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2. Joining the Regional Greenhouse Gas Initiative (RGGI) would drive quicker and deeper carbon dioxide emissions reductions than would otherwise occur. The additional emissions reductions caused by joining RGGI could be sufficient to bring a portfolio that failed to comply with H951's 2030 emission-reduction requirement into compliance with the law. Joining RGGI would generate significant revenue, which could be invested in increased energy efficiency programs, causing further emissions reductions and ratepayer savings. It is appropriate to open a docket on North Carolina's participation in RGGI. It is appropriate to ask the Environmental Management Commission to finalize RGGI rules expeditiously.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence for this finding is found in the testimony and exhibits of joint SACE et al. and NCSEA Witness Dr. Uday Varadarajan and the entire record in this proceeding.

Summary of Evidence

Information about RMI's use of Optimus to quantify the allocation of economic and ratepayer impacts of different Carbon Plan scenarios was provided by SACE et al. and NCSEA Witness Dr. Uday Varadarajan and in the two RMI reports, the first, Official Exhibits, vol. 23—Analyzing the Ratepayer Impacts of Duke Energy's Carbon Plan Proposal (Jul 15, 2022) (RMI Report)—and the second, Official Exhibits, vol. 23, Ex. UV-2—Supplemental Report: Analyzing the Ratepayer Impacts of Duke Energy's Carbon Plan Proposal and Synapse's Alternative Scenarios (Sep. 2, 2022) (RMI Supplemental Report). The Optimus analysis supports the selection of a least cost resource portfolio by examining "the distributional economic impacts of a portfolio. . . and how the distributional impacts might be further affected by plausible future events — such as fuel price shocks, state utility regulation reform, and the adoption of new federal policies." RMI Report at 2.

Optimus is an open-source financial modeling tool developed by RMI "that quantifies the distribution of economic impacts of utility planning scenarios among ratepayers, the utility, and the utility's shareholders." *Id.* at 1. Optimus allows the calculation of all-in "ratepayer costs using the full revenue requirement to better reflect the cumulative impact on ratepayers and help the utility, the Commission, and intervening parties identify opportunities to reduce the cumulative costs of each portfolio scenario through mechanisms such as securitization." In contrast, the NPVRR provided by Duke only considers "the forward-looking incremental costs" of a given portfolio. *Id.* at 6-7. Optimus "considers the evolution of the entire portfolio (both existing and additions) and estimates the differential impact amongst" different customer classes, providing a more holistic view of likely bill impacts from various portfolios. *Id.* at 7; RMI Supplemental Report at 12. Duke's approach to estimating residential bill impacts represents an average impact,

without considering how the costs of the existing portfolio could change or how the costs would be spread across customer classes. *Id.*

RMI's initial analysis of the Duke Resources Portfolio was based on the Synapse EnCompass outputs that recreated the Duke Portfolio P-1 Alt. (no Appalachian Gas). *Id.* at 8. RMI reported that it was not able to make use of the EnCompass outputs that Duke provided, in part because they did not include the installed cost associated with each asset in the portfolio and in part because RMI was unable to "validate and calibrate Duke's analysis" using the EnCompass files provided by Duke. *Id.*; RMI Supplemental Report at 12. In addition, RMI's initial analysis was based on Synapse's recreation of the Duke Resources using a version of EnCompass that was later determined to contain a "bug" that affected how the model treated coal-fired power plants that have been converted to run partially on gas. RMI Report at 8. The RMI Supplemental Report analyzed the Duke Resources portfolio as modeled in EnCompass 6.0.4 and compared it to the Synapse Optimized and Regional Resources Portfolios. RMI Supplemental Report at i.

Based on its Optimus analysis, RMI concluded that both the Synapse Optimized and Regional Resources are more cost-effective than Duke Resources, primarily because they do not include new gas and nuclear, unlike the Duke Carbon Plan P1-Alt Portfolio. RMI Supplemental Report at 16. The capital expenditures for new battery storage and solar resources are the main cost drivers in the Synapse Optimized portfolio, but those costs are less than the costs for new gas and nuclear plants included in the Duke Resources portfolio. *Id.* RMI quantified those savings as more than \$20 billion in net present value savings for ratepayers over 28 years. *Id.* at 17. Witness Varadarajan testified that Duke's plan to invest in gas capacity over the near term "also exposes ratepayers to significant risk through investment in assets that will either need to be converted to hydrogen (at costs that are highly uncertain today as the technology has not yet been deployed at scale) or will be obsolete before they are fully depreciated." Tr. vol. 23 at 239.

