

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

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

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Joint Petition of Duke Energy Carolinas, LLC,)	ORDER APPROVING
and Duke Energy Progress, LLC, for Approval)	PRO FORMA RENEWABLE
of Competitive Procurement of Renewable)	POWER PURCHASE
Energy Program)	AGREEMENT

BY THE COMMISSION: The Competitive Procurement of Renewal Energy (CPRE) Program is being implemented pursuant to N.C. Gen. Stat. § 62-110.8, as enacted by North Carolina Session Law 2017-192 (HB 589). Pursuant to N.C.G.S. § 62-110.8(a), Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP and collectively with DEC, Duke), must procure energy and capacity from renewable energy facilities over a term of 45 months (CPRE Program Procurement Period).

During the CPRE Program Procurement Period, Duke is required to add a total of 6,160 MW of renewable energy through a combination of (1) CPRE Program procurement solicitations and (2) the execution of power purchase agreements (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.G.S. § 62-159.2 (Transition MW). Under N.C.G.S. § 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 non-CPRE Program Transition MW capacity.

Section 62-110.8(b)(1) provides that, if during the CPRE Program Procurement Period, Duke contracts for Transition MW in excess of 3,500 MW, the Commission shall reduce the CPRE Program procurement target by the amount of such exceedance. Further, N.C.G.S. § 62-110.8(a) states in part that “[t]he 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[.]”

Through various filings made on November 24, 2021, December 2, 2021, and December 3, 2021, Duke provided information to the Commission regarding the CPRE Program total and the Transition MW total procured during the CPRE Program Procurement Period, as well as its recommendations for the structure and implementation of a Tranche 3 procurement of the CPRE Program.

In summary, Duke proposed that the Commission reduce the CPRE Program procurement target to 1,782 MW and require Duke to initiate a third procurement solicitation (Tranche 3) of the CPRE Program to procure the 596 MW shortfall of the adjusted CPRE Program procurement target. Duke further proposed that the Commission approve a DEC-only procurement, beginning on January 5, 2022. Finally, pursuant to N.C.G.S. § 62-110.8(b)(3) Duke filed its CPRE Tranche 3 “Renewable Power Purchase Agreement” (RPPA) with the Commission for approval.

On December 20, 2021, the Commission issued an Order Determining Adjusted CPRE Program Procurement Solicitation, Approving Resource Solicitation Cluster, and Requiring Response to Commission Questions Regarding RPPA (Tranche 3 Order). Pertinent to the immediate decision, the Tranche 3 Order authorized a Tranche 3 CPRE Program procurement but held off on approving the RPPA pending Duke’s response to two Commission questions regarding the structure of fees to be collected from CPRE bidders (Market Participants or MPs) to cover the cost of the CPRE Program Independent Administrator (IA).¹

First, the Commission inquired as to whether “[i]n the event that DEC exercises its Limited Termination Right pursuant to Section 20.1.2 of the Renewable Power Purchase Agreement², are the Winners’ Fees subject to refund if Duke and the seller fail to reach an agreement on the seller’s payment obligation for the Excess Network Upgrades? In its response, filed on December 28, 2021 (Response), Duke states that “in the event that DEC exercises its Limited Termination Right pursuant to RPPA Section 20.1.2, the Winners’ Fees are not subject to refund if DEC and Seller fail to reach agreement on the Seller’s payment obligation for the Excess Network Upgrades.” Response, 2 (December 28, 2021).

¹ “All reasonable and prudent administrative and related expenses incurred [by the Independent Administrator] shall be recovered from market participants through administrative fees levied upon those that participate in the competitive bidding process, as approved by the Commission.” N.C.G.S. § 62-110.8(d). “The Independent Administrator’s fees shall be funded through reasonable proposal fees collected by the electric public utility. The electric public utility shall be authorized to collect proposal fees up to \$10,000 per proposal to defray its costs of evaluating the proposals. In addition, the electric public utility may charge each participant an amount equal to the estimated total cost of retaining the Independent Administrator divided by the reasonably anticipated number of proposals. To the extent that insufficient funds are collected through these methods to pay of the total cost of retaining the Independent Administrator, the electric public utility shall pay the balance and subsequently charge the winning participants in the CPRE RFP Solicitation.” Commission Rule R8-71(d)(10).

² The Limited Termination Right and Right to Cure provisions in RPPA Sections 20.1.2 and 20.1.3 are new to Tranche 3. As detailed in RPPA Section 20.1.2, DEC can only exercise the Limited Termination Right where the Seller’s estimated network upgrades specified in a completed Facilities Study Report exceed the “Excess Network Upgrade Costs.” This amount is determined by the IA in its initial bid evaluation as the “amount that Seller’s facility’s total project costs could increase without exceeding the avoided cost threshold identified in the RFP.” The winning proposal’s Excess Network Upgrade Costs amount will be specifically identified in RPPA Section 20.1.2. Further, if assigned network upgrades increase above the Excess Network Upgrade Costs threshold and DEC exercises its Limited Termination Right, the Seller will then have a Right to Cure by paying the amount of network upgrade costs exceeding the allocated Excess Network Upgrade Cost amount. See RPPA Section 20.1.3. Where a Seller exercises its Right to Cure, DEC and Seller will enter into a reimbursement agreement assigning Seller the allocated Excess Network Upgrade Cost and the executed RPPA will remain in full force and effect.

Further, Duke states that it has revised the Tranche 3 Request for Proposal (RFP) Section II.E to clarify that Winners' Fees are nonrefundable:

The "Winners' Fee" is the amount to be determined as described below in order to recover any remaining IA costs not covered by the Proposal Fee. The Winners' Fee will be determined upon conclusion of the RFP and shall be paid by each winning Proposal to DEC within thirty calendar days of invoice receipt. Any such Winners' Fee costs will be allocated among all winning Proposals on a pro-rata basis on a per MW basis and will be non-refundable. The total of the Winners' Fees shall not exceed \$1.5 million.

Id., at 3 (emphasis in original). Finally, Duke advises the Commission that the IA supports the final RFP as revised and states that the revised Tranche 3 RFP is also being posted by the IA to the IA Tranche 3 Website "[c]ontemporaneously with this filing[.]" No stakeholder opposition has been filed in these dockets related to the revised RFP.

Second, the Commission inquired whether "[i]f the Winners' Fees are subject to refund, does the Tranche 3 program fee structure ensure that all Tranche 3-related IA fees will be recovered from Tranche 3 Market Participants?" As is discussed above, Duke has provided clarity to the Commission and via the RFP that Winners' Fees are nonrefundable.

Based on Duke's Response to the Commission's questions contained in the Tranche 3 Order and the entire record, the Commission finds good cause to approve the RPPA.

Finally, Duke's Response advises the Commission that, due to a larger than previously anticipated procurement, the IA's earlier Tranche 3 fee estimate³ has increased by 40% from approximately \$674,171.40 to approximately \$943,839. The RFP provides for a combination of Proposal Fees and Winners' Fees to recover the IA's costs similar to prior RFP Tranches. The Proposal Fee is required to be submitted with each Market Participant's Proposal and is a nonrefundable amount of \$500/MW, based on the Facility's nameplate capacity, up to a maximum of ten thousand dollars (\$10,000). The Winners' Fee is an amount determined upon the conclusion of the RFP to recover any remaining IA costs not previously recovered by the Proposal Fee. Only successful market participants selected through the RFP will be responsible for Winners' Fees, and the fee will be allocated on a pro-rata basis on a per MW basis to each successful market participant. The RFP provides that total of the Winners' Fees shall not exceed \$1.5 million. Duke finally states that

Assuming the IA's scope of work and fee estimates are reasonably accurate and there are no significant post-solicitation expenses (identified as Exclusions in the IA's scope of work), the Tranche 3 program fee structure of

³ See CPRE Tranche 3 IA Scope of Work (November 24, 2021).

Proposal Fees and Winners Fees is reasonably designed to recover all Tranche 3-related IA fees from Tranche 3 market participants.

Response at 2 (pages unnumbered).

The Commission notes that in both Tranches 1 and 2 the IA's fees ultimately exceeded the fees collected from Market Participants (MPs). This precedent has led the Commission on several recent occasions to direct Duke to ensure that its future CPRE Program procurement fee structures are designed to recover all IA fees from MPs. See, e.g., Order Approving CPRE Program Cost Recovery Rider and CPRE Program 2020 Compliance Report, Docket No. E-2, Sub 1275 (November 18, 2021); Order Approving CPRE Rider and CPRE Program Compliance Report, Docket No. E-7, Sub 1247 (August 17, 2021).

The Commission does not take lightly the requirements contained in N.C.G.S. § 62-110.8(d), that “[a]ll reasonable and prudent administrative and related expenses incurred [by the Independent Administrator] shall be recovered from market participants through administrative fees levied upon those that participate in the competitive bidding process, as approved by the Commission[.]” and Commission R8-71(d)(10), which states in pertinent part that “[t]o the extent that insufficient funds are collected through these methods to pay of the total cost of retaining the Independent Administrator, the electric public utility shall pay the balance and subsequently charge the winning participants in the CPRE RFP Solicitation[.]” The Commission is concerned by the substantial increase in the IA's estimated fees as reported by Duke its Response; however there is no opposition in the record to Duke's assessment that the fee structure for Tranche 3 “is reasonably designed to recover all Tranche 3-related IA fees from Tranche 3 market participants[.]” Should the IA's Tranche 3 fees ultimately exceed the amounts collected from MPs, the Commission will consider first the legality (particularly in light of the repeal of N.C.G.S. § 110.8(h)(5) by Session Law 2021-165) and then the reasonableness of any excess fees in future CPRE Program cost recovery rider proceedings.

IT IS, THEREFORE, ORDERED that the RPPA is hereby approved.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of January, 2022.

NORTH CAROLINA UTILITIES COMMISSION



Erica N. Green, Deputy Clerk