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April 13, 2022

VIA ELECTRONIC FILING

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

RE: Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and Dominion Energy North Carolina's Joint Reply Comments Concerning Multiyear Rate Plan Projects and CPCN Requirements
Docket No. E-100, Sub 178

Dear Ms. Dunston:

Enclosed for filing in the above-referenced docket, please find Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and Dominion Energy North Carolina's Joint Reply Comments Concerning Multiyear Rate Plan Projects and CPCN Requirements.

If you have any questions, please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

Jack E. Jirak

Enclosure

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 178

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Implement Performance-Based Regulation of Electric Utilities	)))))))))	**JOINT REPLY COMMENTS OF DUKE ENERGY CAROLINAS, LLC, DUKE ENERGY PROGRESS, LLC, AND DOMINION ENERGY NORTH CAROLINA CONCERNING MULTIYEAR RATE PLAN PROJECTS AND CPCN REQUIREMENTS**

NOW COME Duke Energy Carolinas, LLC ("DEC"), Duke Energy Progress, LLC ("DEP" and, together with DEC, the "Duke Utilities"), and Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina ("DENC" and, together with DEC and DEP, the "Utilities"), by and through their legal counsel, and respectfully submit the following reply comments in response to Ordering Paragraph Four (4) of the North Carolina Utilities Commission's ("Commission") *Order Adopting Commission Rule R1-17B* issued on February 10, 2021, in the above-captioned docket (the "PBR Order"). Pursuant to N.C. Gen. Stat. § 62-133.16 (the "PBR Statute"), the Commission through its PBR Order adopted Commission Rule R1-17B to govern the Performance-Based Regulation ("PBR") process. In addition, the PBR Order requested comments with respect to three questions regarding the interplay of the PBR process and the certificate of public convenience and necessity ("CPCN") process. On March 16, 2022, the Utilities, Public Staff, and certain intervenors filed responses to the Commission's questions. The Utilities respond herein to initial comments filed by the North Carolina Sustainable Energy Association ("NCSEA"), the Carolinas Clean Energy Business Association ("CCEBA"),

and the Carolina Utility Customers Association, Inc. ("CUCA") together with the Carolina Industrial Group for Fair Utility Rates I, II, and III ("CIGFUR" and together with CUCA, "CUCA/CIGFUR"), as supported by the Public Staff – North Carolina Utilities Commission ("Public Staff").

I. BACKGROUND

The Utilities jointly submitted comments ("Initial CPCN Comments") affirming that the Commission has authority to approve multiyear rate plan[1] ("MYRP") rate recognition for projected capital projects that require, but have not yet received, a CPCN (whether such projects are utility or third-party owned at the time of the PBR application). In addition, the Utilities asserted that the Commission should rely on its findings in a PBR application decision in a future CPCN application (where applicable). The Utilities' positions on these issues align with the plain language and intent of the PBR Statute, the PBR Order, and the PBR Rule, and appropriately balance regulatory oversight with administrative efficiency.

CUCA/CIGFUR, NCSEA, and CCEBA argue that (1) projected capital projects requiring a CPCN should not be included in a PBR Application, (2) assuming a projected capital project without a CPCN was included in a PBR Application, a future CPCN proceeding on that capital project should not consider the Commission's findings in the PBR Application proceeding, and (3) until the CPCN for a CPCN-dependent capital project is transferred to the utility, the costs of that project should not be included in a MYRP. The Public Staff filed a letter stating its agreement with the CUCA/CIGFUR comments but did

[1] The MYRP (including the earnings sharing mechanism or ESM) is one of three components of PBR (the other two being the residential decoupling and performance incentive mechanisms).

not submit any further responses to the Commission's questions or provide any independent explanation of its views.

