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January 10, 2022

VIA ELECTRONIC FILING

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

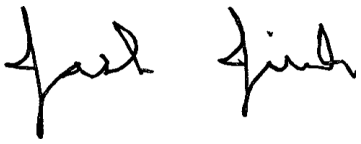
RE: Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Reply Comments in Support of Joint Proceeding
Docket Nos. E-7, Sub 1259 and E-2, Sub 1283

Dear Ms. Dunston:

Enclosed for filing in the above-referenced dockets, please find the Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC in Support of Joint Proceeding.

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

Sincerely,



Jack E. Jirak

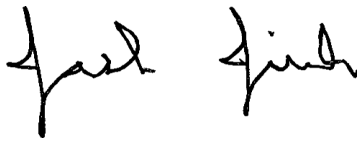
Enclosure

cc: Parties of Record

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Reply Comments in Support of Joint Proceeding, in Docket Nos. E-7, Sub 1259 and E-2, Sub 1283, has 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 10th day of January, 2022.



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STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 1259
DOCKET NO. E-2, SUB 1283

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Joint Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC to Request the Commission to Hold a Joint Hearing with the Public Service Commission of South Carolina to Develop Carbon Plan	)	**REPLY COMMENTS OF DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, LLC IN SUPPORT OF JOINT PROCEEDING**

NOW COME Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (collectively, "Duke Energy" or the "Companies"), pursuant to the North Carolina Utilities Commission's ("NCUC") November 23, 2021 Order Requesting Comments on Petition for Joint Proceeding, and hereby submit these Reply Comments in support of the Companies' November 9, 2021 Petition for Joint Proceeding ("Petition"), petitioning the NCUC to hold a joint proceeding with the Public Service Commission of South Carolina ("PSCSC" and, together with the NCUC, the "Commissions" and each, a "Commission") in 2022 to develop the NCUC's initial plan to achieve the least cost path to meet Session Law 2021-165's ("HB 951") carbon reduction goals ("Carbon Plan").

The Companies' Reply Comments address the comments filed regarding the Companies' Petition by the Southern Alliance for Clean Energy, Sierra Club, and Natural Resources Defense Council (together, the "Environmental Parties"); the North Carolina Sustainable Energy Association ("NCSEA"); Apple, Inc., Google LLC, and Meta Platforms, Inc. (together, the "Tech Customers"); Carolina Industrial Group for Fair Utility Rates II and III (together, "CIFGUR"); Carolina Utility Customers Association, Inc

("CUCA"); Carolinas Clean Energy Business Association ("CCEBA"); Clean Power Suppliers Association ("CPSA"); the North Carolina Attorney General's Office ("AGO"); and Walmart Inc. ("Walmart").

SUMMARY OF DUKE ENERGY'S REPLY COMMENTS

For decades, the NCUC and PSCSC have overseen Duke Energy's jointly planned and operated utility systems. The benefits of this joint planning and operation speak for themselves: reliable and safe electric service, rates below national averages, a generating fleet with low carbon intensity (due largely to nation-leading amounts of nuclear and solar generation located in North Carolina and South Carolina), and the completion of the initial steps of a thoughtful and deliberate least cost energy transition (as evidence by the retirement of 34 coal units totaling 4,200 megawatts over the past 11 years). Viewed from this historic lens, while the requested joint proceeding is a unique and novel procedural avenue, the intended outcome—continuing to deliver the benefits of joint planning to Duke Energy's customers in North and South Carolina—is not new at all but rather is a continuation of the joint system planning and operation that has benefitted customers for decades.[1]

Similarly, when viewed from a historic lens, the energy transition that is to be implemented in North Carolina through the Carbon Plan is also not "new"—Duke Energy has already commenced the energy transition under the oversight of the NCUC and the PSCSC and has continued to advocate prudent and purposeful steps to continue the

[1] Duke Energy Initial Comments, at 4-5 (describing substantial customer benefits of Duke Energy's historical approach to joint planning and operations, which would not have been achieved without regulatory certainty regarding Duke Energy's ability to recover its costs incurred to plan and operate a joint system).

transition through the existing legal frameworks such as the Integrated Resource Planning ("IRP") process and expanding energy efficiency in both States.

