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June 3, 2022

Ms. A. Shonta Dunston
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

via: Electronic Submittal

**RE: In the matter of
Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC,
2022 Solar Procurement Pursuant to Session Law 2021-165, Section 2(c)
NCUC Docket Nos. E-2, Sub 1297 and E-7, Sub 1268
*Comments of the Clean Power Suppliers Association and the
Carolinas Clean Energy Business Association on Draft Request for Proposal***

Dear Ms. Dunston:

Pursuant to the Commission's May 26, 2022 Order Authorizing a Competitive Procurement of Solar Resources Pursuant to House Bill 951 and Establishing Further Procedures and the Commission's June 1, 2022 Order Requiring Answers to Commission Questions and to provide Comments on the Request for Proposals for New Solar Resources (Draft RFP) filed by Duke Energy Progress LLC and Duke Energy Carolinas LLC (collectively, "Duke" or the "Companies") in the above referenced consolidated dockets on June 1, 2022, attached please find Clean Power Suppliers Association's ("CPSA") and Carolinas Clean Energy Business Association ("CCEBA") (collectively "Joint Commenters") Comments on the Draft Request for Proposal.

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota
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Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

/s/ Benjamin L. Snowden

Benjamin L. Snowden
Counsel for Clean Power Suppliers Association

pbb

Enclosure

Copy to: Counsel of Record
Parties of Record

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JUN 03 2022

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1297
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 2022 Biennial)	
Integrated Resource Plans and Carbon)	COMMENTS OF THE CLEAN
Plan)	POWER SUPPLIERS
)	ASSOCIATION AND THE
And)	CAROLINAS CLEAN ENERGY
)	BUSINESS ASSOCIATION ON
In the Matter of)	DRAFT REQUEST FOR
Duke Energy Progress, LLC and Duke)	PROPOSAL
Energy Carolinas, LLC 2022 Solar)	
Procurement Pursuant to Session Law)	
2021-165, Section 2(c))	

NOW COME proposed Intervenor Clean Power Suppliers Association (“CPSA”) and the Carolinas Clean Energy Business Association (“CCEBA”) (collectively, “Joint Commenters”) pursuant to the North Carolina Utilities Commission’s (“Commission”) May 26, 2022 Order Authorizing a Competitive Procurement of Solar Resources Pursuant to House Bill 951 and Establishing Further Procedures (“May 26 Order”) and June 1, 2022 Order Requiring Answers to Commission Questions (“June 1 Order”), and provide the following comments on the Request for Proposals for New Solar Resources (“Draft RFP”) filed by Duke Energy Progress LLC and Duke Energy Carolinas LLC (collectively, “Duke” or “the Companies”) in these consolidated dockets on June 1, 2022, and on certain questions posed by the Commission in the June 1 Order.

A. COMMENTS ON DRAFT RFP

Joint Commenters are generally supportive of the terms of the RFP. As noted by the Independent Evaluator (“IE”) in its Pre-Solicitation Report for Duke Energy’s 2022 Solar Procurement Program Request for Proposals process filed on June 1 (“Pre-Solicitation Report”), Duke was generally responsive to stakeholder input on the April 2022 Draft RFP and made a number of changes to the RFP in response to feedback from Joint Commenters and other stakeholders. However, a few issues merit discussion.

1. Re-pricing mechanism

While Joint Commenters are generally supportive of requiring PPA Track proposals to refresh their “Part A” bid in April 2023, there are two aspects of the implementation of re-pricing in Sections VI.C. and VI.D. of the Draft RFP that are highly problematic.

a. One-way bid refresh

Section VI.D. of the RFP provides that bidders will be required to refresh their bids in April, 2023, but may not exceed their initial pricing. In other words, bids may go down but not up.

Joint Commenters are absolutely in favor of allowing bidders adjust their bids downwards in April 2023 if the federal investment tax credit for renewable energy projects (“ITC”) is extended or expanded, as this will allow the benefits of an ITC extension or other positive market developments to be passed on to ratepayers. Joint Commenters understand the intuitive appeal of only allowing a downward adjustment, so that the bid refresh will not result in increased cost to ratepayers. However, allowing only a one-way

adjustment may have the perverse effect of increasing the cost of solar procured under the RFP.