II. SUMMARY OF REPLY COMMENTS

Similar to their arguments during the earlier rulemaking portion of this proceeding, intervenors assert positions that are inconsistent with the plain language and intent of the PBR Statute (as well as the now established PBR Rule), positions that would result in inefficiency in both the PBR and CPCN processes and deny timely rate recovery of projected capital projects that will provide benefit to customers. In the PBR Rule, the Commission established a PBR process that ensures appropriate review and oversight without creating regulatory processes that are inefficient or unnecessarily burdensome. The Commission rejected proposals from the very same intervenors to expand, lengthen and complicate the regulatory process—proposals that had no basis in the PBR Statute. Undeterred, many of the same intervenors once again seek to limit the Commission's discretion over utility ratemaking and approval of projected capital projects, introducing inefficiencies into the Commission's regulatory oversight processes that similarly have no basis in the PBR Statute. Furthermore, intervenors' arguments remain at a superficial, high level[2] and ignore the practicalities and timing of the implementation of a PBR Application and its alignment with related regulatory processes.

The PBR Statute imposes no pre-PBR approval process of any sort on projected capital projects, contrary to intervenors' unfounded claims. Imposing a pre-PBR approval process for projected capital is inconsistent with the text and intent of the PBR Statute. In

[2] For instance, all the intervenor comments appear to be focused on solar generating projects and do not appear to have even considered these questions as they relate to MYRP rate recognition of projected transmission projects that may require a CPCN.

fact, the Commission previously rejected attempts by intervenors to impose pre-PBR approval processes for projected capital projects.[3] No party has articulated any meaningful way in which the Commission's review of a projected capital project in a PBR proceeding is different than the review in a CPCN proceeding. Furthermore, assuming that the Commission does conclude that a CPCN is not required prior to MYRP rate recognition, no party has offered a coherent explanation as to why the Commission should, in any future CPCN process, disregard any relevant findings made in the PBR process.

The Utilities respectfully submit that the Commission should once again reject the intervenors' attempts to impose burden and inefficiencies that are unsupported by and inconsistent with the PBR Statute. In contrast, the Utilities' proposed framework will create administrative efficiencies and support flexible and timely capital investment in furtherance of the broader goals of the PBR Statute.

III. DETAILED REPLY COMMENTS

a. Intervenor arguments are contrary to, and ignore, the plain language and intent of the PBR Statute.

The PBR Statute does not require that a capital project that requires a CPCN prior to commencing construction must obtain a CPCN prior to being included in a PBR Application. If the General Assembly had intended to make a CPCN a prerequisite for a project to be included in a PBR Application and receive MYRP rate recognition (or any form of pre-approval before the PBR process), it certainly could have done so—but it did not. Instead, the General Assembly specified that the MYRP rates for the first rate year should include "a known and measurable set of capital investments, net of operating benefits, associated with a set of discrete and identifiable capital spending projects *to be*

[3] PBR Order at 14.

placed in service during the first rate year" and that the MYRP rates for the second and third rate year should include "*projected* incremental Commission-authorized capital investments *that will be* used and useful during the rate year."[4] This statutory language clearly authorizes the Commission to include future specific capital projects in setting MYRP rates through a PBR decision issued prior to those capital projects being placed into service, or even prior to the commencement of construction (which would otherwise trigger a CPCN where required).

As the North Carolina Supreme Court has stated: "[w]here the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must give it plain and definite meaning, keeping in mind that nontechnical statutory words are to be construed in accordance with their common and ordinary meaning."[5] It is unambiguous that the General Assembly did not require any form of pre-approval outside the PBR process, including a CPCN, be granted before a projected capital project receives MYRP rate recognition. Had it intended to impose any form of preapproval outside of the PBR process, the General Assembly would have so stated. Instead, the General Assembly imposed the standard of" capital investments "to be," or that "will be," used and useful.