Considering distributional impacts, RMI determined that the Synapse Optimized portfolio provides savings over the Duke Resources scenario for all customer classes starting in 2025, with the largest relative savings for residential customers. RMI Supplemental Report at 18. The Synapse Optimized portfolio is also more resilient to future fuel price spikes and greater electrification of the economy. *Id.* at 21-23. In addition, RMI concluded that the Duke Resources scenario would exacerbate the pre-existing rate disparity between DEC and DEP customers, whereas the Optimized and Regional Resources scenarios would mitigate that rate disparity. Tr. vol. 23 at 234.

RMI concluded that the updated analysis in the Supplemental Report confirms the conclusion reached in the first RMI Report, which is "that portfolios with higher reliance on energy efficiency and higher penetration of renewables can be less expensive than Duke's proposed Carbon Plan portfolio and still meet the

requirement for a 70% emission reduction by 2030.” RMI Supplemental Report at 26. “Even absent consideration of the aforementioned execution risks, the Optimized and Regional Resources scenarios in aggregate distribute the costs of the transition more equitably amongst ratepayer classes.” *Id.* Given the short time between the enactment of the IRA and the deadline for intervenor testimony, RMI was not able to conduct additional modeling on the effects of the IRA on these portfolios. *Id.* Nevertheless, RMI concluded that “[i]f capacity expansion and production cost modeling were run today with the realities of the IRA reflected, scenarios with accelerated deployment of mature clean energy resources such as wind, solar, and storage and lower utilization of fossil fuels would likely have even lower costs than the scenarios currently before the Commission.” *Id.* at 26-27. Witness Varadarajan testified that the Duke Resources scenario is overly exposed to execution risk because it has less opportunity to benefit from the incentives and other policies implemented by the IRA. Tr. vol. 23 at 240. Duke did not ask any questions of Witness Dr. Varadarajan or address the RMI reports in its testimony.

The RMI Optimus analysis provided the only attempt by any party to the proceeding to estimate an “all-in” cost analysis of modeled portfolios. Public Staff witness McLawhorn testified about the importance of developing a more comprehensive, “all-in” cost analysis for the Carbon Plan. Tr. Vol. 23 at 108. In addition, Witness McLawhorn criticized the exclusion of fixed costs from existing generation plants from Duke’s carbon plan cost analysis, because such an omission “artificially suppresses operational costs in the near term and masks an analysis of tradeoffs between capital costs and production costs associated with renewable resources.” *Id.* at 108-09. According to the Public Staff, such a future bill analysis should include the effects of riders. *Id.* at 109. CIGFUR Witness Muller testified that the Commission should require “revised Carbon Plan cost estimates and rate impacts that paint a more all-encompassing and accurate picture of what the ‘all-in’ cost and bill impact forecasts expected to be shouldered” by North Carolinians will be. Tr. Vol. 25 at 354. At the hearing, counsel for Walmart, CIGFUR, and the Tech Customers pursued questions about ways to determine a more accurate picture of “all-in” costs from the Companies’ Carbon Plan proposals to the Duke Modeling Panel and to Witness Bateman.

Discussion and Conclusions

The Commission concludes that the financial and ratepayer analysis of resource portfolios conducted by RMI using its Optimus tool provides important information for Commission consideration when developing a least-cost Carbon Plan. RMI’s analysis demonstrates that Synapse’s Optimized and Regional Resources portfolios will likely cost less to ratepayers than the Duke P1-Alt portfolio. As noted by the Public Staff and several intervenors during the evidentiary hearing, there is value in providing a more detailed analysis of the distributional effects of various carbon plan portfolios, considering the likely impact to the rates of different customer classes and to the customers of DEC and DEP. In the next carbon plan update, Duke should make use of Optimus or another

comparable tool to estimate the ratepayer impacts of its proposed portfolios for Commission consideration.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The evidence for these findings is found in Company's Initial Carbon Plan filing on May 15, the filings of Public Staff and other intervenors, the testimony and exhibits of the witnesses, and the entire record in this proceeding.