The Companies' continued transition towards an electric generation and delivery system that relies on more modern technologies with lower carbon intensity is supported by a broad range of customers, including many of the intervenors in this proceeding, and is necessary to ensure continued reliability, to retain existing businesses and attract new economic development,[2] and to ensure continued access to capital at reasonable rates for the benefits of customers. Contrary to commenters that assert or imply that Duke Energy was somehow the sole proponent of HB 951 or that HB 951 unfairly favors Duke Energy, the benefits of the energy transition contemplated by HB 951 are highlighted by the overwhelming bi-partisan majorities in the General Assembly that voted for the legislation and the execution of the bill by Governor Roy Cooper. HB 951 simply affirms that continuing the energy transition that Duke Energy has been pursuing under the oversight of the NCUC and PSCSC is good energy policy.

Joint Consideration of the Carbon Plan is Needed to Ensure the Companies Can Continue Joint System Planning for the Benefit of Customers. In light of the accelerated timeframe for development of this initial Carbon Plan, Duke Energy believes that it is critical to leverage this unique procedural route to obtain imminently-needed clarity regarding whether the NCUC and PSCSC will continue to support joint system planning and operation. Simply put, the Companies are asking the NCUC and the PSCSC to exercise their respective statutory authority to conduct a joint proceeding to address this

[2] Toyota Selects North Carolina Greensboro-Randolph Site for New U.S. Automotive Battery Plant (Dec. 6, 2021), https://pressroom.toyota.com/toyota-selects-north-carolina-greensboro-randolph-site-for-new-u-s-automotive-battery-plant.

unprecedented moment in the Companies' system-wide resource planning efforts to achieve a clean, reliable, and affordable energy transition for the Carolinas.

Duke Energy recognizes that the PSCSC is not bound by North Carolina law and is under no obligation to accept the Carbon Plan ultimately approved by the NCUC. But no party with an interest in energy policy in North Carolina and South Carolina will be well-served by a lack of clarity from the respective Commissions regarding whether, at a fundamental level, Duke Energy should continue to jointly plan and operate its systems for the benefit of customers in both States.

Duke Energy's position on this issue is clear: continued joint planning provides the most efficient and cost-effective path to advance the energy transition supported by the Companies and their customers, while also meeting HB 951's carbon reduction goals in North Carolina. No party has meaningfully challenged this fact nor offered any meaningful alternative to a jointly planned and operated system that is designed to reliably serve customers in both States. And that is the issue at the heart of this first-of-its-kind Petition seeking coordination and cooperation between the States: will customers and communities in both States continue to receive the benefits of joint planning and operation as Duke Energy continues its energy transition and implements HB 951? This fundamental question must be answered independently by both the NCUC and PSCSC for each State's intrastate customers by considering whether the current interstate, system-wide resource planning approach is, in their views, just and reasonable and in the best interest of both States going forward.

Resource Planning and Cost Allocation are Inextricably Linked. Certain commenters focus on and seemingly criticize the Companies' concerns regarding cost

allocation and cost recovery risks, suggesting that there is something underhanded or nefarious in the Companies' desire for proactive and purposeful alignment with respect to joint planning and operation and the cost allocation and recovery decisions that naturally flow therefrom. But what these commenters fail to acknowledge is the inextricable link between planning and operation and cost allocation and recovery and the fact that fundamental disconnects between those aspects of regulatory process are not in customers' best interests in the short- or long-term. The Companies have not hidden the fact that alignment and clarity regarding cost allocation and recovery is a topic of vital importance. Clarity is important for both the Companies and Customers. Investors providing capital that enables reliable and affordance electric service will reasonably assess whether the regulatory environments in which the Companies operate will provide them with a reasonable opportunity to recover and earn a fair return on their investments, consistent with the cost of service regulatory construct affirmed by the North Carolina, South Carolina and United States Supreme Courts and that has served customers well for decades.[3]

No Party Has Identified an Obstacle to the Joint Proceeding that Cannot Be Overcome. Contrary to the Companies' proactive request for clarity through seeking this first-of-its-kind joint proceeding, commenters opposed to the joint proceeding fail to meaningfully consider the significant negative ramifications for customers of misalignment, as well the need for more conclusive policy direction from the NCUC and PSCSC during this pivotal time of development of the initial Carbon Plan.