Further, as the North Carolina Supreme Court recently held in *State ex rel. Utilities Commission v. Stein*, "the cardinal principle of statutory construction is that the words of the statute must be given the meaning which will carry out the intent of the Legislature" and that the legislative "intent must be found from the language of the act…."[6] The

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[4] N.C. Gen. Stat. § 62-133.16(c)(1)a (emphasis added).
[5] *Williams v. Williams*, 299 N.C. 174, 180, 261 S.E.2d 849, 854 (1980) (*citing State ex rel. Util's Comm'n v. Edmisten*, 291 N.C. 451, 232 S.E.2d 184 (1977); *Peele v. Finch*, 284 N.C. 375, 200 S.E.2d 635 (1973); *Lafayette Transportation Service, Inc. v. County of Robeson*, 283 N.C. 494, 196 S.E.2d 770 (1973); *In re McLean Trucking Co.*, 281 N.C. 242, 188 S.E.2d 452 (1972)).
[6] 851 S.E.2d 237, 263-264 (2020) (*citing Milk Comm'n v. Food Stores*, 270 N.C. 323, 332–33, 154 S.E.2d 548, 555 (1967).

language used by the General Assembly in the PBR Statute does not suggest an intent to impose a restrictive, binary CPCN requirement in order to allow for inclusion of a projected capital project in an MYRP (or any pre-approval for that matter). The concept of "known and measurable" and "discrete and identifiable capital spending projects" provides wide latitude for the Commission to assess and approve projected capital projects and does not support the argument that the General Assembly intended thereby to impose a pre-MYRP obligation to obtain a CPCN (where applicable). Similarly, the concept of "projected incremental Commission-authorized capital investments that will be used and useful during the rate year" does not contain any suggestion or implication of the requirement for a pre-MYRP approval process. Simply stated, there is not a single aspect of the PBR Statute that would suggest that the General Assembly intended to impose any pre-MYRP approval process in order for projected capital to receive MYRP rate recognition. In fact, the Commission has already rejected arguments from CIGFUR that a separate pre-approval was required for projected capital projects.[7]

Furthermore, "[i]t may be presumed that statutes are enacted by legislative bodies with care and deliberation, and with knowledge of former related statutes."[8] Thus, the General Assembly is presumed to be aware of the CPCN process and could have easily expressly imposed a CPCN requirement for projected capital projects in a PBR Application—but it did not.

CUCA/CIGFUR urge interpretations that are inconsistent with both the plain language of the PBR Statute and the intent of the General Assembly. Specifically,

[7] PBR Order at 40 ("during the PBR rate case proceeding, the Commission gives the utility approval to commence specific capital spending projects that it has authorized for the MYRP and approval of the associated revenue requirements for each rate year.").
[8] *State v. Albert Lance*, 244 N.C. 455 (1956).

CUCA/CIGFUR argue that MYRP rate recognition "requires certainty—not speculation—concerning the identified capital project."[9] CUCA/CIGFUR then state that "[a]bsent the utility already possessing a CPCN for a CPCN-dependent project, the project exists in the realm of speculation. Projects that are aspirational—as opposed to 'known'—do not qualify for inclusion in the MYRP."[10]

There are numerous flaws in this line of argument. First, CUCA/CIGFUR's focus on "certainty" is not supported by the plain language of the PBR Statute or the intent of the General Assembly. The heart of the MYRP process is the concept of rate recognition of projected capital projects. Projected capital projects are by definition those projects that will be used and useful in the future and therefore involve some element of uncertainty (as compared with the traditional historic test period approach in which capital projects receiving rate recognition were required to have been placed in service). It is conceptually incoherent to assert that the PBR structure—which is intended to grant rate recognition to projected capital projects (*i.e.*, projects that have not occurred but will occur in the future)—also requires "certainty." "Certainty" is not the standard set forth in the PBR Statute with respect to projected capital projects. Instead, the Commission is authorized to grant MYRP rate recognition for capital projects where they are "known and measurable"

[9] CUCA/CIGFUR Initial CPCN Comments at 2.