Summary of Evidence

Synapse's EnCompass analysis used to produce the Synapse Report includes a sensitivity examining the effect of joining the Regional Greenhouse Gas Initiative (RGGI) on each of the three scenarios modeled for the report. Official Exhibits vol. 25, 171-72 [PDF].

Synapse modeled North Carolina joining RGGI by applying a per-ton price to carbon emissions, based on the projected RGGI-wide clearing price, using an annual RGGI allowance cost forecast developed by a private firm. Official Exhibits vol. 25, 171 [PDF] n.25. The forecast cost of carbon emissions ranged from \$10 to \$50 per ton of carbon dioxide emitted. *Id.* at 172 [PDF]. The RGGI carbon price shifted marginal generation from coal to gas resources, resulting in reductions of emissions of 200,000 to 1.1 million tons annually. *Id.* This reduction was sufficient to bring Synapse's "Duke Resources" scenario—designed to mimic Duke's "Portfolio 1 -Alternate" portfolio—into compliance with H951's 2030 carbon-reduction requirement. *Id.* In addition, RGGI would generate revenue of \$2 billion on a net-present-value basis by 2030 and \$3.7 billion by 2050, which would pay for the entirety of the energy efficiency in the "Duke Resources" scenario. *Id.*

CLEAN Intervenors request that the Commission include in its Carbon Plan modeling a sensitivity analysis for North Carolina joining RGGI, including evaluating the benefits of investing the resulting revenue and, if the analysis shows that RGGI creates benefits for ratepayers, open a docket on North Carolina's participation in RGGI and ask the Environmental Management Commission to finalize RGGI rules expeditiously. Supplemental Joint Comments at 8.

Public witness Katie Craig, for the North Carolina Public Interest Research Group, testified that North Carolina should consider joining RGGI because it has been effective in cutting power plant pollution in half compared to 2005 levels for states that have already joined. Tr. vol. 1, 70. Witness June Blotnick, for CleanAIRE NC, urged the Commission to create a Carbon Plan that includes RGGI because it would efficiently and consistently reduce emissions, pointing out that according to a recent report RGGI prevented almost 50 million tons of carbon dioxide from being emitted into the atmosphere and that it is associated with strong economic growth. Tr. vol. 4, 28.

CLEAN Intervenor's witness Tyler Fitch testified concerning the RGGI sensitivity in the Synapse Report. Witness Fitch testified that ratepayers could save as much as \$2.9 billion through investment in energy efficiency beyond that proposed by Duke. Tr. vol. 24, 137, 185. Mr. Fitch recommended expanding energy efficiency savings targets to 1.5 percent of total retail load and investing in utility energy efficiency programming to achieve that target. *Id.* at 137-38. He testified that Synapse used a 1.5 percent incremental savings target because it represented an achievable target in line with peer utilities. *Id.* at 183. To achieve that level of energy efficiency, Synapse proportionally scaled Duke's existing utility energy efficiency programs and costs. *Id.* at 183-84. The result was a savings of \$2.9 billion by 2050. *Id.* at 185.

Discussion and Conclusions

The Commission finds the Synapse Report's conclusions concerning joining RGGI compelling. Although other parties disputed portions of the Synapse Report, none disputed its RGGI sensitivity. Therefore, the Commission concludes that Synapse's findings concerning joining RGGI are very likely at least directionally correct.

Based on Synapse's modeling, the Commission determines that joining RGGI would likely cause quicker and deeper reductions in carbon dioxide emissions than would otherwise occur. These carbon reductions could enable a portfolio that would otherwise fail to achieve H951's 70-percent-by-2030 emission-reduction requirement into compliance with the law, helping to ensure the Commission's successful execution of its mandates under H951. In addition, the revenue generated by the RGGI auction could be invested in energy efficiency, among other public-benefit investments, including flowing revenue to low-income ratepayers to help reduce their electricity bills. The revenue that could be generated by the RGGI auction would be sufficient to fund a significant increase in Duke's energy efficiency programs.

