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September 1, 2022

**VIA ELECTRONIC FILING**

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

**RE: DEC DEP Petition for Approval to Procure CPRE Program  
Remainder MW through 2022 Solar Procurement; to Extend CRPE  
PPA Term; and for Waiver of Certain Provisions of NCUC Rule R8-71  
Docket Nos. E-2, Subs 1159 and 1297 and E-7, Subs 1156 and 1268**

Dear Ms. Dunston:

Enclosed for filing in the above-referenced docket, please find Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's *Petition for Approval to Procure CPRE Program Unawarded MW through 2022 Solar Procurement; to Extend CRPE PPA Term; and for Waiver of Certain Provisions of NCUC Rule R8-71.*

Please do not hesitate to contact me if you have any questions. Thank you for your assistance with this matter.

Very truly yours,

/s/E. Brett Breitschwerdt

EBB:sbc

Enclosure

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-2, SUB 1159  
DOCKET NO. E-2, SUB 1297  
DOCKET NO. E-7, SUB 1156  
DOCKET NO. E-7, SUB 1268

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Duke Energy Progress, LLC, and Duke	)	
Energy Carolinas, LLC, Joint Petition of Duke	)	PETITION FOR APPROVAL TO
Energy Carolinas, LLC, and Duke Energy	)	PROCURE CPRE PROGRAM
Progress, LLC, for Approval of Competitive	)	UNAWARDED MW THROUGH
Procurement of Renewable Energy Program	)	2022 SOLAR PROCUREMENT; TO
	)	EXTEND CPRE PPA TERM; AND
In the Matter of	)	FOR WAIVER OF CERTAIN
Duke Energy Progress, LLC, and Duke	)	PROVISIONS OF NCUC RULE R8-
Energy Carolinas, LLC, 2022 Solar	)	71
Procurement Pursuant to Session Law 2021-	)	
165, Section 2(c)	)	

NOW COME Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP” and together with DEC, the “Companies” or “Duke Energy”), pursuant to N.C. Gen. Stat. §§ 62-30, 62-31, and 62-110.8(a), as well as North Carolina Utilities Commission (“Commission”) Rule R1-5, and hereby respectfully petition the Commission for (i) approval to procure the 441 unawarded Competitive Procurement of Renewable Energy (“CPRE”) Program megawatts (“CPRE Program Unawarded MW”) through the 2022 Solar Procurement Program (“2022 SP”); (ii) approval to extend the CPRE power purchase agreement (“PPA”) term from twenty years to twenty-five years; and (iii) waiver of certain provisions of NCUC Rule R8-71.

Commission approval of the relief requested in the Petition will allow the Companies to fulfill the CPRE Program requirement to hold a final CPRE additional

procurement pursuant to N.C. Gen. Stat. § 62-110.8(a), and allow for an efficient transition to HB 951’s new competitive framework for procuring renewable energy to serve the needs of the Companies’ customers throughout the Carolinas. The Companies respectfully request that the Commission approve this Petition on or before November 1, 2022, so that Duke Energy can establish the total procurement volume of new solar resources to be procured in the 2022 SP, including both new solar capacity solicited pursuant to Section 2.(c) of North Carolina Session Law 2021-165 (“HB 951”) (“HB 951 2022 SP Procurement MW”) and the CPRE Program Unawarded MW, in advance of the conclusion of 2022 SP Step 1 bid evaluation on or about November 23, 2022.

In support of this Petition, the Companies hereby show the following:

### **BACKGROUND**

#### ***A. HB 589 and the CPRE Program Requirement for Additional Procurement***

1. On July 27, 2017, North Carolina Session Law 2017-192 (“HB 589”) was enacted establishing, in part, a CPRE Program pursuant to N.C. Gen. Stat. § 62-110.8 (the “CPRE Statute”) “with the purpose of adding renewable energy to the State’s generation portfolio in a manner that allows the State’s electric public utilities to continue to reliably and cost-effectively serve customers’ future energy needs.”

2. N.C. Gen. Stat. § 62-110.8(a) directs the Companies under the Commission’s oversight to competitively procure energy and capacity from new renewable energy facilities during a 45-month timeframe (such period of time, the “CPRE Procurement Period”). During the CPRE Procurement Period, the Companies were required to add a total of 6,160 MW of renewable energy through a combination of (1) CPRE Program procurement (“CPRE Program MW”) and (2) the execution of PPAs for

renewable energy capacity within the DEC and DEP Balancing Authority Areas that are not subject to economic dispatch or curtailment and were not procured pursuant to the Green Source Advantage program authorized under N.C. Gen. Stat. § 62-159.2 (projects satisfying such criteria, “Transition MW”). Under N.C. Gen. Stat. § 62-110.8(a) and (b)(1), 2,660 MW of this 6,160 MW total was targeted to be procured through the CPRE Program and the remaining 3,500 MW was targeted to be Transition MW capacity.