[10] *Id*. As an aside, in their footnote 1, CUCA/CIGFUR cite the Commission's Order Denying Certificate of Public Convenience and Necessity for Merchant Generating Facility issued in Docket No. EMP-105, Sub 0, but appear to misunderstand the issues at stake in that decision. CUCA/CIGFUR cite to the case in support of the proposition that a pre-CPCN project "exists in the realm of speculation." Yet, the Commission was not specifically considering whether a pre-CPCN project was or was not speculative nor did it have before it the type of information concerning such pre-CPCN project that it will have in the context of a PBR application. Instead, the Commission was considering a complex situation involving substantial transmission upgrades on which a certain number of other future projects were allegedly depending. The Commission concluded that the potential other future projects that would rely on such transmission upgrades were "too speculative to support the approval of Friesian's CPCN." Therefore, that decision has no relevance to the issues at hand in these comments.

and expected to be "placed in service during the first rate year" or projected to be "used and useful" during rate years two and three. The Commission can make all such determinations in the absence of a CPCN and, once again, the General Assembly did not impose any pre-approval requirement for capital projects in an MYRP (or, for that matter, require "certainty" for such capital projects).

Second, characterizing projected capital projects as "aspirational" before they receive a CPCN does not align with the rigorous regulatory scrutiny that will be applied to all projected capital projects in the PBR process (as explained below). Intervenors' characterization likewise fails to recognize the many ways in which projected capital projects in a MYRP may have already been vetted or considered or approved by the Commission through the Carbon Plan or other processes (as also explained further below).

Third, CUCA/CIGFUR also do not explain why a CPCN process for a projected capital project provides any greater "certainty" than Commission review of a projected capital project in a PBR application. There are numerous examples in which non-utility generation projects were granted a CPCN but ultimately were not constructed due to a variety of circumstances.[11] Even after a CPCN process, there is not complete certainty that the projected capital project will ultimately be constructed, as circumstances could change

[11] *See, e.g., Order Canceling CPCN and Registration, and Closing Docket,* Docket No. SP-7782, Sub 0 (Jun. 8, 2021); *Order Accepting Notice of Cancellations, Cancelling CPCNs and Registrations, and Closing Dockets,* Docket Nos. SP-5077, Subs 0 and 1, SP-5075, Subs 0 and 1, SP-5057, Subs 0 and 1, SP-5039, Subs 0 and 1, SP-5043, Subs 0 and 1, SP-5058, Subs 0 and 1, SP-5052, Subs 0 and 1, SP-5056, Subs 0 and 1, SP-5053, Subs 0 and 1, SP-5044, Subs 0 and 1, SP-8333, Subs 0 and 1, SP-8328, Subs 0 and 1, and SP-8329, Subs 0 and 1 (Oct. 15, 2018); *Order Cancelling Certificate and Registration and Closing Docket,* Docket No. SP-12976, Sub 0 (July 12, 2019); *Order Cancelling Certificate and Registration Statement and Closing Docket,* Docket No. SP-2543, Sub 0 (Mar. 18, 2014); *Order Cancelling Certificate and Closing Docket,* SP-751, Sub 12 (Mar. 14, 2014).

resulting in a certificated project not being constructed. CUCA/CIGFUR's search for "certainty" is neither supported by the PBR Statute nor solved by the CPCN process.[12]

As was stated in the Duke Utilities' Reply Comments, "the Companies expect that changes from the approved projected capital investments will be narrow, targeted, and in the best interests of customers."[13] But the Commission itself recognized in the PBR Order that "certainty" is neither the intended nor even the desired outcome of the PBR process. In fact, the potential for the cancellation of capital projects approved in an PBR Application was expressly considered by the Commission in the rulemaking process. The Commission appropriately recognized that the potential for approved capital projects that are ultimately cancelled is an unavoidable reality. But the Commission recognized that the "discretion to modify or cancel projects when doing so is in the public interest."[14] The fact that the Commission expressly recognized the potential for cancelled projects was ignored by all intervenors in this comment cycle as well as the numerous customer protections noted by the Commission in the PBR Order to mitigate these concerns.[15]

While it is true that the General Assembly left in place the CPCN requirement when it enacted the PBR Statute, there is no indication that by doing so, the General Assembly intended to require that the CPCN process occur prior to the PBR process. Rather, the CPCN process remains in place, but effectively gives the Commission post-PBR decision