For the foregoing reasons, the Commission concludes that it is appropriate to open an investigatory docket on North Carolina's potential participation in RGGI. The Commission understands that a proposed rule seeking to accomplish that end is currently under consideration with the Department of Environmental Quality's Environmental Management Commission (EMC). The Commission will inquire with the EMC concerning the status of the rule and the potential to expedite its finalization as an auxiliary measure supporting the Commission's efforts to take all reasonable steps to ensure that the carbon-reduction requirements in H951 are met at least cost to ratepayers.

Further Discussion and Guidance

In addition to the Commission's findings and conclusions set forth above, the Commission has determined that it would be appropriate to provide additional

guidance with respect to the non-expert hearing track issues identified in the July 29, 2022 Order Scheduling Expert Witness Hearing, Requiring Filing Of Testimony, And Establishing Discovery Guidelines and certain other legal and policy issues raised in the Initial Comments and Responsive Comments of various parties and intervenors. The Commission has given particular attention to the following three topics: (1) rule-making procedures for revisions to the Commission's IRP Rule R8-60, (2) rule-making procedures for revisions to the Commission's rules for certificating new generating facilities to support execution of the Carbon Plan, and (3) assurances for purposes of future recovery of costs incurred for project development activities.

Future Rulemaking Proceedings

In its eighth request for relief, the Companies ask the Commission to "Direct the Companies and the Public Staff to develop and propose for comment by January 31, 2023, revisions to the Commission's IRP Rule R8-60 and related rules for certificating new generating facilities to support execution of the Carbon Plan[.]" [Duke] Verified Petition for Approval of Carbon Plan, at 17 (May 16, 2022) (Verified Petition).

Although several parties agreed that the Commission should initiate a rulemaking process, no party endorsed Duke's request without caveats or modifications. In its July 15, 2022 comments, the Public Staff agreed that revisions to Commission Rule R8-60 are necessary, but requested that the comment due date be April 28, 2023, to allow more time for all parties to develop draft rules. Comments of the Public Staff (July 15, 2022) at 163 (Public Staff Initial Comments). CCEBA stated that it supports Duke's proposed approach, "so long as full opportunity is given for stakeholder and intervenor participation, comment, and feedback." Comments and Issues of the Carolinas Clean Energy Business Association at 58 (July 15, 2022). CLEAN Intervenors argued that it was unnecessary to grant Duke's request for relief because the Commission had already signaled its intent to convene such a rulemaking proceeding, that Duke's proposed timing would require development of draft rules to begin prior to the issuance of the Carbon Plan, and because "it is inappropriate for Duke and the Public Staff to develop changes to Rule R8-60 behind closed doors and without input of other stakeholders." Joint Comments of the North Carolina Sustainable Energy Association, the Southern Alliance for Clean Energy, the Sierra Club, and the Natural Resources Defense Council (July 15, 2022) at 32-33 (CLEAN Intervenor Initial Comments). Similarly, the AGO commented that "Duke's request for an order directing Duke and the Public Staff to jointly develop and propose revisions to the rules appears to exclude other engaged stakeholders without good cause. All interested parties should be encouraged to participate as in other rulemaking dockets." Responsive Comments of the Attorney General's Office at 6 (AGO Responsive Comments). Walmart Inc. (Walmart) commented that the Commission

should not convene such proceeding until after issuance of a final order in this case and participation should not be limited to only the Companies and Staff but should instead be open to all parties. Moreover, because HB 951 imposes on the Commission the obligation to create a Carbon Plan, the Commission or a neutral third party selected by the Commission should oversee this rulemaking process. The Commission should ensure that sufficient time is given to the parties to evaluate proposed changes to the rules.

Responsive Comments of Walmart, Inc. (Sept. 9, 2022) at 4-5 (Walmart Responsive Comments).