As the Commission is likely aware, the United States Department of Commerce is currently investigating allegations, raised in a petition filed in February by Auxin Solar Inc., that solar panel manufacturers are circumventing antidumping / countervailing duties on Chinese solar cells and panels by manufacturing these products in certain countries in Southeast Asia (“the AD/CVD petition”).¹ One possible outcome of that investigation would be the imposition of tariffs on solar modules imported from those countries, which could have a marked impact on solar development costs in the United States. It is likely that the AD/CVD petition will be resolved by next April, when the bid refresh is slated to occur.

If bidders are not afforded the opportunity to re-price their proposals upward in response to the imposition of tariffs or other impacts of the AD/CVD Petition, then bidders must factor the risk that tariffs will be imposed into their proposals. This is likely to raise the aggregate bid price in the 2022 RFP, even if tariffs are not imposed. Furthermore, because there are many possible outcomes of the Department of Commerce’s investigation, bidders are likely to factor in the risk of the AD/CVD Petition in very different ways. This means that even if the petition is ultimately denied, allowing bidders to adjust their prices downward in April 2023, the re-pricing may result in significant re-ordering and instability in the projects selected in Step 2. The downward-only could also result in otherwise-competitive proposals being eliminated in Step 1 of the process (well before re-pricing),

¹ See 87 Fed. Reg. 19,071 (Apr. 1, 2022).

simply because those developers chose to make more conservative assumptions about the potential risks of the AD/CVD petition. And if the petition is granted, then bidders who made more optimistic assumptions about the outcome of the petition may be forced to withdraw from the RFP.

Joint Commenters acknowledge that the downward-only refresh may protect ratepayers from the possibility that RFP pricing will go up, *relative to the original bids*. However, if it results in the original bids being higher, this protection is illusory. However the RFP is structured, bidders will not be able to deliver on PPA prices that are too low to fund project development. Structuring the RFP in a way that requires bidders to factor in the risk of significant panel pricing changes at the beginning of the process is likely to result in higher cost to ratepayers. Joint Commenters also note that in the event pricing does go up, the Volume Adjustment Mechanism proposed to be used for the RFP (discuss on page 3 of the Commission's May 26 Order) will serve to protect ratepayers from significant increases in PPA pricing, and to allow ratepayers to capture some of the benefits of lower-than expected pricing.

Finally, there is neither logic nor symmetry to Duke's proposal. There are two major policy changes under consideration that could significantly affect solar pricing. The first is that Congress, through pending budget reconciliation legislation, could extend and expand current tax credits for solar energy investments, which would *reduce* the delivered cost of solar resources. The second, as discussed, is that the Department of Commerce could impose duties on imported solar equipment that could *increase* the delivered cost of solar. It makes no sense to direct bidders to assume in preparing their bids that the former policy change will not occur but that the latter one will. Rather, bidders should be directed

to base their bids on the status quo (*i.e.*, no ITC extension and no additional tariffs), and to adjust bids upward in the event of favorable changes to existing tax policies and downward in the event of unfavorable changes in existing trade policy.² And, to be clear, such adjustments should only be allowed if the policy changes in question in fact occur.

b. UOT proposal re-pricing

Duke acknowledges that UOT proposals will not be impacted by an ITC extension, but nonetheless proposes to require UOT proposals to refresh their bids in April 2023 “to ensure customers receive the benefits of any reduction in project costs.” Although Joint Commenters do not object in concept to UOT projects refreshing their bids, there is one very significant problem with this proposal: it gives Duke the opportunity to re-price its own UOT proposals *after having reviewed every other UOT bid*. As provided in Section VI.C. of the RFP, the Duke Evaluation Team will have reviewed and ranked all UOT proposals in the Step 1 process before Duke re-prices its own bids. It will also receive cost information on all projects from the DEC/DEP DISIS Phase 1 System Upgrade estimates, including interdependencies within Phase 1 and interdependencies with prior-queued projects.

