clean, science-based renewable sources will only deepen this trend.

A second, major area where underrepresentation of existing and emerging costs occurs is in the requirements to include the full cumulative impact of natural gas infrastructure construction. In the case of the ACP, the permit application lacked a complete analysis of both the cumulative and disproportionate impact on the rural Eastern NC counties chosen to host the project. This lack of information in the permit application included full disclosure of the purposes and impacts of the three Metering and Regulating

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<sup>10</sup> Scott DiSavino and Taru Jain, *Dominion takes \$2.8 bln charge to exit Atlantic Coast natgas pipe*, REUTERS (July 31, 2020), <https://www.reuters.com/article/us-dominion-results-atlantic-coast/dominion-takes-2-8-bln-charge-to-exit-atlantic-coast-natgas-pipe-idUSKCN24W21Z>.

<sup>11</sup> Adam Smith, *2021 U.S. billion-dollar weather and climate disasters in historical context*, CLIMATE.GOV (Jan. 24, 2022), <https://www.climate.gov/news-features/blogs/beyond-data/2021-us-billion-dollar-weather-and-climate-disasters-historical>.

Stations and extensive impact in Robeson County related to up to nine projects associated with the ACP. Section IIIC of the 2019 Petition for Revocation of the 401 Water Quality Certification that was filed with the NC Department of Environmental Quality (“NCDEQ”) details the underrepresentation of the ACP’s cumulative impact.<sup>12</sup> This section also documents major discrepancies between what was openly stated regarding the ACP’s scope and scale and what was disclosed in the ACP 401 Permit Application. The underrepresentation of cumulative impacts has a direct connection to the underrepresentation of infrastructure buildout costs and least cost applications.

Finally, as referenced in the RTHC and RCCSD comments filed on July 15 with NCUC, nonmarket costs and moral damages based on corporate practices also should be considered in determining true costs and least cost applications.<sup>13</sup> For example, one of the most prescient moral damages caused by Duke Energy in the ACP controversy was its documented and continued underrepresentation of the full scope, scale, and impact of the ACP to the public, regulators, and particularly to the communities most impacted by it. Based on these recent experiences, EJ Intervenors feel there has been a breach of trust in relation to Duke Energy’s efforts to engage with impacted communities meaningfully and in good faith in Eastern North Carolina. EJ Intervenors ask the Commission to help begin to mitigate this breach by acknowledging Duke Energy’s lack of serious engagement with frontline communities during this Carbon Plan process, as noted in previous comments

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<sup>12</sup> Atlantic Coast Pipeline—Petition for Revocation of 401 Water Quality Certification, Div. Water Resources, Dept. of Env’tl. Qual. (Aug. 13, 2019), *available at* <https://securservercdn.net/198.71.233.185/f8b.bf5.myftpupload.com/wp-content/uploads/2019/08/Legal-Petition-to-DEQ-NC-CLimate-Solutions-Coalition-and-Friends-of-the-Earth.pdf>.

<sup>13</sup> Initial Comments of RedTailed Hawk Collective and Robeson County Cooperative for Sustainable Development, N.C. Util. Comm’n, E-100 Sub 179 (July 15, 2022), at §B3.

and below, and requiring that substantive efforts to engage with impacted communities—including complete factual disclosures—be made in future dockets.

3. Rural North Carolina communities will bear the burdens of new unclean energy development as currently proposed by Duke Energy

Duke Energy's proposals to advance construction of natural gas, nuclear energy, and biofuels use will place a disproportionate impact on rural communities, particularly racially diverse and low-income communities. Based on the history and recent pattern of siting natural gas and biofuel facilities and projects, rural Eastern North Carolina will not only continue to be overburdened—the region will most likely experience an expansion of harmful pollution and a further increase in forest destruction as well. This outcome is the result of Duke Energy's collaboration with industrial agriculture and the major entry of the latter into the energy sector with the buildout of biomass and biogas projects. This pattern of environmental injustice and economic underdevelopment is occurring rapidly outside the realm of major public discourse and deliberation. It is occurring project-by-project and permit approval by permit approval. The majority of the North Carolina public is unaware of this recent trend in the poorest and most racially diverse region of our state.

This pattern is all the more distressing and unjust due to the destructive impacts of climate change that are impacting Eastern North Carolina more than any other region of the state.<sup>14</sup> Now known as “hurricane alley,” Eastern North Carolina is plagued by constant flooding, droughts, heat stress, and a growing pattern of more massive and stronger hurricanes. Adding to the mix, North Carolina has allowed more forest

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<sup>14</sup> See generally N.C. CLIMATE SCIENCE REPORT, N.C. INST. FOR CLIMATE STUDIES, N.C. STATE UNIV. (Sept. 2020), [https://ncics.org/wp-content/uploads/2020/10/NC\\_Climate\\_Science\\_Report\\_FullReport\\_Final\\_revised\\_September2020.pdf](https://ncics.org/wp-content/uploads/2020/10/NC_Climate_Science_Report_FullReport_Final_revised_September2020.pdf).



destruction to occur in its Eastern and Sandhills regions at the hands of the international wood pellet industry than any other state in the nation.<sup>15</sup> The role and function of forests in protecting our homes and communities from flooding, droughts, and heat stress while promoting diverse eco-systems, wildlife, weather, and climate stability are well-known and indisputable. Forests and wetlands are also our most active “carbon sinks” that remove and store carbon, their disruption and destruction result in the massive release of carbon that has yet to be accounted for by private industry or public policy.<sup>16</sup>

All of these factors causing the significant loss of quality of life in rural North Carolina, particularly Eastern NC, are major components of the nonmarket costs of Duke Energy’s Carbon Plan proposal. Duke Energy’s carbon plan not only neglects to recognize these major nonmarket costs, the plan actively advocates for further development that would advance the already-deteriorating public and environmental health conditions and patterns in our rural communities—principally in the coastal plains of Eastern North Carolina.

Eastern North Carolina is home to the largest indigenous population in the Eastern United States and a large portion of North Carolina’s Black, Latinx, and low-income White population as well.<sup>17</sup> Based on all formal definitions, the existing energy policies in North Carolina, as they exist in the Eastern part of the state, meet all the characteristics

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<sup>15</sup> See generally *Wood Pellet Industry Permitting Actions and Information*, N.C. DEPT. OF ENVTL. QUAL. (last visited Sept. 9, 2022), <https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting/wood-pellet-industry-permitting-actions-and-information>.

<sup>16</sup> See William R.L. Anderegg et al, *Climate-driven risks to the climate mitigation potential of forests*, 368 SCIENCE (June 19, 2020), <https://www.science.org/doi/10.1126/science.aaz7005>.

<sup>17</sup> *Population & Demographics*, N.C. OFFICE OF BUDGET AND MGMT. (last visited Sept. 9, 2022), <https://www.osbm.nc.gov/facts-figures/population-demographics>.

and indicators of environmental racism.<sup>18</sup> The Duke Energy Carbon Plan tragically—and unnecessarily—advances these indicators instead of minimizing them.

**B. Biofuels are not carbon-less and harm North Carolina’s rural communities<sup>19</sup>**

The production and usage of biofuels for energy generation does not happen without carbon emissions<sup>20</sup> and also has many negative consequences for the communities that live near these facilities. There are three primary biofuel methodologies being utilized in North Carolina at the present time, they are: (1) biogas produced from hog waste; (2) electricity production from the incineration of poultry waste, poultry parts, and wood waste; and (3) export-based wood pellet production, which is based on the harvesting and destruction of forests in the Coastal Plains and Sandhills of Eastern North Carolina.

Regarding biogas produced from hog waste, installing and operating a digester increases the overall amount of methane produced at a facility as compared to a farm without a digester.<sup>21</sup> Throughout the biogas production process there is the potential for leakage;<sup>22</sup> however, the risk of significant carbon emissions comes primarily at the end of

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<sup>18</sup> See ROBERT BULLARD, *CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS* (South End Press, 1993); Robert Bullard, *Environmental Racism and “Invisible Communities”*, 96 W.VA. L. REV. 1037 (1993-94), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/wvb96&div=47&id=&page=>; Paul Mohai and Bunyan Bryant, *Environmental Racism: Reviewing the Evidence*, in *RACE AND THE INCIDENCE OF ENVIRONMENTAL HAZARDS* (1993); Ryan Holifield, *Defining Environmental Justice and Environmental Racism*, 22 URBAN GEOGRAPHY 78 (May 16, 2013), <https://www.tandfonline.com/doi/abs/10.2747/0272-3638.22.1.78?journalCode=rurb20>.

<sup>19</sup> Issues pertaining to biofuels are labeled as “General/Other” in Duke Energy’s Issues Report. See *supra* Issues Report, at 30; see *supra* Order Scheduling Expert Witness Hearing, at ¶ 6(f).

<sup>20</sup> See Environmental Justice Community Action Network et al Comments on 2022 Draft Swine Digester System General Permit (AWG400000), NC Div. of Water Resources (May 2, 2022).

<sup>21</sup> See RICHARD BAINES, *REDUCING GREENHOUSE GAS EMISSIONS FROM LIVESTOCK PRODUCTION* 144-145 (2020).

<sup>22</sup> See J. Liebetrau et al., *Analysis of Greenhouse Gas Emissions from 10 Biogas Plants within the Agricultural Sector*, 67 WATER SCI. & TECH. 1370, 1378 (2013); Charlotte Scheutz & Anders M. Fredenslund, *Total Methane Emission Rates and Losses From 23 Biogas Plants*, 97 WASTE MGMT. 38, 38–46 (Sept. 2019), <https://doi.org/10.1016/j.wasman.2019.07.029>; see also Phoebe Gittelsohn et al., *The False Promises of Biogas: Why Biogas is an Environmental Justice Issue*, ENV’T JUST., 2021, at 10, <https://www.liebertpub.com/doi/pdfplus/10.1089/env.2021.0025>.

the process—either through venting/flaring<sup>23</sup> or through the open storage of digester waste.<sup>24</sup> There is evidence that the average agricultural biogas facility leaks at a rate of 2.4 percent, though it can be as much as 14.9 percent of total methane production.<sup>25</sup> While requiring up-to-date leak detection and repair capabilities, appropriate storage methods for digester waste, and limitations on flaring/venting is not within the Commission’s purview, the carbon emissions that will result from the lack of such requirements<sup>26</sup> have clear implications for the Carbon Plan and should thus be considered.

Sampson and Duplin counties produce more hogs than any other counties in the United States.<sup>27</sup> The National Academy of Sciences published a study just last year “attributing 178 premature deaths *every year* to fine particulate pollution caused, in part, by ammonia emissions from hog operations in Sampson County and Duplin County alone.”<sup>28</sup> As more and more hog operations utilize digester systems to generate energy,<sup>29</sup> ensuring that proper technologies are installed, and inspection procedures followed, will

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<sup>23</sup> “Venting involves simply emitting methane, carbon dioxide, nitrous oxide (N<sub>2</sub>O), and various sulfur compounds, notably hydrogen sulfide (H<sub>2</sub>S) and sulfur dioxide (SO<sub>2</sub>), directly into the air. Flaring involves burning the biogas without any beneficial use and emitting unburned methane, sulfur dioxide, nitrogen oxides (NO<sub>x</sub>), and various other toxic compounds into the air. *See supra* Comments on 2022 Draft Swine Digester General Permit, at 37; Valerio Paolini et al., *Environmental Impact of Biogas: A Short Review of Current Knowledge*, 53 J. ENV’T SCI & HEALTH, PART A 899, 900 (2018), <https://www.tandfonline.com/doi/pdf/10.1080/10934529.2018.1459076?needAccess=true>.

<sup>24</sup> Researchers have found that up to 11.2 percent of methane utilized may leak from digester waste storage alone. *See supra* Liebetrau, at 1370.

<sup>25</sup> *See supra* footnote 22.

<sup>26</sup> *2022 Digester System General Permits*, N.C. DEPT. OF ENVTL. QUAL. (July 1, 2022), <https://deq.nc.gov/digesterpermits#final-permits-effective-july-1-2022>.

<sup>27</sup> SOREN RUNDQUIST & DON CARR, UNDER THE RADAR: NEW DATA REVEALS N.C. REGULATORS IGNORE DECADE-LONG EXPLOSION OF POULTRY CAFOs 3 (2019), [https://www.ewg.org/sites/default/files/u352/EWG\\_NCCAFO\\_Report\\_C05.pdf?\\_ga=2.183218982.1871371914.1643903681-234045606.1643732578..](https://www.ewg.org/sites/default/files/u352/EWG_NCCAFO_Report_C05.pdf?_ga=2.183218982.1871371914.1643903681-234045606.1643732578..)

<sup>28</sup> *See supra* Environmental Justice Community Action Network et al Comments; Nina G.G. Domingo et al., *Air Quality-Related Health Damages of Food*, 118 PROCS. NAT’L ACAD. SCI., 2021, <https://www.pnas.org/content/118/20/e2013637118>.

<sup>29</sup> *See generally 2022 Digester System General Permits*, NC DEPT. OF ENVTL. QUAL. (last visited Sept. 9, 2022), <https://deq.nc.gov/digesterpermits>.

be essential—however, if they are not enforced,<sup>30</sup> biogas from hog waste should have no place in North Carolina’s Carbon Plan.

With regards to the incineration of wood waste and poultry waste, a study by the Partnership for Policy Integrity found that such facilities release as much as 50 percent more carbon dioxide than coal plants per megawatt-hour and up to twice as much of other air pollutants, including carbon monoxide, nitrogen oxides, particulate matter, and volatile organic compounds (“VOCs”).<sup>31</sup>

North Carolina Renewable Power (“NCRP”) is a biomass-fired power plant in Robeson County with a history of significant Clean Air Act violations, including ongoing violations.<sup>32</sup> NCRP produces energy from burning poultry litter (bedding and feces from poultry operations) and poultry cake (pressed and dewatered waste from slaughterhouses), as well as wood chips from sawmills.<sup>33</sup>

In the last 5 years, NCRP has:

- o Violated emission limits for fine particulate matter, sulfur dioxide, and nitrogen oxides;
- o Routinely failed to operate required monitoring technology;
- o Improperly removed necessary air pollution control;
- o Failed to conduct required emissions testing in a timely manner;
- o Committed numerous other monitoring and recordkeeping violations.<sup>34</sup>

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<sup>30</sup> Which they currently are not under the most recent digester general permit. See Permit No. AWG400000, NC Env’tl. Mgmt. Comm’n, NC Dept. of Env’tl. Qual. (June 30, 2022), <https://deq.nc.gov/media/30375/download?attachment>.

<sup>31</sup> Mary S. Booth, *Trees, Trash, and Toxics: How Biomass Energy has Become the New Coal*, PARTNERSHIP FOR POLICY INTEGRITY (Apr. 2, 2014), <https://www.pfpi.net/wp-content/uploads/2014/04/PFPI-Biomass-is-the-New-Coal-April-2-2014.pdf>.

<sup>32</sup> Lisa Sorg, *Despite multiple fines, violations, NC Renewable Power is still a chronic and major air polluter*, NC POLICY WATCH (Mar. 3, 2022), <https://ncpolicywatch.com/2022/03/09/despite-multiple-fines-violations-nc-renewable-power-is-still-a-chronic-and-major-air-polluter/>.

<sup>33</sup> See Air Quality Permit No. 05543T29, N.C. Renewable Power—Lumberton, LLC, Div. Air Qual., NC Dept. of Env’tl. Qual. (May 23, 2022), <https://deq.nc.gov/media/29319/download?attachment>.

<sup>34</sup> See *supra* Lisa Sorg.

In short, the NCRP has emitted pollutants at rates that exceeded the Clean Air Act's major source threshold, but the facility had never obtained the stringent major source permit necessary to protect air quality and public health. In spite of its history of violations, fines, and widespread local and statewide opposition, the NCDEQ's Division of Air Quality issued a new permit to NCRP on May 23, 2022 that reclassifies the facility as a PSD major source to reflect the current emissions, operating scenarios, and additional boiler modifications.<sup>35</sup>

The NCRP controversy raised serious questions regarding North Carolina's entire biomass program, particularly in relation to issues of environmental justice.<sup>36</sup>

The wood pellet industry is a major carbon emitter due to its destruction of carbon-rich forests, its production that emits carbon and other major pollutants into impacted communities, its transport and export involving up to 4,000 miles, and its incineration that is worse than burning coal on the climate. The wood pellet industry expels massive amounts of carbon through its entire lifecycle.<sup>37</sup> It is neither carbon neutral nor a reducer of carbon at all.

North Carolina produces more wood pellets from its harvested forests than any other state in the nation.<sup>38</sup> While recognizing of the controversy around this practice, the North Carolina Clean Energy Plan issued by the NCDEQ in 2019 states that the wood pellet industry is not a part of the state plan, ignoring the reality on the ground.<sup>39</sup> With the

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<sup>35</sup> See *supra* Air Quality Permit No. 05543T29.

<sup>36</sup> Aman Azhar, *North Carolina's Bet on Biomass Energy Is Faltering, With Energy Targets Unmet and Concerns About Environmental Justice*, INSIDE CLIMATE NEWS (Apr. 17, 2022), <https://insideclimatenews.org/news/17042022/north-carolina-biogas-justice/>.

<sup>37</sup> See *supra* Mary S. Booth.

<sup>38</sup> *Monthly Densified Biomass Fuel Report*, U.S. ENERGY INFO ADMIN. (Aug. 17, 2022), <https://www.eia.gov/biofuels/biomass/>.

<sup>39</sup> N.C. CLEAN ENERGY PLAN, STATE ENERGY OFFICE, N.C. DEPT. OF ENVTL. QUAL. (Oct. 2019), 25-26.

Commission's development of the Carbon Plan, it is imperative that the ongoing impacts of wood pellet production be recognized, mitigate, and prevented from further expansion and risking North Carolina's climate goals under H.B. 951.

In response to the wood pellet industry controversy in North Carolina, Andy Wood, Director of the Coastal Plain Conservation Group, made these recent comments:

Living, standing forests provide irreplaceable ecosystem services that clean air and water, protect soil from erosion, remove and store carbon, supply raw materials for various products that go into our constructs, and provide mitigating shelter from the human-caused escalating rate of climate change. For these indisputable facts, it is beyond simple folly that our global populace should pursue burning whole trees, or other organic CO<sub>2</sub>-producing compounds, to generate fleeting electricity, especially under the guise of sustainability and renewability. Burning trees to generate electricity is simply the latest in our species' long history of proven unsustainable use of natural resources. Think whaling to produce oil to light lanterns. The wood pellet industry is 21st century "whaling" and just as unsustainable.

To Enviva's claim about reforesting land clearcut to provide raw materials for wood pellets, it matters not one whit if the land is replanted with trees because the clearcutting itself destroys biodiversity, reduces air and water filtration, soil protection, and sheltering benefits from storm-induced winds and rain. For the benefit of future generations, these are reasons enough to halt the egregious wood pellet scheme. The fact that trees planted in 2022 will require 80-plus years to recover the CO<sub>2</sub> released by destroyed forests and spewed in seconds from electric power plants, means that it will be in the lifetime of baby boomer's great, great grandchildren before those trees have achieved what Enviva implies will happen weeks after a forest is rendered into wood pellets.

The wood pellet to energy business plan should not be acceptable to any conservation-minded organization or individual. Period. Look to our history with the great whales to understand how this statement is true.<sup>40</sup>

Due to extensive corporate malpractice, local opposition, legal assistance, the fifth proposed wood pellet facility proposed in North Carolina and earmarked for Robeson

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<sup>40</sup> On file with Mac Legerton, Robeson County Cooperative for Sustainable Development.

County was cancelled in 2022.<sup>41</sup> In spite of known concerns, the NCDEQ issued a permit for Active Energy Renewable Power (“AERP”) in 2020.<sup>42</sup> Both the AERP and NCRP controversies in Robeson County are indicators of major problems regarding how our state regulators narrowly review permit applications and do not consider related issues, including untested methodologies, corporate history and financial stability, and cumulative impacts as required by Title VI of the Civil Rights Act. Duke Energy’s choice to continue to pursue the inclusion of biofuels-based energy generation on North Carolina’s electrical grid make these issues directly related to the ongoing development of the Carbon Plan by the Commission.

As a result of major lobbying, both biomass and biogas were given the deceptive title of renewable fuels by the North Carolina Legislature in order to receive the governments blessing, justification, and tax benefits. However, this action in no way prevents the Commission from considering the very real carbon emissions attendant to the production and use of biofuels with its Carbon Plan. In fact, to have a Carbon Plan truly representative of the lived experience of all North Carolinians—it must.

Dr. Ryan Emanuel, associate professor at Duke University, provides this perspective on the inclusion of biogas and woody biomass in the state’s energy plan: “Swine biogas and woody biomass look—at least on the surface—like easy ways to help achieve North Carolina’s goals of reducing net greenhouse gas emissions...To admit that these energy sources don’t perform as expected—or that they perpetuate environmental

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<sup>41</sup> See *Abandoned biomass plans make ‘one less thing to worry about’*, SELC (May 10, 2022), <https://www.southernenvironment.org/news/abandoned-biomass-plans-make-one-less-thing-to-worry-about/>.

<sup>42</sup> See Air Permit No. 10636R00, Active Energy Renewable Power, Div. Air Qual., NC Dept. Env’tl. Qual. (Aug. 3, 2020), <https://deq.nc.gov/media/16636/download>.

racism calls into question some aspects of the energy plan.”<sup>43</sup> The development of the Carbon Plan is an important opportunity to redress that oversight.

**C. Impacted community outreach must be improved<sup>44</sup>**

As the Commission’s Carbon Plan proceeds over the coming years, one of the most important aspects of its process will be the scale and quality of the engagement and empowerment of ethnically- and racially-diverse impacted residents, ratepayers, and communities in its process and proceedings.

In January 2022, Gov. Roy Cooper signed Executive Order (“EO”) 246, entitled the “North Carolina’s Transformation to a Clean, Equitable Economy.”<sup>45</sup> Section 2, entitled “Environmental Justice and Equity,” includes the following statement: “Council of State members, state boards and commissions, higher education institutions, local governments, private businesses, and other North Carolina entities are encouraged to incorporate environmental justice and equity considerations and benefits into their work.”

Section 8, entitled “Agency Public Participation Plans, includes this charge: “Each Cabinet agency, supported by the Governor's Office, shall develop an agency public participation plan informed by stakeholder input. The plan shall include best practices for community engagement, meaningful dialogue, and efficient mechanisms to receive and incorporate public input into agency decision-making.”

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<sup>43</sup> Aman Azhar, *North Carolina’s Bet on Biomass Energy Is Faltering, With Energy Targets Unmet and Concerns About Environmental Justice*, INSIDE CLIMATE NEWS (Apr. 17, 2022), <https://insideclimatenews.org/news/17042022/north-carolina-biogas-justice/>.

<sup>44</sup> Issues pertaining to impacted community outreach are not discussed in Duke Energy’s Issues Report, however they were discussed extensively in the Initial Comments of EJ Intervenors. *See generally supra* Issues Report; *see supra* Order Scheduling Expert Witness Hearing, at ¶ 6(g); *see supra* RedTailed Hawk Collective Initial Comments at §C.

<sup>45</sup> EXEC. ORDER NO. 246 (Jan. 7, 2022).



While this order does not directly implicate the work of the Commission, both the public participation processes of cabinet agencies with overlapping jurisdiction and the processes that the Commission is still required to undertake, as discussed in EJ Intervenor's previous comments,<sup>46</sup> are woefully inadequate. As Donna Chavis, Founder and Coordinator of the RTHC, often states: "Access does not equal influence." EO 246 calls for "meaningful, fair, and equitable public engagement in state agency decision-making." But how such a call will be met is the critical question.

There are many reasons why present patterns and procedures of public participation are insufficient. These include: the restrictive time allowed for public review and research on proposed plans and projects; inadequate public notification and outreach; limited time for public comments and lack of in-depth discourse on critical energy matters and concerns; broad agency discretion on when, how, and what type of public meetings will be held; and, based on experience, a lack of confidence among impacted community residents and leaders that their voices and perspectives will matter or count and have any impact on decision-making.

A case in point is the process that Duke Energy and its affiliate, Piedmont Natural Gas ("Piedmont"), used in the development of its Liquid Natural Gas ("LNG") Facility in Robeson County and the response of the NCDEQ.

In March 2018, Piedmont, a wholly-owned subsidiary of Duke Energy, applied to NCDEQ for a synthetic minor permit to build an LNG storage facility for approximately 7,480,519,481 billion gallons, or 1 billion cubic feet of LNG in Maxton, North Carolina between two major swamps in Robeson County, North Carolina. Duke Energy amended

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<sup>46</sup> See *supra* Initial Comments of RedTailed Hawk Collective, at §C.

the request for permit not to include a flare and resubmitted their application for a synthetic minor permit to NCDEQ on April 18, 2019. This facility would mean that fracked gas will be transported via pipeline to and from this storage unit, where the plant will use two turbines to cool the gas to -260°F so that it condenses for storage.

The amended permit request meant that an extensive air quality permit would not be necessary and there would be no required public participation in the permitting process. A request for a public meeting, not a public hearing, was made to NCDEQ. The request was denied. Duke Energy/Piedmont held its own public relations events but there was no organized public engagement or broad-based public discourse sought by either Duke Energy/Piedmont or state regulators.

The Robeson County LNG is now operational in the largest indigenous community in North Carolina and in the Eastern United States. There was basically no “meaningful, fair, and equitable public engagement” because the law did not require it. Yet, as noted in EJ Intervenor’s Initial Comments,<sup>47</sup> there are accepted principles and practices of “free, prior, and informed consent” in relation to how governments interact with indigenous peoples across every nation in the world.<sup>48</sup>

The tenets of free, prior, and informed consent are important values, principles, and practices to review and follow as the Commission proceeds with its Carbon Plan process and establishes further methodologies to engage the public. As the Commission grapples with hugely consequential questions for the citizens of North Carolina in future

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<sup>47</sup> *Id.*

<sup>48</sup> *Consultation and free, prior and informed consent (FPIC)*, UNITED NATIONS HUMAN RIGHTS COMM’N (last visited Sept. 9, 2022), <https://www.ohchr.org/en/indigenous-peoples/consultation-and-free-prior-and-informed-consent-fpic>.

dockets, it is essential that there are meaningful, fair, and equitable ways for the voices of impacted community residents to be not only heard, but also carry weight.

#### **D. Conclusion**

For the reasons detailed in the above comments, EJ Intervenors recommend that the Commission reject the proposed plans that would advance the buildout of natural gas infrastructure in North Carolina and support a rapid shift to clean, renewable energy sources. If any temporary “bridge” is needed to support this needed shift, it does not need to be through the expansion of natural gas or through expanding the use of biofuel sources. Both of these represent pathways that are not only unnecessary, but also ill-conceived in relation to the science, economics, and technologies now available to support a rapid transition to a clean, renewable energy economy. Further, they pose a significantly disproportionate burden to rural North Carolina, the most poverty-stricken and racially diverse sector of our state, as well as on both rural and urban, low-income ratepayers.

The RTHC, RCCSD, EJCAN, and DECAESJC appreciate the opportunity to provide comment on the North Carolina Carbon Plan process and Duke Energy’s draft carbon plan, and hope that the Commission finds this information and commentary useful as it seeks to craft a Carbon Plan that truly represents all of North Carolina.

Respectfully submitted this 9th day of September, 2022.

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing document upon all counsel of record as listed in docket E-100, Sub 179 on the Commission's website by email transmission.

This the 9th day of September, 2022.

/s/ Ethan Blumenthal  
Ethan Blumenthal