Conclusions – Future Rulemaking Proceedings

The Commission has previously announced its intent to “initiate, by separate order and subsequent to undertaking the development of the initial Carbon Plan, a rulemaking proceeding to revise Commission Rule R8-60 to reflect the approach of syncing the Carbon Plan with the IRP proceedings.” *Order Requiring Filing of Carbon Plan and Establishing Procedural Deadlines* at 1-2 (November 19, 2021) (internal footnotes omitted). Consistent with the Commission’s emphasis in this proceeding on “collaborative work[.]” *Order Requiring Filing of Carbon Plan and Establishing Procedural Deadlines* at 2 (November 19, 2021), “consensus[.]” *Order Requiring Filing of Carbon Plan and Establishing Procedural Deadlines* at 2 (November 19, 2021), and a “meaningful stakeholder process,” *Order Regarding Data Inputs and Assumptions, and Scheduling Additional Update on Stakeholder Process Sufficiency* at 2 (March 22, 2022), the Commission determines that it is appropriate for a broader group of interested parties to work together to develop proposed changes to Rule R8-60 and related CPCN rules at the outset, rather than Duke and the Public Staff developing proposed changes to which other parties would then react. Duke’s request for only the Companies and the Public Staff to be involved in proposing modifications to Rule R8-60 and related CPCN rules is inconsistent with the Commission’s direction to the parties that these proceedings should be inclusive and collaborative.

Moreover, Duke’s proposal sets out a timeline that is likely to be unworkable, with only a month between the Commission’s statutory deadline of December 31, 2022 to complete the initial Carbon Plan and Duke’s proposed January 31, 2023 deadline. Duke requests that the Commission direct it and the Public Staff to propose amendments to Rule R8-60 and related CPCN rules “by January 31, 2023,” meaning that proposed rule revisions would be developed contemporaneously with the development of the Commission’s initial Carbon Plan. Verified Petition at 17. The Commission agrees with the Public Staff that all parties should be afforded more time to develop draft rules, and also agrees with Walmart that the parties should be given sufficient time to evaluate proposed changes to the rules.

In addition, the Commission agrees with the AGO and CCEBA that stakeholders and intervenors should have a full opportunity to participate, comment, and provide feedback on any proposed rule changes. Although the standard notice-and-comment rulemaking process is typically sufficient for relatively modest changes to the Commission's rules, the complexity of this proceeding and intense stakeholder interest indicates that a more collaborative and inclusive process is necessary and appropriate. There is precedent for such an approach, albeit precedent that could be improved upon: When it undertook the last round of IRP rule revisions in 2014-2015, the Commission followed a process that would address many of the concerns raised by parties to this proceeding. In that rulemaking proceeding, after the filing of initial comments and reply comments, and pursuant to the recommendation of the Public Staff, the Commission established a working group to develop a proposal for revisions to Rule R8-60, as well as a plan for the creation of an IRP stakeholder process for DEC and DEP, and any proposed changes to the existing Dominion IRP stakeholder process. The Commission accepted the Public Staff's offer to lead the working group, and directed the group to file a report with the Commission within 60 days, with the report to include the recommendations of the majority of the parties, but also to include any differing positions. *Order Requesting Public Staff to Convene an IRP Working Group*, Docket No. E-100, Sub 111 (January 30, 2015).

Consistent with the Commission's *Order Requiring Filing of Carbon Plan and Establishing Procedural Deadlines*, issued November 19, 2021, the Commission will issue an order in early 2023 initiating a generic rulemaking proceeding to consider potential revisions to Rule R8-60 to synchronize the Carbon Plan and IRP proceedings, as well as potential revisions to the CPCN rules to conform them to any necessary changes to Rule R8-60 and the Carbon Plan process generally (discussed more fully below). As part of this rulemaking proceeding, the Commission intends to appoint an independent third party or Commission staff to facilitate a collaborative process for interested parties to develop proposed rule revisions. If participating parties are not able to reach consensus on proposed rule revisions, parties may propose rule revisions either individually or jointly, and the Commission will afford other parties an opportunity to reply.