As noted by Joint Commenters in the stakeholder process, the same personnel making up the Duke Evaluation Team are also responsible for preparing the Companies’ UOT proposals. Although Joint Commenters have no reason to doubt that the IE will exercise independent oversight to mitigate the possibility of Duke giving its projects an unfair advantage in bid evaluation, the IE is not involved in the preparation of Duke’s UOT

² Of course, both policy changes could occur, in which case bidders would need to account for the net impact of those two changes on pricing.

bids, and there is absolutely nothing to prevent the Companies from considering market information gleaned in the evaluation process in formulating its refreshed bids. Other UOT bidders will not have such market information when re-pricing their proposals.

Duke claimed in the stakeholder process that the Companies have no financial incentive to favor their own UOT bids in the evaluation process. The IE Report makes the somewhat more limited claim that “the strict 55%/45% ownership allocation dictated by HB 951 significantly reduces the financial motivation for the Companies to favor the self-developed option given the earnings are the same whether the asset is self-developed or acquired.” Pre-Solicitation Report at 11.

But even if there is no difference in terms of *cost recovery* standpoint between self-developed and acquired UOT assets, this does not mean that the Companies are financially indifferent to whether its projects are selected. At the conclusion of the procurement, Duke will either be paying third-parties for UOT projects or (effectively) paying itself for those projects. Presumably those project awards would go towards paying the salaries of Duke employees and the Companies’ overhead, to the ultimate benefit of Duke shareholders. Indeed, it is hard to understand why Duke would go to the significant effort and expense of developing UOT bids if there were nothing in it for the Companies.

Given the clear opportunity that a UOT re-pricing presents for Duke to create advantages for its proposals based on access to information about other UOT proposals, the Commission should either bar Duke from re-pricing its UOT proposals, or separate the personnel responsible for preparing Duke’s UOT proposals from the Duke Evaluation Team.

B. RESPONSE TO COMMISSION QUESTIONS IN THE JUNE 1 ORDER

In the June 1 Order, the Commission directed Duke to respond to the following questions, and invited other parties to provide comments on this issue:

1. Confirm that System Upgrades will be taken into account when evaluating the cost-effectiveness of bids and ranking the bids for the 2022 procurement, and provide an explanation how the costs will be evaluated.
2. Identify any System Upgrade projects that will be included the baseline for 2022 DISIS that: i) were identified in the TCS; ii) were referenced in the Carbon Plan or the 2022 NCTPC Study Scope Document; or iii) were previously identified as network upgrades that would have been assigned to an interconnection customer.
3. For any System Upgrade projects identified in the answer to Question No. 2, explain how including the identified upgrades in the baseline for the 2022 DISIS will impact the 2022 procurement process, paying particular attention to whether such inclusion has the potential to impact the cost-effectiveness of bids.

Joint Commenters respectfully submit that the Commission's questions need to be viewed in the light of the evolving public policy considerations presented by the Federal Energy Regulatory Commission's ("FERC") recent Notice of Proposed Rulemaking on Transmission Planning and Cost Allocation,³ the work of the FERC-NARUC Joint Task Force on Transmission and Interconnection, and concepts recognized by Duke in its proposed Carbon Plan and approach to implementing H.B. 951. In a nutshell, there is broad recognition that utilities and other transmission operators should be identifying System Upgrades that are needed to achieve public policy goals, such as those of H.B. 951, and that in light of the broad public benefits provided by such upgrades – both to many generation projects and to the system and its users – the cost of such upgrades should not be

³ Notice of Proposed Rulemaking: Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, 179 FERC ¶ 61,028 (Apr. 21, 2022) ("NOPR").

attributed to or paid for by individual generation projects. On the other hand, where individual generation projects, or clusters of such projects, require upgrades that are not included in proactive utility or RTO transmission plans, or to the extent they do not otherwise provide system benefits, such upgrades should be assigned to and paid for by the relevant generators.⁴