3. N.C. Gen. Stat. § 62-110.8(b)(1)-(4) places certain limitations and requirements on procurement of CPRE Program MW, the first being that the number of required CPRE Program MW must be adjusted upward or downward based on the number of Transition MW procured through the CPRE Procurement Period. N.C. Gen. Stat. § 62-110.8(b)(1). The other limitations prescribed by N.C. Gen. Stat. § 62-110.8(b) require that the CPRE Program MW be procured at or below the Companies’ forecasted, Commission-approved avoided cost, that the CPRE Program PPA be subject to Commission approval, and that no more than 30% of the total CPRE Program MW be satisfied through the Companies’ or its affiliates’ own development of renewable energy facilities. N.C. Gen. Stat. § 62-110.8(b)(2)-(4).

4. On November 6, 2017, in Docket No. E-100, Sub 150, the Commission issued its *Order Adopting and Amending Rules*, establishing R8-71 pursuant to N.C. Gen. Stat. § 62-110.8.

5. On February 21, 2018, the Commission issued its *Order Approving and Modifying Joint CPRE Program*, commencing the 45-month CPRE Procurement Period. Between 2018 and 2021, the Commission oversaw the Companies’ implementation of Tranches 1 and 2 of the CPRE Program.

6. On November 21, 2021, the 45-month CPRE Program Procurement Period ended. Through the CPRE Procurement Period, the Companies procured a total of 1,185 CPRE Program MW through two CPRE Tranches, and 4,378 Transition MW, or an excess of 878 Transition MW.

7. On December 3, 2021, the Companies petitioned the Commission to determine the aggregate number of MW to be competitively procured through the CPRE Program based on the exceedance of Transition MW over the 45-month CPRE Procurement Period, and to approve the resulting Tranche 3 target CPRE Program MW amount. Additionally, the Companies requested the Commission approve a DEC-only Tranche 3 request for proposal (“RFP”).

8. On December 20, 2021, in Docket Nos. E-2, Sub 1159 and E-7, Sub 1157, the Commission issued its *Order Determining Adjusted CPRE Program Procurement Solicitation, Approving Resource Solicitation Cluster, and Requiring Response to Commission Questions Regarding Pro Forma PPA* (“December 20, 2021 Order Determining Adjusted CPRE Procurement Volume”) determining that the current CPRE Program procurement target is 1,782 MW, since the original 2,660 MW required target shall be reduced by the excess 878 Transition MW procured during the CPRE Procurement Period. As a result of this determination, the Commission directed that DEC shall target 596 MW in a CPRE Tranche 3 in order to fully meet the procurement requirements under N.C. Gen. Stat. § 62-110.8.

9. On January 5, 2022, DEC issued the CPRE Tranche 3 RFP seeking to procure 596 MW. The bid window for CPRE Tranche 3 closed on February 3, 2022.

10. Only eight projects totaling 520 MW bid into CPRE Tranche 3. Following closure of the bid window, 365 MW withdrew from Tranche 3, citing market uncertainty and the rising costs of solar development relative to what the bidders assumed in their initial bids as the cause of their withdrawal. Ultimately, two projects totaling 155 MW completed the Tranche 3 bid evaluation process, both of which were determined bid winners and have signed a PPA with DEC.

11. As a result of both the lack of initial bidder participation in Tranche 3 and withdrawals from Tranche 3 during the bid evaluation process, the Companies will not achieve the current 1,782 MW CPRE Program procurement target at the close of Tranche 3 to close out the CPRE Program. Instead, the Companies have 441 MW of unawarded CPRE Program MW relative to the target CPRE Program MW total.

12. Pursuant to N.C. Gen. Stat. § 62-110.8(a), the “Commission shall require the additional competitive procurement of renewable energy capacity by the electric public utilities in an amount that includes all of the following: (i) any unawarded portion of the initial competitive procurement required by this subsection; (ii) any deficit in renewable energy capacity identified pursuant to subdivision (1) of subsection (b) of this section; and (iii) any capacity reallocated pursuant to [N.C. Gen. Stat. § 62-159.2].” The total number of Transition MW procured through the CPRE Procurement Period still totals 4,373 MW, and no additional capacity has been reallocated to CPRE pursuant to N.C. Gen. Stat. § 62-159.2.<sup>1</sup> Therefore, the CPRE Statute requires the Commission to direct one final additional

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<sup>1</sup> Session Law 2021-180, enacted in December 2021, has prescribed all remaining available capacity under the Green Source Advantage Program to a specific economic development customer as of August 5, 2022.

procurement of the 441 CPRE Program Unawarded MW to meet the requirements of N.C. Gen. Stat. § 62-110.8.