CPCN Rule Revisions

With regard to Duke's request that the Commission direct it and the Public Staff to develop and propose for comment revisions to the Commission's rules for certificating new generating facilities, several parties either argue explicitly or imply that current CPCN standards and procedures should remain intact. CLEAN Intervenors, CLEAN Intervenor Initial Comments at 34, Carolina Industrial Group for Fair Utility Rates II and Carolina Industrial Group for Fair Utility Rates III (CIGFUR), see Comments of CIGFUR II and II at 32-35 (July 15, 2022) (CIGFUR Initial Comments), the Tech Customers, Tech Customers' Comments on Proposed Carbon Plan at 13-14 (July 15, 2022) (Tech Customers Initial Comments), the

North Carolina Electric Membership Corporation (NCEMC), Comments of North Carolina Electric Membership Corporation at 15 (July 15, 2022), Carolina Utility Customers Association, Inc. (CUCA), CUCA's Comments Regarding Carbon Plan at 4-5 (July 15, 2022) (CUCA Initial Comments), and Walmart, Comments of Walmart Inc. at (July 15, 2022) (Walmart Initial Comments), each argued, in essence, that inclusion or "selection" by the Commission of an asset in its carbon plan does not relieve the Companies of their obligations to provide the critical, detailed information required in a CPCN application to enable the Commission's finding and concluding that any particular resource is required by the public convenience and necessity pursuant to N.C. Gen. Stat. § 62-110.1(a).

Both CIGFUR and CLEAN Intervenors highlight that while earlier draft versions of H951 included language that would relieve utilities of the CPCN requirement under N.C.G.S. § 62-110.1, legislators did not ratify any modifications to existing CPCN requirements in the version of HB 951 that became law. CIGFUR Initial Comments at 34; CLEAN Intervenor Initial Comments at 34.

Walmart further stated that it "supports necessary revisions that reflect the existence of Sections 1 and 2 of Session Law 2021-165 ("HB 951") and its impact on the generation mix going forward" but "opposes any attempt by the Companies to make changes to Commission rules in order to lower or undermine the standard necessary to obtain a certificate of public convenience and necessity ("CPCN") for new generating and related facilities, even for resources that the Companies contend are necessary to comply with the Carbon Plan." Walmart Responsive Comments at 2.

Duke maintains that certain supply-side resources will remain subject to the obligation to obtain a CPCN after being selected as part of the Carbon Plan. Verified Pet. at 10, 15; Duke Pre-Hearing Comments on Non-expert Hearing Track Legal and Policy Issues (Sept. 9, 2022) at 55-56 (Duke Responsive Comments). In response to a discovery request from the Public Staff, Duke clarified its position to be "that to the extent the Commission selects a resource as part of an approved Carbon Plan, the Commission's Carbon Plan ruling should be controlling in a CPCN proceeding absent a material change in facts and circumstances from Carbon Plan assumptions." CUCA Initial Comments at Exhibit 1. Duke further refined its position in its Responsive Comments to be that as HB 951 requires the Commission to "select generating facilities" as part of the Carbon Plan, inclusion of a resource in the Carbon Plan should establish the need for such resources, should be deemed strong evidence of public convenience and necessity, and ultimately should be determinative in a CPCN proceeding. Duke Responsive Comments at 52-57. Duke also contends that the scope of disputed issues in future CPCN proceedings should be limited to those that were not or could not have been addressed in the Carbon Plan. Duke Responsive Comments at 53-57. Duke cites a concern for regulatory efficiency, that the Commission will be required to retread the same ground in a CPCN proceeding as in the Carbon Plan process, and for

giving intervenors an additional opportunity to rebut any assumptions in the Carbon Plan, as informing its position. Duke Responsive Comments at 54-55.

Conclusions – CPCN Rule Revisions

With regard to Duke's request to propose revisions to CPCN rules, the Commission agrees with the above-listed parties that as H951 did not alter the public convenience and necessity standard that must be satisfied before the Commission may grant a CPCN for a proposed new generating facility, revisions to CPCN rules that lessen the rigor of scrutiny required or weaken the public convenience and necessity standard established by N.C.G.S. § 110.1 are not appropriate at this time. The Commission is not persuaded that regulatory efficiency requires abdicating responsibility for ensuring that electric generation facilities are properly sited, comply with least cost principles, justified by both energy and capacity needs and the utility's most recent [IRP], and fully approved by other relevant agencies. This level of detailed review is not likely to retread issues determined as part of the resource planning exercise to develop the Carbon Plan.