[12] It also is not supported by the CPCN statute, which permits the Commission to modify or revoke a CPCN if it finds that completion of the generating facility is no longer in the public interest. N.C. Gen. Stat. § 62-110.1(e1).
[13] DEC DEP Reply Rule Comments at 27 (filed Dec. 17, 2021).
[14] PBR Order at 42.
[15] *Id.* at 41 (Commission noting several customer protections including: 1) the Public Staff's "scrutiny and review" of the required quarterly construction status and tracking reports against the approved MYRP plan and the Commission's authority to address any prudence concerns in the utility's next rate case, 2) the earning sharing mechanism to prevent against "excessive earnings" from over-projected capital costs, and 3) the fact that the Commission upon its own motion or upon the motion of Public Staff, may initiate a proceeding during a PBR Plan period to adjust rates as necessary).

oversight over a certain subset of MYRP capital projects—those projects that require a CPCN.[16]

Arguments for requiring capital projects to first have a CPCN prior to being included in a PBR Application also fail because they undermine the General Assembly's broader intent in enacting the PBR Statute. As the Duke Utilities explained during the rulemaking portion of this proceeding, one of the goals of PBR generally is a reduction of "costly administrative burden" and achievement of "administrative efficiency."[17] Intervenors' arguments on the Commission's CPCN questions, just like the arguments they offered earlier in this proceeding, are inconsistent with this intent and seek to limit the Commission's and the utility's flexibility regarding projected capital investments and impose duplicative review of projected capital projects. The Commission should similarly reject intervenor arguments on these issues.

b. The PBR review of projected capital is functionally the same standard of review as occurs in a CPCN process.

Putting aside questions of statutory construction, it is also important to note that, from a practical perspective, the PBR review process will provide sufficient scrutiny to justify MYRP rate recognition in advance of a CPCN. As the Utilities pointed out in their Initial CPCN Comments: "[b]oth the PBR Application process and the CPCN process require essentially the same determination from the Commission—whether the capital

[16] While the CPCN process remains in place, that does not change the fact that the Commission may consider whether it might be appropriate to modify those aspects of the CPCN process that are not governed by the applicable statutes in order to streamline the CPCN process for those projected capital projects that are approved in the PBR process or through other regulatory processes such as the Carbon Plan.

[17] DEC DEP Initial Rule Comments at 9-10 (filed Nov. 9, 2021) (*citing* North Carolina Energy Regulatory Process PBR Guidance at 6 (*available at* https://deq.nc.gov/media/17684/download) and North Carolina Energy Regulatory Process – Summary Report and Compilation of Outputs (2020), at 13 (*available at* https://files.nc.gov/ncdeq/NERP%202020_Final%20Report%20and%20Products%20%281%29_0.pdf).

project is needed and whether the projected cost is reasonable."[18] Fundamentally, the Commission will only authorize a projected capital project in a MYRP if it concludes that such capital project is needed and in the best interests of customers. Similarly, in a CPCN proceeding, the Commission will only grant a CPCN if it finds that the capital project is needed and in the best interest of customers. Therefore, putting aside questions of statutory construction, the Commission can be assured that the PBR process will provide sufficient review to protect customers even where such PBR process occurs in advance of the CPCN process.

No intervenor offered any meaningful distinction between the core purpose of the MYRP and the CPCN review processes. NCSEA asserts that "approval for cost recovery in an approved PBR Application is not the same analysis as the Commission determining that the electric grid needs a facility's energy and capacity."[19] To the contrary, it is inconceivable that the Commission, for instance, would approve a utility to recover the costs of a solar generating facility in an MYRP without first concluding that the "electric grid needs a facility's energy and capacity." Similarly, CUCA/CIGFUR argue that "[w]hile a utility's desire to recover costs under a MYRP is some evidence that the asset is 'needed' as part of the utility's own internal planning, it is not dispositive in determining whether the project satisfies the public convenience and necessity standard, nor whether the resource could be provided through some other means."[20] Such an odd framing, focused on the "utility's desire," obscures the reality of the MYRP process. Projected capital projects receive MYRP rate recognition based not on the "utility's desire," but

[18] Joint Initial CPCN Comments at 5.
[19] NCSEA Initial CPCN Comments at 2.
[20] CUCA/CIGFUR Initial CPCN Comments at 5.

instead on a finding by the Commission that the projected capital is needed and in the best interest of customers. CUCA/CIGFUR state that "[i]n contrast [to the MYRP process], the CPCN process is intended to scrutinize whether a project is needed to accomplish reliable and economic utility service."[21] Once again, such framing is incorrect, as it implies that there might be a scenario in which the Commission would approve rate recognition of a projected capital project without having concluded that such project is "needed." This implication is wholly incorrect.

The Commission's PBR review of projected capital will be detailed and probing and serves as an adequate basis for cost recovery even where a CPCN has not yet been obtained. CUCA/CIGFUR assert that the PBR process will involve only "cursory review of a proposed project for purposes of ratemaking."[22] The plain language of the PBR Rule shows that assertion to be wholly incorrect and it is unreasonable for CUCA/CIGFUR to suggest that the Commission would grant MYRP rate recognition based only on "cursory review." The PBR Rule contains entire sections detailing the requirements a utility must meet, and evidence the utility must provide, when including a projected capital project in a PBR Application. Specifically, sections (d)(2)i. and j. of the PBR Rule require the utility to provide: a financing plan for the capital spending projects; project costs; all workpapers; a reason for each capital spending project; the scope of the capital spending project; the timing of the project; the depreciation life of the capital project; and impacts of the project. This evidence for a projected capital project will additionally be subject to discovery, as well as reviewed through an evidentiary hearing. Thus, the PBR review process will be

[21] *Id.* at 6.
[22] CUCA/CIGFUR Initial CPCN Comments at 6.

detailed and probing and will "scrutinize…in detail"[23] all projected capital projects (including those requiring a CPCN)—far more than a "cursory" review.

For instance, in the case of a projected solar generating facility included in a PBR application, the PBR Rule requires the utility to demonstrate the "reason for each capital project."[24] In the case of a projected solar generating facility, this would require showing "how the facility would contribute to resource and fuel diversity," "[a]n explanation of the need for the facility, including information on energy and capacity forecasts," and "[a]n explanation of how the proposed facility meets the identified energy and capacity needs, including the anticipated facility capacity factor, heat rate, and service life."[25] In other words, there is no scenario in which the utility could justify a projected solar generating facility in a PBR application without demonstrating the specific factors required under the Commission's CPCN Rule. Furthermore, as explained in more detail below, the Carbon Plan (the initial one of which will be developed prior to an initial PBR decision) will provide even more definitive regulatory guidance regarding the "reason" and "need" for projected solar generating facilities—that is, where the Commission has through a Carbon Plan decision determined the "reason" and "need" for a projected solar generating facility, such decision should guide and, in many cases, simplify both the PBR and CPCN processes.

In summary, it is reasonable for MYRP rate recognition to be granted to a projected capital project in advance of a CPCN because the nature and depth of the review that will occur in a PBR process is substantively the same as the CPCN process. As explained

[23] *Id.*
[24] NCUC Rule R1-17B(d)(2)j.i.
[25] NCUC Rule R8-64.

above, the CPCN process will remain in place post MYRP approval to serve as a subsequent opportunity for the Commission to evaluate projects in the event of any changing circumstances occurring after the PBR process.

c. Intervenors' comments do not meaningfully address the specific types of projected capital projects that may be proposed for inclusion in a PBR Application process and also require a CPCN.

As explained above, the PBR Statute definitively did not impose a requirement that a CPCN is required prior to MYRP rate recognition. In addition, the Commission's PBR review will provide for a probing and detailed assessment of all projected capital to ensure that such projects are needed and will benefit customers, even where such assessment occurs prior to a CPCN process. In addition, consideration of the specific types of projects that would conceivably be proposed as part of a MYRP and will also need a CPCN also illustrates why, practically speaking, it is reasonable for the Commission to grant MYRP rate recognition for a project that does not yet have a CPCN.