Consistent with these principles, Duke has identified in the Carbon Plan certain near-term System Upgrades that it believes – correctly in Joint Commenters’ opinion – are necessary to achieve the goals of the Carbon Plan and to benefit its system as a whole, a large volume new generation, and ultimately Duke’s customers (the “Carbon Plan Upgrades”). The need for and approval of such upgrades is a FERC-jurisdictional matter that FERC has elected to address and manage through the Transmission Planning Collaborative (“TPC”) process. In addition, Duke has appropriately recognized the concepts described above by recently confirming that it does not intend to assign the cost of the proactive System Upgrades to 2022 RFP bidders, assuming that such upgrades are included by the TPC in its annual Transmission Plan. In contrast, to the extent that the DISIS study process identifies System Upgrades that are needed to interconnect 2022

⁴ It should also be noted that the NOPR explicitly (albeit preliminarily) finds that FERC’s current regional transmission planning and cost allocation requirements are no longer just and reasonable because they fail to “consider the broader set of benefits and beneficiaries of regional transmission facilities planned to meet those transmission needs.” NOPR at P 47. FERC goes on to state: “We believe that these deficiencies may be resulting in unjust and unreasonable and unduly discriminatory and preferential Commission-jurisdictional rates to the extent that they lead public utility transmission providers to fail to identify transmission needs driven by changes in the resource mix and demand, select more efficient or cost-effective transmission facilities to meet those transmission needs, and allocate the costs of transmission facilities selected in the regional transmission plan for purposes of cost allocation to meet those transmission needs in a manner that is at least roughly commensurate with the estimated benefits.” NOPR at P 47.

bidders and that are not included in the annual plan, the cost of such Upgrades should be allocated to relevant bidders in the same manner as was done in CPRE but recovered by Duke from ratepayers for the reasons recognized by the Commission in its approval of the CPRE program.

That is not to suggest that System Upgrade costs are irrelevant to the 2022 procurement process. In approving the 2022 procurement, Commission has determined that the final procurement volume should be established after (i) the Carbon Plan and stakeholder comments have been fully considered by the Commission; (ii) bid pricing has been received, and (iii) preliminary upgrade costs for proposed projects has been determined through the DISIS Phase 1 study process. As a result, System Upgrade costs will play a role in determining both the total near-term solar procurement needs and the portion of such total procurement that should be made in 2022. With respect to System Upgrades included in the TPC Transmission Plan, the expected cost of such upgrades has already been included in the capacity expansion and cost production modeling that informs Duke's proposed Carbon Plan, so an impact to procurement volume from those cost would only occur if the Commission were to conclude that the assumed costs are inaccurate. With respect to additional System Upgrades resulting from the DISIS study process, if the cost of such upgrades as identified in DISIS were to exceed Duke's assumed cost, there could potentially be some impact on total Carbon Plan and 2022 solar procurement volumes. However, Joint Commenters believe that is unlikely given how much cheaper solar generation is than most of the generation resource alternatives.

To summarize, in Joint Commenters' view, it is reasonable to consider the cost of the Carbon Plan Upgrades in examining the cost-effectiveness of any portfolio of generating projects. However, as noted that the Carbon Plan Upgrades are not designed to facilitate the interconnection of a single project, or even a single tranche of projects procured through an RFP. According to Duke, those Upgrades will create significant "headroom" for the interconnection of later generating projects required for HB 951 compliance. Because the benefits of those proposed Upgrades go far beyond any individual project or tranche of projects, it would be inappropriate to consider the cost of those Upgrades in ranking individual projects in an RFP. However, to the extent that the DISIS study determines that System Upgrades *not* included in the Transmission Plan are needed to interconnect projects bidding into the 2022 procurement, such costs should be attributed to such projects for the purpose of bid evaluation, in accordance with Duke's approved interconnection procedures.

Respectfully submitted this the 3rd day of June 2022.

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/s/ Benjamin L. Snowden

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CERTIFICATE OF SERVICE

I hereby certify that all persons on the Commission's docket service list have been served true and accurate copies of the foregoing Comments by hand delivery, first class mail, deposited in the U. S. Mail, postage pre-paid, or by e-mail transmission with the party's consent.

This 3rd day of June, 2022.

/s/ Benjamin L. Snowden

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