As the Commission recently noted with respect to the CPCN requirement for capital projects included in a multi-year rate plan, the CPCN processes provide notice to the public of proposed citing information and create an opportunity for public comment that the Carbon Plan process does not afford, as detailed facility information is not considered at the resource planning stage. *Order Approving Template Notice and Providing Initial Guidance on Issues Related to CPCN Process and Cost Recovery Under PBR*, Docket No. E-100 Sub 178 (September 8, 2022). The selection of a resource in the Carbon Plan does not, and will not be held to, create a presumption of need, public convenience or necessity, environmental compatibility or any other required element in a CPCN or CECPCN proceeding, respectively. Instead, a resource's consistency with the Carbon Plan will be considered as one of the factors weighed by the Commission in such future proceedings, as will any changes in fact or circumstances from the assumptions in the Carbon Plan.

At the same time, however, it is possible that Commission Rule R8-61 (prescribing requirements for CPCN applications for new generating facilities in North Carolina and out of state), Commission Rule R8-63 (CPCN applications for merchant plants) and/or Commission Rule R8-64 (CPCN applications for PURPA QFs and small power producers) may require revision to conform to any changes to Commission Rule R8-60 that result from the rulemaking proceeding that the Commission has already announced.² For example, Rule R8-61 requires a public

² In addition, the Commission recognizes that the Public Staff's Petition to Revise Commission Rules R8-63 and R8-64 filed in Docket No. E-100, Sub 176 remains pending. Further, the Commission has held in abeyance a docket opened in 2008 in which the Commission initiated an investigation to consider (1) whether the Commission should give further guidance or adopt more

utility's application to include, among other things, "[t]he utility's most recent biennial report and the most recent annual report filed pursuant to Rule R8-60, plus any proposals by the utility to update said reports[.]" Commission Rule R8-61(b)(1)(i). Given the Commission's announced intent to undertake rulemaking to synchronize the Carbon Plan and IRP proceedings, Rule R8-61's references to the "biennial report" (IRP) and "annual report" (IRP update) may become obsolete or nonsensical. Moreover, another provision of Rule R8-61 applies only in the case of a coal- or nuclear-fueled facility, and requires the application to include "information demonstrating that energy efficiency measures; demand-side management; renewable energy resource generation; combined heat and power generation; or any combination thereof, would not establish or maintain a more cost-effective and reliable generation system and that the construction and operation of the facility is in the public interest." Commission Rule R8-61(b)(5). Interested parties may wish to propose, and the Commission may conclude, that the rule should be revised so that this provision applies to other types of generating facilities.

As discussed above, the Commission's generic rulemaking proceeding to consider potential revisions to Rule R8-60 to synchronize the Carbon Plan and IRP proceedings shall also consider potential revisions to the CPCN rules to conform them to any necessary changes to Rule R8-60 and the Carbon Plan process generally.

Cost Recovery Assurances

Duke requests in both its Verified Petition and Responsive Comments that the Commission provide it assurances that project development costs incurred developing offshore wind, SMRs, or new pumped storage hydro resources will be recoverable. Specifically, Duke seeks assurance from this Commission that:

(1) engaging in initial project development activities, in advance of receiving any required CPCN, for these significant long lead-time resources is a reasonable and prudent step in executing the Carbon Plan to enable potential future selection of Bad Creek II, new nuclear and offshore wind on the timeline required to meet HB 951 goals; (2) to the extent the Commission later finds the individual costs incurred to be reasonable and prudent, they will be recoverable in rates; and (3) that such reasonable opportunity for recovery will be available to the Companies should the resource not ultimately be selected by the Commission and development activities abandoned in the future.

specific rules as to how electric utilities should assess the capabilities of, and the options available through, the wholesale market when making resource additions and (2) if so, what the components of such guidance or rules should be. *Order Holding Docket in Abeyance*, Docket No. E-100, Sub 122 (August 11, 2009).

Duke Responsive Comments at 38.