***B. HB 951 and the New Competitive Procurement Framework***

13. On October 13, 2021, Governor Roy Cooper signed HB 951 into law, establishing a new framework for the Commission to set a least cost path with the Companies to take all reasonable steps to achieve 70% carbon emission reductions by 2030 and carbon neutrality in the State by 2050. Section 1 of HB 951 directs the Commission and the Companies, with stakeholder participation, to develop a Carbon Plan that specifically plans for the addition of “new solar generation” by establishing a new framework for both utility ownership and procurement of controllable solar PPAs under N.C. Gen. Stat. § 62-110.9(2).b. Developing and/or procuring new solar energy resources will be a key component of the Companies’ plans to comply with HB 951.

14. HB 951 also amended the CPRE Program. Section 2(a) of HB 951 amended N.C. Gen. Stat. § 62-110.8(a) by eliminating future procurements of renewable energy under the CPRE framework based upon a showing of need. Additionally, Section 2(b) of HB 951 repealed N.C. Gen. Stat. § 62-110.8(h)(5), which previously provided the Commission discretion to modify or delay compliance with the statutory CPRE Program requirements. As a result of these changes, N.C. Gen. Stat. § 62-110.8(a) now directs the Commission to require a single “additional competitive procurement” to solicit any remaining CPRE Program Unawarded MW and to close out the CPRE Program.

15. Additionally, Section 2.(c) of HB 951 authorizes the Commission to direct the Companies to procure solar energy facilities in 2022 “if, after stakeholder participation and review of preliminary analysis developed in preparation of the initial Carbon Plan, the

Commission finds that such solar energy facilities will be needed in accordance with the criteria and requirements set forth in Section 1 of [HB 951] to achieve the authorized carbon reduction goals.”

16. On March 14, 2022, following robust stakeholder engagement and in accordance with HB 951, the Companies filed a Petition for Authorization of the 2022 Solar Procurement Program pursuant to Section 2.(c) of HB 951, seeking Commission authorization of a system-wide competitive procurement seeking a minimum of 700 MW of utility-owned and third party solar energy resources sited in both North Carolina and South Carolina aligning with the 2022 Definitive Interconnection System Impact Study (“DISIS”) (“2022 SP Petition”).

17. As explained in the 2022 SP Petition, the 2022 SP builds on and evolves from the CPRE Program established pursuant to N.C. Gen. Stat. § 62-110.8. For example, the 2022 SP utilizes a competitive solicitation process to procure new least cost solar energy resources. Resources procured through the 2022 SP competitive solicitation opting to enter into a controllable PPA are required to allow DEC’s and DEP’s system operators the ability to dispatch, operate, and control the third party solar qualifying facility (“QF”) in the same manner as the utility’s own generating resources (“Controllable PPAs”), consistent with the CPRE Controllable PPA requirement. Also similar to the CPRE Program, the 2022 SP is managed by, and proposals are independently evaluated by, an Independent Evaluator (“IE”), Charles River Associates (“CRA”), to ensure transparency and fairness throughout the solicitation process.

18. On May 26, 2022, the Commission issued an *Order Authorizing a Competitive Procurement of Solar Resources Pursuant to House Bill 951 and Establishing*



*Further Procedures* authorizing the Companies to commence a system-wide competitive procurement seeking a minimum of 700 MW of utility-owned and third-party solar energy resources sited in both North Carolina and South Carolina. The Commission’s order noted, however, that unlike the CPRE Program, which caps the procurement obligation by the Companies’ current forecast of its avoided cost calculated over the term of the PPA, the 2022 SP does not expressly require bids to be below the Companies’ forecasted avoided cost. Therefore, and consistent with the least cost directive included in HB 951, the Commission determined it would review and approve the 2022 SP and *pro forma* PPA, as well as direct the Companies to include a proposed Re-Pricing Mechanism in the 2022 SP RFP.<sup>2</sup>

19. On April 25, 2022, the Commission issued an *Order Requiring Answers to Commission Questions and Establishing Additional Procedural Deadlines*, requesting the Companies respond to questions regarding the 2022 SP on topics such as solar paired with storage and calculation of avoided cost. The Order also stated that the Commission would delay its decision on whether to launch the RFP until after the initial Carbon Plan is filed on or about May 16, so as to afford the Commission time to review the Companies’ 2022 SP Petition and the initial Carbon Plan for consistency.

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<sup>2</sup> The 2022 SP uses a “Carbon Plan-informed volume approach” designed to both mitigate the risk of unreasonable System Upgrade costs for customers and to recognize that a large amount of solar is expected to be needed in the Carolinas Carbon Plan and will need to be procured to come online through 2030. The 2022 SP therefore provides a “volume adjustment mechanism” to adjust the amount procured based on cost to customers as reflected in the actual bid prices. This approach helps to ensure the Companies are taking into account market signals and the cost of potential System Upgrades assigned to proposals when procuring solar resources for North and South Carolina customers during this initial procurement. The 2022 SP also includes other mechanisms to ensure proposals are least cost including the potential for selecting early winners that are the most competitive projects at the conclusion of Step 1 of the bid evaluation process as well as allowing downward repricing of bids during Step 2 of the bid evaluation process. See *DEC-DEP 2022 Solar Procurement Program Final RFP and pro forma PPA Compliance Filing*, Docket Nos. E-2, Sub 1297 and E-7, Sub 1268 (filed June 17, 2022).

20. On June 1, 2022, the Companies filed its proposed final 2022 SP RFP and *pro forma* PPA, and CRA, the 2022 SP IE, filed the Independent Evaluator Pre-Solicitation Report.

21. On June 10, 2022, the Commission issued an *Order Approving Request for Proposals and Pro Forma Power Purchase Agreement Subject to Amendments* (“June 10 Order”), approving the 2022 SP RFP and PPA, and requiring the Companies to include their proposed Re-Pricing Mechanism in the RFP and add additional responsibilities for the Duke Evaluation Team to further ensure transparency and fairness throughout the solicitation process.

22. On June 20, 2022, the 2022 SP RFP was issued soliciting 750 MW of new cost-effective solar resources between DEP and DEC. Currently 64 projects totaling approximately 5,000 MW are participating in the 2022 SP RFP.

**REQUEST FOR APPROVAL TO PROCURE CPRE PROGRAM  
UNAWARDED MW THROUGH 2022 SOLAR PROCUREMENT**

***A. Necessity to Procure CPRE Program Unawarded MW through 2022 SP***

23. As explained above, HB 951 effectively “sunset” the CPRE Program by mandating that after the initial 45-month CPRE Program Procurement Period, the Commission shall direct one additional competitive procurement of renewable energy capacity to solicit any unawarded portion of CPRE Program Unawarded MW.

24. Reading N.C. Gen. Stat. § 62-110.8 and HB 951 together, the Companies seek approval to procure the CPRE Program Unawarded MW through the 2022 SP, thereby simultaneously implementing the CPRE “additional competitive procurement” requirement within the now approved and underway 2022 SP RFP.

25. By procuring the remaining CPRE Program Unawarded MW through the 2022 SP, the Companies can most expediently and cost-effectively meet the requirements of N.C. Gen. Stat. § 62-110.8 and close out the CPRE Program, while also achieving an efficient transition to the new competitive procurement framework established by HB 951.

26. First, unlike CPRE Tranche 3, there has been robust market participation in the 2022 SP. Due to this robust market participation, the Companies believe sufficient “depth of market” exists to achieve both the 2022 SP volume targeted under HB 951 (750 MW +/- 20%), as well as the 441 CPRE Program Unawarded MW amount.

27. Second, the 2022 SP is already underway, and procuring the CPRE Program Unawarded MW through the 2022 SP allows the Companies to more expeditiously transition to, and focus resources on, Carbon Plan-driven procurements of solar and other resources pursuant to HB 951. Were the Companies to establish a separate stand-alone Tranche 4, interconnection cost estimates would still be required in order to select winners. This means that directing the Companies to undertake a future, separate Tranche 4 would either require alignment with the 2023 DISIS cluster or require a separate Resource Solicitation Cluster (“RSC”), both of which options are logistically fraught. To detail, aligning with 2023 DISIS would mean Tranche 4 is delayed a year and likely happening simultaneously with a 2023 RFP for solar to meet generation transition and Carbon Plan needs, which would presumably have no cost cap, making it far more attractive to bid into the 2023 RFP instead of Tranche 4. In this instance, Tranche 4 would still incur fees from an Independent Administrator (“IA”) but may have zero bid fees or winner’s fees to pay the IA’s costs. Alternatively, creating a separate RSC between 2022 DISIS and 2023 DISIS would mean Tranche 4 would be seeking proposals before the 2022 SP has even

selected winners (in May, 2023) and so any rankings would be moot until after 2022 SP PPAs and agreements are executed (in June 2023), at which time the Companies would know which proposals are remaining in Tranche 4. These alternative approaches could introduce major complexities for the ongoing 2022 DISIS Cluster as well as future DISIS Clusters. In contrast, by procuring the CPRE Program Unawarded MW through the 2022 SP, the Companies and IE can focus on optimizing the selection of winning bids collectively for CPRE and the 2022 SP, and also begin engaging with market participants to plan for future HB 951 procurements, including the potential for new contract structures to procure solar plus storage resources in 2023 rather than spending time creating a stand-alone CPRE Tranche 4.

28. Third, having a separate CPRE Tranche 4 would lead to increased costs for customers. The 2022 SP has already been issued, and as discussed more fully below, aligns with, and meets the statutory requirements of the CPRE Statute, therefore avoiding the need for additional costs associated with the development, implementation, and administration of a separate Tranche 4. Accordingly, approval of this Petition can most efficiently achieve the statutory requirement to hold an additional CPRE Program procurement as well as result in cost savings for customers.

***B. Mechanics of Procuring CPRE Program Unawarded MW through 2022 SP and Adherence to CPRE Program Statute***

**i. CPRE Procurement Target**

29. The Companies plan to procure the 441 CPRE Program Unawarded MW from the total number of MW received through the 2022 SP Controllable PPA proposals in order to achieve the CPRE Program target established by N.C. Gen. Stat. § 62-110.8 and

the Commission's December 20, 2021 *Order Determining Adjusted CPRE Procurement Volume*.

**ii. Cost-Effectiveness Limitation on CPRE Procurement**

30. Out of the total number of MW procured through the 2022 SP, the lowest-cost MW in the Controllable PPA Track would be "assigned" as CPRE Program Unawarded MW.<sup>3</sup> To accomplish the CPRE Program requirement "[t]o ensure the cost-effectiveness of procured new renewable energy resources" in accordance with N.C. Gen. Stat. § 62-110.8(b)(2), the CPRE Program Unawarded MW procured through the 2022 SP will be subject to an avoided cost cap based upon the Companies' Commission-approved methodology. To clarify, the Companies would target procuring 441 MW of proposals submitted through the 2022 SP that offer pricing that is beneath the avoided cost cap, as required under the CPRE Program, and those proposals will be procured as CPRE Program Unawarded MW. The all-in cost of the proposal, including upgrade costs, would be compared to the Companies' forecasted avoided cost. The Companies would utilize their then-current forecast of avoided cost as of November 1, 2022, calculated over the term of the PPA (25 years) and consistent with the Commission's most recently approved avoided cost methodology, approved in Docket No. E-100, Sub 167.<sup>4</sup> However, if the Commission approves the Docket No. E-100, Sub 175 methodology before November 1, 2022, the Companies will update the avoided cost cap accordingly for assessing cost effectiveness of these CPRE Program Unawarded MW. In either case, the Companies would file such

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<sup>3</sup> Bids may not perfectly align with the 441 CPRE Program Unawarded MW target. To the extent that procured capacity in excess of the targeted CPRE Program Unawarded MW are below the avoided cost cap, the Companies will determine with the IE the most appropriate allocation and project selection to meet the needs of the CPRE Program Unawarded MW.

<sup>4</sup> *Order Establishing Standard Rates and Contract Terms for Qualifying Facilities*, Docket No. E-100, Sub 167 (Aug, 13, 2021).

avoided cost cap with the Commission and request the IE publish the avoided cost cap for all bidders in advance of the Step 2 bid refresh planned for April 2023.

**iii. Independent Evaluation of CPRE Program Unawarded MW**

31. N.C. Gen. Stat. § 62-110.8(d) requires that the CPRE Program be independently administered by a third-party entity approved by the Commission. As the Commission is aware, the Companies retained CRA as the IE to manage the 2022 SP and to independently evaluate all bids submitted into the RFP. CRA's evaluation role for the 2022 RFP was specifically developed and agreed-upon by the Companies and stakeholders, and the Companies' 2022 SP Petition provided CRA's detailed scope of work to the Commission<sup>5</sup> and further memorialized CRA's role in the published 2022 RFP. Although not specifically titled an "IA," the 2022 SP IE meets the intent of N.C. Gen. Stat. § 62-110.8(d) by having a third party oversee and evaluate 2022 SP RFP proposals to ensure fairness and transparency throughout the competitive bid process. While the Duke Evaluation Team does have a more significant role in bid evaluation and is responsible for selection of winning proposals under the 2022 SP, this is not prohibited by the CPRE Statute. Moreover, as discussed below, the Companies are seeking wavier of the applicable CPRE rule provisions to the extent such rule provisions specifically require an IA. Accordingly, the Companies believe the IE's oversight and independent evaluation of the 2022 SP RFP, and procurement of CPRE Program Unawarded MW through the 2022 SP, meets the requirements of N.C. Gen. Stat. § 62-110.8(d). Therefore, the Companies request the Commission find good cause to approve of CRA's oversight of the CPRE Program Unawarded MW procured through the 2022 SP.

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<sup>5</sup> 2022 SP Petition at Attachment 2 (Duke Energy Independent Evaluator Scope of Work for 2022 Solar Procurement).

**iv. Cost Recovery**

32. Similar to prior CPRE Tranches, the Companies designed the 2022 SP to provide that administrative and related expenses incurred to implement the 2022 SP will be recovered from market participants through a combination of bid fees and winner's fees. However, recognizing that the 2022 SP RFP is already underway and in the interest of regulatory efficiency, the Companies commit not to seek recovery of any 2022 SP administrative and related expense (including IE costs of administering the 2022 SP and procuring CPRE Program Unawarded MW through such) through the CPRE Rider.

33. In accordance with N.C. Gen. Stat. § 62-110.8(g), as well as Rule R8-71(j) the Companies will, however, seek to recover the costs of all purchases of energy, capacity, and environmental and renewable attributes from third-party renewable energy facilities assigned as CPRE Program Unawarded MW through the annual CPRE Rider approved by the Commission and reviewed annually for the approximate 441 CPRE Program Unawarded MW procured through the 2022 SP. As explained in the Companies' 2022 SP Petition, all other 2022 SP MW energy and capacity costs will be recovered through the fuel clause, pursuant to N.C. Gen. Stat. § 62-133.2.

**v. Commitment to Procure 2022 CPRE Program Unawarded MW Exclusively as Controllable PPA Resources**

34. N.C. Gen. Stat § 62-110.8(b) also places limitations on the number of CPRE Program Unawarded MW developed and owned by the utility. For the limited purpose of closing out the CPRE Program under HB 589 through the 2022 SP, the Companies propose that only third-party PPA proposals in the 2022 SP will be designated as CPRE Program Unawarded MW—no Utility Ownership Track proposals will be designated as CPRE Program Unawarded MW as HB 951 stipulates that Utility Ownership Track proposals are

recovered based upon their cost of service rather than by a bid price.<sup>6</sup> Tranche 3 also did not accept asset transfer offers (only PPA resources), so sourcing CPRE via Controllable PPA projects does not require any change to the evaluation process in the 2022 SP for those resources.

**vi. Commission-Approved Controllable Third Party PPA**

35. As explained above, third party solar energy resources procured through the 2022 SP opting for a PPA will be subject to the utility's rights to control (curtail/dispatch down) the facility pursuant to the terms of the PPA. In other words, the third-party PPAs offered through the 2022 SP are "Controllable PPAs" with relevant provisions identical to the Tranche 3 CPRE PPA's previously-approved "controllable" provisions, in accordance with N.C. Gen. Stat. § 62-110.8(b).

36. The 2022 SP PPA was developed based on the CPRE Tranche 3 PPA. The 2022 SP PPA was also specifically approved by the Commission at least 30 days in advance of the 2022 SP bid window closing, thereby meeting the requirements of N.C. Gen. Stat. § 62-110.8(b)(3). *See Order Approving Request for Proposals and Pro Forma Power Purchase Agreement*, Docket Nos. E-2, Sub 1297 and E-7, Sub 1268 (June 10, 2022). Only limited ministerial changes to the recitals of the 2022 SP Program PPA will be needed to clarify that Controllable PPA sellers executing that form of PPA are doing so under the HB 589 CPRE Program. Thus, the Commission has met the requirement in subsection (b)(3) of the CPRE Statute to approve the "*pro forma* contract to be utilized for the purpose of

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<sup>6</sup> In the interest of regulatory efficiency and to establish clear separation between the CPRE Program Unawarded MW being procured under HB 589 and the HB 951 2022 SP Procurement MW, the Companies represent and agree that the HB 951 ownership allocation requirements set forth in N.C. Gen. Stat. § 62-110.9(2).b shall not apply to the CPRE Program Unawarded MW and that the Companies are procuring 100% of the CPRE Program Unawarded MW as Controllable PPA projects.



informing market participants of terms and conditions of the competitive procurement.”  
N.C. Gen. Stat. § 62-110.8(b)(3).

37. Based on the foregoing, the Companies’ proposed approach to meeting the CPRE Program requirements and limitations can be met through the 2022 SP, and the Companies request the Commission approve procurement of the remaining 441 CPRE Program Unawarded MW through the 2022 SP.

**REQUEST TO EXTEND CPRE PPA TERM TO 25 YEARS**

38. The CPRE Statute requires that the CPRE Program PPA be (i) submitted to the Commission for approval and made publicly available at least 30 days prior to each competitive procurement solicitation and (ii) that the PPA be for a term of 20 years unless the Commission determines a different duration is in the public interest.

39. N.C. Gen. Stat. § 62-110.8(b)(3) specifically authorizes the Commission to approve a CPRE Program PPA term of a different duration than 20 years where doing so would be in the public interest.

40. The Companies respectfully request the Commission to approve a 25-year CPRE PPA term for CPRE Program Unawarded MW procured through the 2022 SP as being in the public interest.

41. Allowing for a 25-year CPRE PPA term for CPRE Program Unawarded MW procured through the 2022 SP will align with the 2022 SP program bids and ensure that these CPRE Program Unawarded MW are contracted to provide renewable energy to the Carolinas through 2050, and assist North Carolina in meeting HB 951’s goals of procuring low or carbon-free resources by 2050 pursuant to the Carbon Plan.

42. Additionally, offering 25-year CPRE PPAs to 2022 SP proposals ultimately assigned as CPRE Program Unawarded MW ensures fairness and equal treatment amongst 2022 SP market participants, and avoids the need to amend the 2022 SP RFP to account for a potential 20-year CPRE PPA offering, thereby creating administrative efficiencies and, ultimately, cost savings.

43. As illustrated, the Commission should grant approval of extension of the CPRE PPA term from 20 years to 25 years, since doing so is necessary to align the CPRE Program additional procurement with the 2022 SP and is in the public interest.

**MOTION FOR WAIVER OF RELEVANT PROVISIONS OF NCUC RULE  
R8-71**

44. NCUC Rule R8-1(c) provides for waiver of Commission rules where compliance “introduces unusual difficulty.” *Cf. Order Granting Limited Waivers with Conditions*, Docket No. E-2, Sub 1271, E-7, Sub 1251 (Mar. 24, 2021) (concluding that the limited waivers of Commission rules, waiver of Code of Conduct provisions, and revisions to service regulations are consistent with the public interest); *Order Cancelling Annual Public Hearing, Approving Proposed Accounting Treatment, and Approving CPRE Compliance Report*, Docket No. E-7, Sub 1193 (Apr. 16, 2019) (approving waivers of certain requirements under Commission Rule R8-71(j) where Commission found compliance impossible or impracticable).

45. NCUC Rule R8-71 establishes additional requirements for administering the CPRE Program in addition to those prescribed by N.C. Gen. Stat. § 62-110.8, several of which are not consistent with the Commission-approved 2022 SP RFP and would impede the Companies from using the 2022 SP RFP bid evaluation process to procure the CPRE Unawarded MW. Accordingly, the Companies petition the Commission to grant

waiver of the relevant provisions of Rule R8-71 that do not align with the 2022 SP and HB 951, specifically those being sections (d) (Selection and Role of Independent Administrator), (e) (Communications Between CPRE Market Participants), and (f) (CPRE RFP Solicitation Structure and Process) of the rule, to the extent those provisions are not consistent with the 2022 SP RFP framework and requirements.

46. Good cause exists to waive these provisions of Rule R8-71 in order to allow the Companies to procure the additional CPRE Program Unawarded MW through the 2022 SP without modification of the 2022 SP RFP framework. As demonstrated by this Petition, the 2022 SP can meet the statutory requirements of the CPRE Program for purposes of this limited and final CPRE additional procurement, in an administratively efficient and cost-effective manner. To require adherence to subsections (d), (e), and (f) of Rule R8-71 would require amendment to, and potential delay of, the 2022 SP RFP, as well possibly increase costs.

47. Further, the Commission has extensively reviewed and approved the 2022 SP framework, with input from the Public Staff, market participants and other interested stakeholders, and will have oversight of the 2022 SP throughout its entirety. The Commission also recognized in initially adopting the CPRE Program rules relating to both the role of the IA and the Companies in the bid evaluation process that “opportunities for improvements may arise or become apparent after there is a sufficient historical record of working through the process [and that] the Commission will remain open to these opportunities in the future.” *Order Adopting and Amending Rules*, at 17, Docket No. E-100, Sub 150 (Nov. 6, 2017). The 2022 SP RFP reflects improvements over the prior

CPRE Program bid evaluation process and, therefore, approval of the requested waivers is in the public interest.

48. The IE, CRA, has also been vetted through the stakeholder process, and will ensure transparency and fairness in the bid evaluation process, as well as submit reports to the Commission detailing the evaluation of market participants' proposals and identifying the 2022 SP bid winners. Additionally, the Companies have announced that no Duke Energy affiliates will be participating in the 2022 SP, eliminating some of the risks identified in the Commission's original rulemaking order justifying the need for the additional, more robust oversight prescribed by Rule R8-71 for the 2022 SP. *Order Adopting and Amending Rules*, at 15. The Commission has also directed separation requirements to be included in the 2022 SP RFP to further ensure fairness and transparency in the bid evaluation process. June 10 Order, at 6.<sup>7</sup>

49. In sum, waiver of NCUC Rule R8-71(d), (e), and (f) is necessary to allow the Companies to proceed with procuring the CPRE Program Unawarded MW through the 2022 SP, and the concerns addressed by the rule provisions proposed to be waived are not present under the current 2022 SP framework.

WHEREFORE, Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC, respectfully request that the Commission issue an order on or before November 1, 2022:

- (i) Directing the Companies to procure the final remaining 441 CPRE Program Unawarded MW through the 2022 Solar Procurement Program;
- (ii) Approving the Companies' request to extend the CPRE Program PPA term from 20 to 25 years as in the public interest;

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<sup>7</sup> The Companies incorporated these separation requirements in Section V.D of the final 2022 SP RFP filed on June 17, 2022 in Docket Nos. E-2, Sub 1297 and E-7, Sub 1268.

- (iii) Directing the Companies to file the updated avoided cost cap to be used to assess 2022 SP bids for cost-effectiveness to meet the administratively-determined avoided cost requirement under N.C. Gen. Stat. § 62-110.8(b)(2) on or before December 15, 2022, and to work with the IE to publish the avoided cost cap to 2022 SP market participants on or before December 22, 2022;
- (iv) Granting waiver of NCUC Rule R8-71(d), (e), and (f) to the extent such provisions do not align with the 2022 Solar Procurement Program framework, as previously approved by the Commission; and
- (v) Granting any other relief as the Commission deems reasonable and proper.

Respectfully submitted, this the 1<sup>st</sup> day of September, 2022.

By: /s/ E. Brett Breitschwerdt

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

VERIFICATION

STATE OF NORTH CAROLINA	)	
	)	DOCKET NO. E-2, SUB 1159
COUNTY OF MECKLENBURG	)	DOCKET NO. E-2, SUB 1297
	)	DOCKET NO. E-7, SUB 1156
	)	DOCKET NO. E-7, SUB 1268

George V. Brown, being first duly sworn, deposes and says:

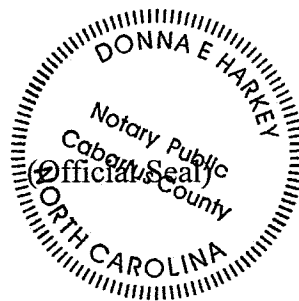
That he is General Manager of Strategy, Policy, and Strategic Investment for Distributed Energy Technology in the Enterprise Strategy and Planning Group for Duke Energy Corporation; that he has read the foregoing *Petition for Approval to Procure CPRE Program Remainder MW through 2022 Solar Procurement; to Extend CPRE PPA Term; and for Waiver of Certain Provisions of Rule R8-71* and knows the contents thereof; that the same is true except as to the matters stated therein on information and belief, and as to those matters, he believes it to be true.

George V Brown  
Name

Signed and sworn to before me this day by GEORGE V. BROWN  
Name of principal

Date: August 30, 2022

Donna E Harkey  
Official Signature of Notary



Donna E Harkey, Notary Public  
Notary's printed or typed name

My Commission Expires: 03-01-24

**CERTIFICATE OF SERVICE**

I certify that a copy of Duke Energy Carolinas, LLC’s and Duke Energy Progress, LLC’s *Petition for Approval to Procure CPRE Program Unawarded MW through 2022 Solar Procurement; to Extend CRPE PPA Term; and for Waiver of Certain Provisions of NCUC Rule R8-71* as filed in Docket Nos. E-2, Subs 1159 and 1297 and E-7, Subs 1156 and 1268 has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid to the parties of record.

This the 1<sup>st</sup> day of September, 2022.

/s/E. Brett Breitschwerdt

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