As the Utilities explained in their Initial CPCN Comments, there are two discrete categories of projects likely to be included in a PBR application and require a CPCN: (1) new transmission lines equal to or greater than 161 kilovolts and (2) solar generating facilities.[26] As noted above, none of the intervenors discuss transmission project inclusion in a MYRP in their comments. Furthermore, none of the intervenors meaningfully addressed the likely regulatory pathways for future solar generating resources. For instance, none of the intervenors considered the likely future scenarios in which all solar projects to be included in a DEC or DEP PBR Application will likely have been approved in some form or fashion through a Carbon Plan process (or related process) and potentially

[26] Joint Initial CPCN Comments at 7.

also directly or indirectly procured through a structured competitive procurement process. Such future scenarios illustrate why, on a practical level, it is reasonable for the Commission to grant MYRP rate recognition to a project in advance of the CPCN process. Stated simply, it is unreasonable to suggest that a solar project that has been found to be needed and selected by the Commission in a Carbon Plan and then procured through a Commission-approved procurement simply due to the fact that a CPCN has not yet been obtained "exists in the realm of speculation."[27] Instead, it is a project that has been deemed by the Commission to be necessary to further the state's carbon reduction goals and procured through a formal procurement process.

d. Intervenors' position would likely force parallel and duplicative regulatory processes.

The Commission's first question focuses on whether a projected capital project is required to have a CPCN as of the date on which the PBR application is approved (*i.e.,* the date of the Commission's decision on a PBR application). Intervenors fail to address practical sequencing issues and, if adopted, their positions would likely force the utility in many cases to pursue parallel and duplicative regulatory processes that will result in inefficient use of the Commission's resources.

Specifically, intervenors' positions would likely force the Utilities to submit a wave of CPCN applications prior to and during the PBR processes, with the intention of having the Commission, in a proceeding separate from the PBR process, consider the need for such CPCN-dependent projects. As explained above, there is no practical distinction between the PBR process and the CPCN process—both processes assess a projected capital project in a probing and detailed manner to determine whether the project is needed and in

[27] CUCA/CIGFUR Initial CPCN Comments at 2.

the best interest of customers. But intervenors' position would force such processes to occur in parallel.

Such an unreasonable and inefficient outcome makes little sense and is not consistent with the intent of the General Assembly as reflected in the PBR Statute. These sequencing issues further underscore why it is eminently more reasonable to utilize the CPCN process as a gating process subsequent to the PBR process (as explained above) at a later point in time when new or modified information may be available and not as a prerequisite to the PBR process. The former construct is consistent with the PBR Statute and provides a reasonable and efficient regulatory outcome while the latter construct results in duplicative, parallel regulatory processes without any identifiable benefit for customers or basis in the PBR Statute. It is certainly possible that, depending the circumstances, certain isolated CPCN applications might need to be filed at the same time as the PBR process, but under the Utilities' proposal, those would occur where appropriate based on circumstances of each project (*e.g.,* projected construction timelines) and not due to the imposition of an unneeded and unjustified legal requirement.

e. There is no basis in law or Commission practice to suggest that the Commission should disregard prior conclusions in rendering a decision in a CPCN proceeding.

Assuming that the Commission concludes that it may include capital projects in a MYRP prior to a CPCN proceeding, CUCA/CIGFUR, NCSEA, and CCEBA all argue that it is improper for the Commission to rely upon a cost/need determination it already made regarding a proposed project in a PBR Application proceeding, in a subsequent CPCN proceeding. Such arguments are without legal basis and appear to ignore the innumerable ways in which the Commission has historically taken judicial notice of prior decisions and, in many cases, expressly relied on evidence and findings of fact from prior proceedings.

To require duplication of an already established record supporting project need and cost in a separate CPCN docket would be contrary to established practice and a waste of administrative time and resources.

Contrary to intervenor's arguments, the Commission has historically elected to rely on prior decisions and has done so specifically in the context of CPCN proceedings and need-making determinations. For example, in Docket No. E-2, Sub 1257, the Commission relied in part on the Western Carolinas Modernization Project ("WCMP") Order and DEP's 2018 Integrated Resource Plan ("IRP") and 2019 IRP in finding a CPCN need for a 5 MW solar photovoltaic facility to be constructed in Buncombe County, North Carolina.[28] This approach of taking judicial notice of its prior decisions and reliance upon such decisions in determining whether a proposed facility was in fact needed would also be appropriate in a CPCN case involving a facility that was previously approved as part of a MYRP.

Similarly, in the context of the Duke Utilities' Competitive Procurement of Renewable Energy ("CPRE") Program, the Commission codified an "expedited" CPCN review of renewable energy facilities owned by an electric utility and procured under the CPRE Program. Pursuant to NCUC Rule R8-71(k), such projects can receive expedited CPCN approval and are not otherwise required to comply with the requirements of N.C. Gen. Stat. §§ 62-82 or 62-110.1, or NCUC Rules R8-61 or R8-64, further evidencing that need determinations in certain instances can be and are appropriately streamlined in certain circumstances. Notably, and as mentioned above, the capital projects at issue here are likely to be renewable energy facilities owned by an electric public utility and procured

[28] *Order Issuing Certificate of Public Convenience and Necessity with Conditions,* Docket No. E-2, Sub 1257 (Apr. 20, 2021) ("Woodfin Solar") (citing Order Granting Application, in Part, with Conditions, and Denying Application in Part, issued March 29, 2016 in Docket No. E-2, Sub 1089).

through a competitive resource procurement – very similar, if not identical to, CPRE projects for which the Commission has established expedited CPCN review. While the findings of a PBR decision are not dispositive, arguing that a CPCN proceeding should not consider the need/cost precedent determination made for the same project in a PBR Application proceeding (absent any material change in circumstance) and instead must be fully litigated again is not supported by law and inconsistent with the goals of the PBR Statute.

f. Arguments regarding interconnection timelines are issues of fact, not law, and are not relevant to the questions posed by the Commission.

Certain intervenors introduce general and largely unsubstantiated claims[29] regarding the interconnection timelines in support of the argument that the Commission should not grant MYRP rate recognition prior to a CPCN. From a legal standpoint, the PBR Statute grants the Commission authority to allow MYRP rate recognition for projected capital projects that do not have a CPCN, as explained above. However, it is also worth noting that this argument based on historic interconnection timelines raises an issue of fact and not of law. The Commission is fully capable of assessing in a PBR Application any actual or proposed solar project based on the specific facts and circumstances to determine whether the solar project is reasonably projected to achieve commercial operation during the MYRP Plan Period. In some cases, a solar project could conceivably already have an Interconnection Agreement and not be dependent on any System Upgrades. In other cases, a solar project may be dependent on substantial System Upgrades. However, in either circumstance, the Commission (and intervenors) could assess the facts

[29] NCSEA Initial CPCN Comments at 1-3; CCEBA Initial CPCN Comments at 2. CCEBA specifically alleges "endemic delays" in interconnection, while only offering vague details concerning certain unspecified projects from CPRE Tranche 2.

as they are known at the time of the PBR Application to determine whether the projected commercial operation date of the solar project is reasonable. But that factual determination is no different than the factual determination required for all projected capital projects included in the MYRP Plan Period. NCSEA and CCEBA are free to argue that any particular solar project will not be used and useful during the MYRP Plan Period. But that is a question of fact and not of law. Therefore, NCSEA's and CCEBA's comments in this respect should not be given any consideration.

IV. CONCLUSION

WHEREFORE, Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and Dominion Energy North Carolina respectfully request the Commission consider the foregoing reply comments in issuing an order addressing these proposed questions and grant any other relief the Commission deems reasonable and appropriate.

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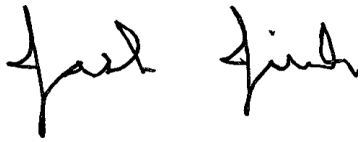
CERTIFICATE OF SERVICE

I certify that a copy of the Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and Dominion Energy North Carolina's Joint Reply Comments Concerning Multiyear Rate Plan Projects and CPCN Requirements filed this day in Docket No. E-100, Sub 178, have been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid, to parties of record.

This the 13th day of April, 2022.



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