The AGO, Public Staff, Tech Customers, Walmart, and CLEAN Intervenors all assert that the Commission should not grant Duke's request or make any determination that project development activities are reasonable and prudent for cost recovery purposes at this time. The AGO, Tech Customers, and CLEAN Intervenors agree that these requests are inappropriate for determination in this proceeding. Comments of the Attorney General's Office (July 15, 2022) at 28 (AGO Initial Comments); Tech Customers Initial Comments at 15; CLEAN Intervenor's Initial Comments at 20-21. Instead, both Walmart and the Public Staff contend, Duke should seek cost recovery at the same time such requests would normally be made under existing Commission practice. Walmart Initial Comments at 8; Public Staff Initial Comments at 155.

With respect to project development costs that are governed by N.C. Gen. Stat. § 62- 110.7, the AGO states that "specific project proposals have not been detailed in this proceeding." AGO Initial Comment 28. Both Public Staff and the AGO argue that the Companies must still meet the requirements of N.C.G.S. § 62-110.7 as set out in statute and rule subsequent to this proceeding and further argue that nothing in N.C.G.S. § 62-110.7 extends to offshore wind or pumped hydro storage projects. Public Staff Initial Comments at 156 -157; AGO Initial Comments at 30.

With respect to projects that are ultimately abandoned in the future, the Public Staff recommends the Commission delay determining "any possible ratemaking treatment" until "the project(s) ceases construction, without pre-determining recovery timeframe, allocation, cost category, or whether a return on the unamortized costs is appropriate." Public Staff Initial Comments at 159. Both Tech Customers and CUCA point out that the Commission has previously held that N.C.G.S. § 62-110.7 does not provide for a return on costs for cancelled projects in denying Duke's request to earn a return on costs for the cancelled Lee Nuclear Project. CUCA Initial Comments at 6; Tech Customers Initial Comments at 16.

Conclusions – Cost Recovery Assurances

The Commission declines to grant Duke assurances that project development costs incurred developing offshore wind, SMRs, or new pumped storage hydro resources will be recoverable in the future. To the extent Duke wishes to seek Commission review of its decision to incur project development costs for a potential nuclear generating facility, it may file an application supported by testimony pursuant to N.C.G.S. § 62-110.7 and Rule R8-61(h). In order to maintain the Commission's ability to flexibly adapt the carbon plan as necessary every two years to take advantage of cost savings where possible and meet the statutory requirements of H951 at least cost to ratepayer, the "selection" of a resource in the carbon plan shall not be determinative of future cost recovery, nor

shall such “selection” control this Commission’s ability to fully assess specific projects as approval is request in accordance with existing Commission Practice.

IT IS, THEREFORE, ORDERED as follows:

1. That Duke shall make use of Optimus or some other financial model with the capability to analyze the impacts to ratepayers of its proposed portfolios for Commission consideration in the next carbon plan update.
2. That Duke shall include in future modeling a sensitivity analysis for North Carolina joining the Regional Greenhouse Gas Initiative (RGGI), including evaluating the benefits of investing the resulting revenue. If the Commission finds advantages to ratepayers from RGGI in any subsequent analysis, open a docket on North Carolina’s participation in RGGI, and ask the Environmental Management Commission to finalize RGGI rules expeditiously.
3. That Duke’s request that it and the Public Staff alone develop revisions to the Commission’s IRP Rule R8-60 is denied.
4. That Duke’s request that it and the Public Staff develop revisions to the Commission’s rules for certificating new generating facilities is denied.
5. That the Commission will issue an order in early 2023 initiating a generic rulemaking proceeding to consider potential revisions to Rule R8-60 to synchronize the Carbon Plan and IRP proceedings, as well as potential revisions to the CPCN rules to conform them to any necessary changes to Rule R8-60 and the Carbon Plan process generally.
6. That the Commission declines to make any finding with respect to the reasonableness or prudence of Duke’s initial project development activities, either for long lead time resources such as offshore wind, SMRs, and pumped storage hydro or the additional resources included in Table 3 of the executive summary of Duke’s proposed Carbon Plan.
7. That Duke’s request to recover through base rates any project development costs for long lead time resources ultimately not necessary to the energy transition is denied.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of _____, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk