

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 190

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	<b>COMMENTS OF</b>
Biennial Consolidated Carbon Plan and	)	<b>ENVIRONMENTAL DEFENSE</b>
Integrated Resource Plans of Duke	)	<b>FUND ON REQUEST FOR</b>
Energy Carolinas, LLC, and Duke	)	<b>DEVELOPMENT OF</b>
Energy Progress, LLC, Pursuant to	)	<b>SUPPLEMENTAL PORTFOLIOS</b>
N.C.G.S. § 62-110.9 and § 62-110.1(c)	)	<b>AND ADJUSTMENT TO</b>
	)	<b>PROCEDURAL SCHEDULE</b>

Pursuant to North Carolina Utilities Commission's ("Commission") December 20, 2023 *Order Requesting Comments on Request for Development of Supplemental Portfolios and Adjustment to Procedural Schedule* in the instant docket, intervenor Environmental Defense Fund ("EDF") provides the following comments on *Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Plans for Development of Supplemental Portfolio Analysis and Supporting Testimony and Request for Adjustment to Procedural Schedule* filed in the above-captioned docket on December 18, 2023 ("Duke's Proposal" or the "Proposal").

**Background**

**I. Snider Supplemental Testimony**

On November 30, 2023, Duke filed *Supplemental Direct Testimony of Glen A. Snider on behalf of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC* ("Snider Supplemental Testimony"). The Snider Supplemental Testimony contains a 13-page supplemental direct testimony filed on behalf of Duke Witness Glen A. Snider ("Duke Witness Snider"). According to Duke Witness Snider, the purpose of the Snider

Supplemental Testimony is to update the Commission, the North Carolina – Public Staff (“Public Staff”), and all other intervenors to the docket on “substantial, material changes in [Duke’s] load forecast since the preparation of [Duke’s] 2023-2024 Carbon Plan and Integrated Resource Plan.” Snider Supplemental Testimony, p. 2, ll. 14-19.

Duke Witness Snider further testified that Duke planned “to make the updated load forecast information available in early December and to further evaluate potential next steps in light of these increases.” Snider Supplemental Testimony, p. 2, ll. 19-22. Upon information and belief, Duke made some updated load forecast information available in its data request portal webpage in mid-December, but no updated load forecast information has been filed with the Commission or otherwise made publicly available.

Within the Snider Supplemental Testimony, Duke Witness Snider projected a significant load growth over the next 15 years in North Carolina due to new projected economic growth developments. This load growth included a projected 36 GW Carolinas Combined Winter Peak in 2030, a marked increase from the 2030 projected approximate 33 GW in the last iteration of the Carbon Plan and the 34 GW projected in the Fall 2023 CPIRP filings.<sup>1</sup> Snider Supplemental Testimony, p. 8. These load forecasts show growth higher than previously considered by Duke. Duke Witness Snider acknowledges that the new load growth projections are higher than the highest load case sensitivity done in the initial Fall 2023 CPIRP modeling runs. Snider Supplemental Testimony, p. 9, ll. 1-5.

## II. Duke’s Request for Scheduling Changes

On Friday, December 15, 2023, counsel for Duke notified intervenors in the

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<sup>1</sup> 2030 is cited here because of its significance under HB 951 as the interim carbon reduction mandate; Duke’s projections show an increase in load growth projections over the course of the next few years.

CPIRP proceeding that it intended to submit “limited supplemental modeling and portfolio analysis to the Commission addressing the recent substantial, material changes in [Duke’s] updated 2023 fall load forecast” following “consultation” with the Public Staff.<sup>2</sup> Duke did not provide a draft copy of the Proposal in their December 15, 2023 email. It is not clear whether Duke consulted with any intervenors aside from the Public Staff on their plans prior to this email; however, Duke did not consult with EDF about either this substantial change in scheduling or the new supplemental modeling and analysis.

Counsel for Duke gave the intervenors until noon on Monday, December 18, 2023 to provide response to Duke’s plan to file the Proposal. In response to the email, numerous intervenors objected to the short turnaround time to respond. EDF was not able to coalesce and provide a position to Duke prior to Duke’s imposed deadline. Ultimately, Duke filed the Proposal at approximately 5 p.m. on December 18, 2023.

Both the email and the Proposal show a seemingly contradictory position – the updated load forecasts were so significant as to require new modeling inputs, assumptions, and analyses and such new data points require Duke to run a new portfolio “variant” and sensitivity analysis and yet counsel for Duke said these new data points, model run, and sensitivity analyses are merely supplemental and do not “supplant” the prior Duke modeling filings and data. While the final breadth and scope of Duke’s additional analysis will not be revealed until January 31, 2024, Duke provided a preview chart in Attachment 1 of its Proposal which included 23 additional modeling tasks within 8 separate topics to be added and/or updated in the new analysis.

Duke’s Proposal significantly reduces the time the intervenors have to review and

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<sup>2</sup> December 15, 2023 Email from Brett Breitschwerdt to counsel for intervenors, available upon request.

respond to the supplemental portfolio analysis and related data as compared to the review time for the prior modeling and analyses. Duke's Proposal calls for the additional portfolio analysis to be filed with the Commission by January 31, 2024, with intervenor direct testimony due by April 17, 2024, Duke's rebuttal testimony to be filed by May 30, 2024, and the expert witness hearing rescheduled to begin on June 17, 2024.

### Analysis

I. Duke seeks to circumvent Commission Rules and also treat intervenors inequitably.

Utility planning to meet future load is paramount, particularly when Duke's generation stack over the same time period is going to be substantially changed from the previous coal and natural gas heavy regime. Accordingly, EDF does not object to the concept of Duke updating its planning processes with new, pertinent information. However, Duke's Proposal was contemplated and planned without sufficient transparency or intervenor input and, as a result, the intervenors are forced into a position of deciding whether to support or not object to a shortened comment period without knowing the full detail of what they will be commenting on.

Duke claims that the January 31, 2024 update is merely "supplemental" and does not "supersede or otherwise negate" the initial modeling provided in the CPIRP docket. Duke's Proposal, p. 2. This position is nonsensical. If the changes to the load forecast are so expansive as to necessitate new modeling to accommodate the load growth in Duke's planning at the behest of the Public Staff, then the new modeling and analysis is material and necessary in determining the next iteration of the CPIRP and thus should necessitate a full intervenor review period.

Moreover, because intervenors cannot be certain as to the full content that will be

filed in the January 31, 2024 proposed update, EDF cannot project with certainty what expert witness(es) needed in response. For the purposes of investigating and litigating this docket, the outlined scope of the changes and the magnitude of the update (provided in Attachment 1 to the Proposal) make it difficult for EDF to consider the January 31, 2024 filing as anything other than an entirely new CPIRP filing, which requires longer than 50 days<sup>3</sup> to review, analyze, and critique. At a minimum, this timeline would unreasonably constrict any intervenors who intend to provide counter modeling or analyses, though, again, EDF is reluctant to limit the type of expert witness testimony or subject matter that will be unreasonably constrained by this new proposed schedule.

That the Public Staff provided feedback which caused Duke to seek to file what is likely a new preferred portfolio in late January 2024 underscores how comprehensive this update is and the lengthy list of action items in Attachment 1 to the Proposal further validates this concern. Meanwhile, the Proposal effectively puts the intervenors' experts in holding as they await review of the final modeling, data, and analyses to determine what information to rely and comment upon. Allowing Duke to "update" its CPIRP application and then short shift the intervenors' time to prepare testimony would also present a dangerous precedent. The applicable rule<sup>4</sup> outlines a prescriptive procedural process to provide the Commission a clear directive in developing and approving a CPIRP. Duke's Proposal circumvents that.

Because of the nature of the proposed new analyses and the presumption that the

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<sup>3</sup> Duke's Proposal provides a "50-Day extension of time for the Public Staff and intervenors to file direct testimony[.]" Duke's Proposal, p. 3.

<sup>4</sup> The Commission recently approved Commission Rule R8-60A, which outlines requirements Duke to propose emissions reductions and integrated resource plans for Commission review. Rule R8-60A requires that the proposed CPIRP be filed "by September 1, 2023, and every two years thereafter", make available complete CPIRP modeling input and output data files, and provides a 180-day window for intervenors to file testimony and exhibits "commenting on, critiquing, or giving alternatives to" the Duke CPIRP.

new modeling will effectively create a new preferred portfolio for the Commission to consider, the equitable solution would be to allow for the intervenors to receive a full 180-days to review and consider the new filing prior to their responsive filings deadline. This would allow not only to accommodate the projected scope of changes (and new preferred portfolio) but would also protect against concern over the unknown. Until intervenors have seen the filings, they will not know what Duke has filed and what they deem necessary to comment upon. Regarding these legal and policy issues, EDF generally supports the position of Southern Alliance for Clean Energy (“SACE”), Sierra Club, Natural Resources Defense Council (“NRDC”), and the North Carolina Sustainable Energy Association (“NCSEA”) that the Commission Rules and equity require a full modeling filing commensurate with the requirements of Commission Rule R8-60A and a full 180-day intervenor review period prior to the deadline to submit intervenor direct testimony. EDF further specifically supports SACE, NRDC, Sierra Club, and NCSEA’s demand that Duke’s January 31, 2024 CPIRP filing include all necessary portfolios as required by rule and as appropriate, including, but not limited to, a portfolio variant that models at least one portfolio that achieves the 70% reduction in carbon dioxide emissions by 2030.

## II. Logistical Challenges

Beyond the legal, procedural, and policy issues outlined above, Duke’s Proposal will cause logistical challenges. Changing the date of the beginning of the evidentiary hearing will affect intervenors, their counsel, and their expert witnesses’ ability to plan for summer childcare, planned vacations and family trips, and other scheduling conflicts which may affect the hearing. For instance, counsel for CIGFUR has indicated a

scheduling conflict of July 8-12, 2023, and it seems unlikely that they will be the only party or witness with a conflict during the possible evidentiary hearing time period. The evidentiary hearing in this matter is currently scheduled by Commission order to begin on May 14, 2024; Duke's Proposal seeks to move that date to June 17, 2024. There are two state holidays in late June and early July: Juneteenth (June 19, 2024) and Independence Day (July 4, 2024). EDF anticipates that Juneteenth will push the hearing back a day and that it will be logistically difficult for relevant people to travel to Raleigh during the week of Independence Day. Additionally, the National Association of Regulatory Utility Commissioners ("NARUC") will hold its Summer Policy Summit from July 14 through July 17 in West Palm Beach, Florida. Acknowledging that there is no perfect solution to scheduling a multi-party, multi-week hearing, the time period suggested by Duke is particularly fraught with scheduling conflicts.

Further, the truncated schedule proposed by Duke may inadvertently limit the intervenors' ability to effectively prune contested issues. It follows logically that more time will allow for intervenors (and their attorneys) to consider which issues they will litigate and which can be either settled with Duke (and/or with other intervenors) or not litigated in this proceeding. Like in any large endeavor, planning is key to efficiency and efficacy. Duke's Proposal greatly limits the amount of time there is to plan and, hence, limits the efficiency and efficacy of the other parties to prepare testimony and prepare for the hearing.

### III. Practical Solution

Should the Commission determine that the evidentiary hearing needs to be rescheduled but does not want to push the proceeding back a full 180-days, then the

hearing should begin in late August 2024. This hearing timeline nearly coincides with the scheduled beginning of fall term for North Carolina public schools in 2024. While it is impossible to meet the needs of every intervenor, attorney, staff personnel, or any other interested parties, it can be generally stated that scheduling the hearing near the beginning of or during the school year will eliminate a significant portion of travel conflicts. Further, EDF is cognizant of the December 31, 2024 deadline for a final order in this proceeding, but the parties and the Commission were able to accomplish this feat in an even shorter window in 2022.<sup>5</sup> Finalizing the evidentiary hearing by the end of the first week of September (based upon an August 19, 2024 initial hearing date and a three-week hearing) would provide the Commission an additional approximate three weeks when compared to the 2022 process.

Moreover, this timeline allows for a compromise number of days between the 180-days demanded by some intervenors and the extremely truncated scheduled requested by Duke.

EDF proposes:

January 31, 2024 – Duke files supplemental portfolios and analyses which substantively, meet the requirements of Commission Rule R8-60A;

June 14, 2024 – Intervenor Direct Testimony due;

July 29, 2024 – Duke’s Rebuttal Testimony is due;

August 19, 2024 – Expert Witness Hearing begins.

The unfortunate consequence of Duke’s new load forecasts being incorporated into the CPIRP proceeding is that, with the December 31, 2024 deadline, there are

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<sup>5</sup> The 2022 Carbon Plan hearing began on September 13, 2022 and concluded on September 29, 2022; EDF estimates that this iteration of the CPIRP evidentiary hearing could begin on August 19, 2024 and conclude by September 5, 2024 (if it included roughly the same amount of testimony and cross examination).



competing interests for a limited number of days to review filings and prepare testimony or prepare for the hearing. While EDF believes that they are entitled to the full 180-day window to review Duke's new CPIRP filing and prepare intervenor direct testimony, EDF recognizes the need for parties to compromise to allow for the most robust and useful CPIRP discourse and final order. The alternative timeline proposed above provides a such a compromise.

### **Conclusion**

For all the reasons set forth herein, EDF requests that the Commission:

1. Reject Duke's Proposal as currently drafted;
2. Require Duke to update its modeling to accommodate the updated load forecasts and to also comply with Commission Rules for CPIRP proceeding by January 31, 2024, including a 2030 emissions reduction mandate portfolio variant;
3. Allow Public Staff and intervenors 180 days from the filing of the updated portfolios to submit intervenor direct testimony and accompanying materials, or,
  - a. In the alternative, order the alternative schedule proposed in the "Practical Solution" outlined above, including scheduling the expert witness hearing to begin on August 19, 2024;
4. For any other relief that the Commission deems just and proper.

Respectfully submitted this 3rd day of January, 2024.

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing document has been served by electronic mail, hand delivery, or by depositing a copy in the United States Mail, first-class postage prepaid, properly addressed to parties of record.

This the 3rd day of January, 2024.

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