The Companies do not dispute comments that the joint proceeding proposed in the Petition will create some additional burdens on the respective Commissions, their staffs,

[3] *See infra*, at 18.

and intervenors. However, no party suggests the NCUC and PSCSC lack the authority to undertake this joint proceeding or otherwise provides any compelling opposition to the Companies' assertion that both the public interest and the State's energy policy strongly support undertaking this unprecedented joint proceeding at this time. The procedural challenges raised by certain intervenors (whether legitimate concerns or intended as roadblocks to the joint proceeding) can be overcome through coordination and cooperation between the NCUC and the PSCSC to ensure the benefits of system-wide resource planning can be continued for all customers.

If authorized, as requested, the Companies believe that a joint proceeding where the NCUC and PSCSC hear the same evidence, review the same pleadings, hear the same cross-examination and commission questions, and actively participate in a single proceeding, will independently arrive at consistent conclusions that a continued system-wide least cost energy transition is in the public interest and to the benefit of both States.

REPLY COMMENTS

I. No Party Asserts that Either the NCUC or PSCSC Lack Authority to Participate in the Joint Proceeding

A threshold issue presented in the Petition is whether the NCUC *can* undertake the Joint Proceeding as requested by the Companies. *State ex rel. Utilities Com. v. General Tel. Co.*, 281 N.C. 318, 336, 189 S.E.2d 705, 717 (1972) ("Gen. Tel. Co.") (recognizing that NCUC's authority under the Public Utilities Act extends only to the extent such authority has been granted by the General Assembly). As the Petition explains, the NCUC has broad authority under the Public Utilities Act to regulate Duke Energy's operations to carry out the laws of the State—including by initiating or appearing in federal or state court and administrative proceedings, conferring and consulting with other State utilities

commissions in developing long-range resource plans, and "cooperat[ing] with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply."[4] In other words, the General Assembly granted the NCUC power to engage in the type of independent, joint proceeding proposed by the Companies to develop a least cost, long-term Carbon Plan that achieves the significant carbon reduction goals prescribed by HB 951.

No party has challenged this authority or otherwise argued that the NCUC—or the PSCSC—lacks authority to proceed in the manner proposed by Duke Energy's Petition. Environmental Parties, for example, agree that the NCUC *could* undertake a joint proceeding even though it opposes the Companies' Petition.[5] CIGFUR and NCSEA decline to take a position on the NCUC's authority, while CUCA, Tech Customers, AGO and NCSEA did not specifically address the issue, thereby implicitly acknowledging the NCUC's powers under the Public Utilities Act to coordinate with other jurisdictions to carry out the laws and energy policies of the State, including engaging in this joint proceeding.[6] Both the NCUC and the PSCSC have the statutory authority to initiate and to participate in a joint proceeding, and the public interest supports granting the relief requested in the Petition.

II. The Public Interest Supports the Companies' Request for a Joint Proceeding as Necessary to Determine Whether the Companies' Carbon Plan Will be a System-Wide or North Carolina-Only Carbon Plan

[4] Petition, at 7-8 *citing* N.C. Gen. Stat. §§ 62-2(a)(6), (8); 62-30; 62-48.
[5] Environmental Parties Comments, at 4 ("By opposing the Petition, SACE, NRDC, and Sierra Club in no way suggest that joint proceedings between the Commission and the PSCSC would never be appropriate.").
[6] NCSEA Comments, at 16 ("NCSEA does not take a position on the Commission's legal authority to work jointly with the PSCSC at this time[.]"); CIGFUR Comments, at 1 ("CIGFUR declines to take a substantive position on the merits of the petition for joint proceeding[.]").

Through HB 951, the State's energy policy now includes achieving significant carbon reduction goals in North Carolina through development of a long-term least cost Carbon Plan. *Id.* Commenters have generally shied away from engaging with the Companies' argument that the public interest—informed by North Carolina's energy policy to ensure the availability of an adequate and reliable supply of electric power—strongly supports the Companies' request for a joint proceeding to determine on a coordinated and expedited basis whether the Carbon Plan should be planned and implemented "system wide" to serve both North Carolina and South Carolina customers. *See* N.C. Gen. Stat. § 62-2(a).

The General Assembly has directed the NCUC to "require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable." *See* N.C. Gen. Stat. § 62-2(a)(3a). HB 951 expressly reaffirms the General Assembly's expectation that the NCUC should continue to adhere to current law and practice with respect to least cost planning for generation in the Carbon Plan.[7] Accomplishing these policy objectives and achieving HB 951's new carbon reduction mandates necessitates a threshold determination of whether the Carbon Plan will be developed as a system-wide, least cost Carbon Plan, consistent with decades-long practice, or a North Carolina-only least cost Carbon Plan.

Unquestionably, Duke Energy's system-wide least cost resource planning approach has delivered significant benefits to customers in both States, including through development and operation of significant baseload carbon-free nuclear capacity and

[7] *See* N.C. Gen. Stat. § 62-2(a)(3a); HB 951, Part I, Section 1(2)(establishing that the Commission shall: "Comply with current law and practice with respect to the least cost planning for generation pursuant to G.S. 62-2(a)(3a), in achieving the authorized carbon reduction goals and determining generation resource mix for the future.").

pumped storage hydroelectric capacity in South Carolina that has reliably served customers in both States for decades.[8] Whether Duke Energy should continue the current system-wide planning approach is a critically important and imminent question because HB 951 requires the NCUC to develop an initial Carbon Plan in 2022. This initial Carbon Plan will likely set the path for accelerated retirement of the Companies' remaining approximately 10,000 MW of coal-fired generation used to serve customers in North Carolina and South Carolina—but 100% of which is located in North Carolina. The initial Carbon Plan must also be designed to replace this capacity and to continue the Companies' nation-leading energy transition towards carbon neutrality by 2050 through adoption of a least cost portfolio of resources that "maintain or improve upon the adequacy and reliability of the existing grid."[9]

Recognizing North Carolina's direction to expeditiously develop an initial Carbon Plan in 2022, South Carolina's significant interest in the pace and trajectory of the Companies' energy transition is implicated if the NCUC expects the Companies to continue their longstanding practice of system-wide resource planning on a least cost basis.[10] For these reasons, the State's energy policy and HB 951's mandate directing the NCUC to develop a Carbon Plan should be construed together to strongly support the Companies' request that the NCUC "cooperate with . . . [South Carolina] in promoting and coordinating interstate and intrastate public utility service and reliability of public utility

[8] *See* Duke Initial Comments, at 4 (highlighting that 6 of the Companies' combined 11 carbon-free baseload nuclear units totaling over 5,600 MW are located in South Carolina along with the Bad Creek and Jocassee pumped hydroelectric stations which provide 2,140 MW of carbon-free dispatchable pumped hydro capacity to the DEC system).

[9] *See* HB 951, Part I, Section 1(3).

[10] *See* Petition, at 3 ("The PSCSC's coordinated participation in developing the Carbon Plan will also allow the Companies and the Commission to determine whether the resources selected as part of the Carbon Plan should be planned to serve South Carolina's future energy needs in addition to those of North Carolina").

energy supply." *See* N.C. Gen. Stat. § 62-2(a)(8); *see also State ex rel. Utils. Comm'n v. Cooper*, 366 N.C. 484, 495 739 S.E.2d 541, 548 (2013) (explaining that Public Utilities Act "is a single, integrated plan. Its several provisions must be construed together so as to accomplish its primary purpose").

Commenters appear to simply presume that the status quo will continue,[11] and no commenting party has meaningfully addressed these policy directives, the fundamental importance of interstate coordination with South Carolina at this juncture, or the need for alignment between the States to support developing a system-wide Carbon Plan that will benefit customers in both jurisdictions.

Certain of the commenters appear to take a "head in the sand" approach by not addressing whether and how Duke Energy will be enabled to continue to deliver the benefits of joint planning and operation and not attempting to offer any alternative to the Companies and the States' joint planning and operational practices.

NCSEA goes so far as to argue that "[t]o the extent that Duke is concerned that South Carolina's planning process may not align with North Carolina's, it should be incumbent upon Duke, and not this Commission, to address any discrepancies."[12] NCSEA's assertion actually misses the point of the joint proceeding, which is to efficiently identify whether, in fact, there are any "discrepancies." The solution to any major policy discrepancies impeding continued joint planning is to move away from the joint planning and operation approach that has benefitted customers for decades, a change that would significantly impact the decision of the NCUC regarding the scope of the initial (and future)

[11] *See e.g.,* CIGFUR Comments, at 4; CUCA Comments, at 3.
[12] NCSEA Comments, at 6.

Carbon Plan. For these reasons, the issues raised in the Petition are and will continue to be relevant to, and serve as predicate for, the NCUC's development of the Carbon Plan.

III. The Energy Transition Will Be More Effectively and Efficiently Achieved Through Continued System-Wide Planning and Coordination

Commenters consistently recognize that Duke Energy's multi-state operations and rates for electric service are, and should continue to be, subject to independent regulation by both the NCUC and the PSCSC. In addition, no party disputes that HB 951 has now set a clear course for achieving carbon reductions in North Carolina as part of the Companies' continued energy transition, though as explained above, such carbon reduction goals are consistent with those supported by the Companies and by many of its customers, lenders and investors, and consistent with public interest.

Many commenters agree with Duke Energy's rationale for the joint proceeding in light of HB 951's new policy goals. CCEBA, for example, "agrees with Duke that based on the Companies' cross-border territories, a well-planned and coordinated energy transition is of vital importance to their customers in both North and South Carolina."[13] CPSA also "supports a coordinated bi-state planning process, given the substantial implications that Duke's implementation of H.B. 951 has for the citizens of South Carolina and for matters under the jurisdiction of the [PSCSC]."[14] Even CUCA, which takes no position on the Petition, recognizes that there would be "some benefit—especially for Duke—to inter-state coordination[.]"[15]

From Duke Energy's perspective, there can be no doubt that the energy transition supported by the Companies and numerous intervenors will be more effectively and

[13] CCEBA Comments, at 1-2.
[14] CPSA Comments, at 1.
[15] CUCA Comments, at 9.

efficiently achieved through continued system-wide planning and coordination.[16] Parties that oppose the joint proceeding have not offered a cogent explanation as to how the Companies could continue to plan and operate a single system serving both States without substantial alignment between the States.[17]

For example, NCSEA suggests that "the PSCSC simply has no interest in Duke's compliance with the Carbon Plan requirements" because "[t]he Carbon Plan is a matter of North Carolina law and does not govern South Carolina law[.]"[18] However, this myopic statement ignores that HB 951 necessarily affects Duke Energy's continued system-wide resource planning to serve both North Carolina and South Carolina—which is matter of central interest to the PSCSC. In the same vein, Tech Customers' advocacy for a "North Carolina-only" focus[19] also cannot be squared with South Carolina's independent obligation to oversee the Companies' future resource planning as well as its responsibility for ensuring just and reasonable rates for South Carolina customers.[20]

South Carolina clearly has a significant interest in ensuring the continued reliable and affordable operation of the Duke Energy systems, including the Companies' future least cost plans for replacement generation to serve both States. Duke Energy fully supports—and is asking the NCUC to engage in this joint proceeding to facilitate the opportunity to demonstrate—that both States will be best served by developing a system-wide Carbon Plan and continuing the Companies' system-wide energy transition for the benefit of both States.

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[16] Petition, at 8; Duke Energy Initial Comments, at 4-6.
[17] See Duke Energy Initial Comments, at 3-4 (explaining that "Duke Energy necessarily must plan its systems for a single future.").
[18] NCSEA Comments, at 8.
[19] Tech Customers Comments, at 3, 9.
[20] *See* Petition, at 6.

In fact, it is puzzling that numerous commenters that are putatively supportive of the general goals of the energy transition—such as NCSEA, the AGO, and the Tech Customers—would oppose a process whereby both the NCUC and the PSCSC would receive evidence and provide guidance regarding the manner and timeline by which Duke Energy will actually achieve the energy transition. Again, those parties that oppose the requested joint process—which is intended to proactively confirm the respective Commission's desire for continued joint planning and operation—should have the burden of offering an alternative to the historic joint planning and operation and demonstrating that such alternative is in the best interest of customers.

IV. The States' Respective Decisions on the Companies' 2020 IRPs Support the Joint Proceeding

A number of commenters highlight the PSCSC's recent December 14, 2021 decision on the Companies' 2020 IRPs as proof that the Joint Proceeding is not a good use of resources. As CUCA puts it, the PSCSC's decision signals that "there is little assurance that a joint proceeding will 'reach a coordinated and cooperative approach to resource planning'" because "at present it appears that the two states are plotting different trajectories for carbon reduction."[21] But what CUCA (and other commenters) fail to wrestle with is the significant negative ramifications for customers of misalignment, as well as the need for more conclusive policy direction from the NCUC and PSCSC during this pivotal time of development of the initial Carbon Plan. Again, commenters should not be permitted to blithely dismiss the value of proactively attempting to reach alignment and the ability to continue to leverage joint planning and dispatch without articulating and demonstrating the benefits to customers of a meaningful alternative.

[21] CUCA Comments, at 9; AGO Comments, at 2.

Rather than abandon alignment attempts as futile, as many commenters appear to do, the Companies believe the two States' IRP orders further underscore the need for cooperation and coordination on the Carbon Plan. From Duke Energy's perspective, the NCUC's and PSCSC's recent rulings on the Companies' 2020 IRPs provide compelling justification for a joint proceeding to consider the benefits of continued system-wide planning and coordination for Duke Energy's customers in both States.

In North Carolina, recognizing the refined policy directives established by HB 951, the NCUC accepted the Companies' 2020 IRPs as adequate for short-term planning purposes but declined to adopt (or pass judgment) on the Companies' 2020 base cases and alternative planning scenarios beyond the Companies' short-term action plans, noting that "neither utility anticipates a new supply resource will be required during that time period, notwithstanding the retirement of several existing generating units."[22] In South Carolina, the PSCSC held its first proceeding in 2020-2021 to review the Companies' 2020 IRPs under a new statutory framework established by the South Carolina Energy Freedom Act, Act 62 of 2019.[23] After the PSCSC found the Companies' as-filed 2020 IRPs deficient for failing to select a preferred portfolio,[24] the Companies filed South Carolina modified 2020 IRPs on August 27, 2021, identifying the earliest practicable coal retirement scenario "C1"—a portfolio that projects a 66% reduction in carbon emissions by 2030 and is directionally comparable to the 70% carbon reduction goal mandated by HB 951[25]—as DEC's and DEP's preferred portfolio. On December 14, 2021, the PSCSC issued a

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[22] *Order Accepting Integrated Resource Plans, REPS and CPRE Program Plans with Conditions and Providing Further Direction for Future Planning*, at 6 Docket No. E-100, Sub 165 (Nov. 19, 2021).
[23] *See* S.C. Code Ann. § 58-37-40.
[24] Petition, at 7; *see also Order Requiring Modifications to Integrated Resource Plans,* Order No. 2021-447, at 8, 85 P.S.C.S.C Docket Nos. 2021-224-E and 2021-225-E (June 28, 2021).

[25] Petition, at 11-12.

directive declining to adopt the Companies' preferred portfolio and "mandate[ing] that [DEC and DEP] use Portfolio A2 as the selected base plan for their respective modified 2020 Integrated Resource Plans."[26]

The PSCSC has not yet issued a final order finalizing its December 14 directive (and the Companies have not yet had an opportunity to review and respond to it, if determined appropriate). However, the PSCSC's directive that Portfolio A2 (base plan without carbon policy) should serve as the Companies' "selected" base plan, presumably for both future short- and long-term resource planning, does not recognize the benefits of continued system-wide planning and coordination for Duke Energy's customers in both States, nor does it align with the Companies' commitment to (and customers' demands for) more aggressive carbon reductions through a more accelerated system-wide energy transition for the benefit of DEC's and DEP's customers.

Importantly, while the PSCSC's recent IRP determination reflects its assessment of the most reasonable and prudent plan "as of the time the plan is reviewed,"[27] the joint proceeding would allow the Companies an opportunity prior to filing their next IRPs with both the PSCSC and the NCUC to inform (and, importantly, to obtain guidance from) both Commissions regarding the critically important and time-sensitive resource planning decisions that necessarily will affect the Companies' system-wide operations. As highlighted in the Petition: "[a]bsent clarity from both States, Duke Energy will be forced to evaluate decisions on planning and running the systems differently in the future,

[26] *See* Pub. Serv. Comm'n of South Carolina, Commission Directive, Docket Nos. 2019-224-E & 2019-225-E (December 14, 2021).
[27] *See* S.C. Code Ann. § 58-37-40(C)(2).

potentially serving North Carolina and South Carolina customers separately, which could be less efficient and more costly than today's operations."[28]

V. Upfront Recognition of "System-Wide Benefits" Must, of Necessity, Factor Into Development of Any System-Wide Carbon Plan to Support Future Cost Allocation and Recovery

The "elephant in the room" as phrased by Tech Customers is that HB 951 now establishes clear North Carolina policy direction setting carbon reduction goals for the State and a new Carbon Plan framework to be administered by the NCUC while a consistent energy policy directive has, to date, not been expressly legislated in South Carolina.[29] Recognizing that North Carolina has required an aggressive timeline for Carbon Plan development and implementation in advance of South Carolina taking any (consistent or contrary) legislative action of its own, parties suggest in various ways that the Companies' request for a joint proceeding is driven by Duke Energy's future plans to allocate the costs of a system-wide Carbon Plan to customers in both States.

CUCA, for example, inaccurately suggests that Duke Energy's Petition is a "Trojan horse, where Duke Energy's true objective is not joint planning but rather building a case for cross jurisdictional cost allocation—a matter which is controlled by state law and inappropriate for a joint proceeding." CUCA,[30] Tech Customers,[31] and NCSEA[32] all point to the PSCSC's 2019 rate case decision, recently affirmed by the South Carolina Supreme Court, disallowing significant South Carolina-allocated costs associated with Duke Energy's compliance with the North Carolina Coal Ash Management Act ("CAMA") as

[28] Petition, at 3-4.
[29] Tech Customers Comments, at 8.
[30] CUCA Comments, at 5-6.
[31] Tech Customers Comments, at 4.
[32] NCSEA Comments, at 9.

evidence that Duke Energy's request is motivated by a desire to ensure cost recovery. In disallowing recovery from South Carolina customers of costs incurred to comply with CAMA, the PSCSC reasoned that "there is no evidence of any direct benefit to South Carolinians that stems from coal ash remediation costs required by North Carolina's CAMA scheme." *Duke Energy Carolina, LLC v. S.C. Office of Reg. Staff*, 864 S.E.2d 873 (S.C. S. Ct. 2021). The Companies believe that the costs incurred to remediate coal ash under CAMA—which the South Carolina Supreme Court found to be "wholly unrelated to the current production of power for which South Carolina customers must pay" are distinguishable for a variety of reasons from those that Duke Energy will incur to implement a future least cost Carbon Plans on a system-wide basis. Nevertheless, achieving upfront clarity regarding whether the PSCSC believes South Carolina customers will also directly benefit from continued system-wide resource planning through development of a system-wide least cost Carbon Plan is the crux of the Petition, and the Companies have made that plain in their filings.

Notably, CUCA, Tech Customers and CIGFUR all ardently support the "benefits" of the current system-wide resource planning process, including system-wide cost allocation, arguing that "without question"[33] the arrangement "should continue."[34] Yet each also maintains that Duke Energy's shareholders—and *not* its customers—should bear any future stranded cost recovery risk arising from Carbon Plan investments to transition the generating fleet simply because North Carolina has taken a policy step ahead of South

[33] CUCA Comments, at 3 ("Without question, CUCA supports the allocation of system costs on a bi jurisdictional basis consistent with the Commission's historical practice[.]").

[34] CIGFUR Comments, at 4 ("to the extent that DEP's or DEC's respective production plant is providing capacity or energy for the benefit of its North and South Carolina customers, such costs should continue to be allocated"); Tech Customers Comments, at 6.

Carolina by mandating a carbon reduction-focused energy transition.[35] NCSEA takes this argument even further, broadly asserting that "any costs [sic] increase associated with the Carbon Plan should be borne by Duke shareholders."[36]

As an initial matter, Duke Energy is not "hiding the ball" in the least with respect to the importance of cost allocation and future cost recovery issues. Cost of service regulation—a construct which has served DEP/DEC customers well for decades and resulted in safe, reliable service at rates below national averages and with low carbon footprint and nation-leading amounts of solar—requires that Duke Energy and its shareholders (many of whom live and work in North Carolina and South Carolina) be provided a reasonable opportunity to earn a return on their investment. As the North Carolina Supreme Court has recognized:

> [T]he fixing of 'reasonable and just' rates involves a balancing of shareholder and consumer interests. The Commission must therefore set rates which will protect both the right of the public utility to earn a fair rate of return for its shareholders and ensure its financial integrity, while also protecting the right of the utility's intrastate customers to pay a retail rate which reasonably and fairly reflects the cost of service rendered on their behalf.

State ex rel. Utilities Com. v. Nantahala Power & Light Co., 313 N.C. 614, 691, 332 S.E.2d 397, 442 (1985) *rev'd on other grounds, Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953 (1986); *see also S. Bell Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 270 S.C. 590, 595–97, 244 S.E.2d 278, 281 (1978) (recognizing the same in South Carolina (quoting *Bluefield*

[35] CUCA Comments, at 5 ("Duke's decision to conduct bi-state operations is accompanied by the risk of inconsistent regulatory treatment between states—a risk borne by Duke's shareholders, not the ratepayers of a particular state.").
[36] NCSEA Comments, at 11.

Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va., 262 U.S. 679, 692–93 (1923); *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602–03 (1944)).

A constructive regulatory environment—where both investors and customers can be assured of fair treatment and just and reasonable rates—benefits all customers by ensuring that Duke Energy is able to access the capital needed at reasonable rates today even though such investments are to be recovered in the future. *See* N.C. Gen. Stat. 62-133(a) (directing the NCUC to "fix such rates as shall be fair both to the public utilities and to the consumer"); *Gen. Tel. Co.,* 281 N.C. at 337-338 (addressing the utility's need to attract capital from investors to provide service at the rates established by the NCUC); *S. Bell Tel. & Tel. Co.*, 270 S.C. at 596, 244 S.E.2d at 281 ("The ratemaking process . . . involves a balancing of the investor and consumer interest. . . . [The] return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.") (quoting *Fed. Power Comm'n v. Hope Nat'l Gas Co.*, 320 U.S. 591, 603, 64 S.Ct. 281, 288 (1944)). NCSEA's outlandish assertion that any alleged cost increase associated with the Carbon Plan "should be borne by Duke shareholders" simply has no basis in the regulatory compact established under North Carolina law.

Moreover, system planning, cost allocation and cost recovery are all inextricably linked. It is well established that the Public Utilities Act is a single, integrated plan that must be construed together to accomplish its primary purpose of regulating public utilities to ensure reliable service, *State ex rel. Utils. Comm'n v. Cooper*, 366 N.C. 484, 495, 739 S.E.2d 541, 548 (2013), such that none of those issues should be considered in a vacuum. This point was made by our Supreme Court in a 1987 decision affirming a NCUC rate case

order authorizing Duke Power Company to recover costs associated with the Catawba Nuclear Station sited in South Carolina that was built without a NCUC-issued Certificate of Public Convenience and Necessity. *State ex rel. Utilities Com. v. Eddleman*, 320 N.C. 344, 362, 358 S.E.2d 339, 351 (1987). The Court explained that while "[t]he needs of North Carolina ratepayers may not be thoroughly considered by public officials in South Carolina or some other state, even though the facility in question is intended to generate electricity for delivery to this state as well as the state in which the plant is located," the North Carolina ratepayer is protected by statutory requirement that facilities must be "used and useful" in providing service to North Carolina customers before they can be included in a public utility's ratebase. *Id.* The Court also noted that the Public Utilities Act directs the NCUC to "confer with officials from other states and the federal government for the purpose of assessing the need for future generating facilities." *Id. citing* N.C. Gen. Stat. § 62-110.1(c). Thus, the Court recognized that resource planning, oversight of utility operations and the fixing of rates for service delivered are all subject to the NCUC's authority and should be considered together.

As highlighted in the Petition, the focus of this Joint Proceeding is to determine the extent of continued alignment regarding system planning and operation that ultimately informs the costs of service to be incurred and recovered from North Carolina and South Carolina customers in the future. A move away from joint system planning and operation will have material impacts on the nature and scope of the Carbon Plan.

While Duke Energy concedes that there is no "assurance that a joint proceeding will reach a coordinated and cooperative approach to resource planning," the Companies still believe the public interest in achieving a reliable, least cost energy transition is best

served by pursuing this first-of-its-kind proceeding to promote alignment between the jurisdictions.[37]

The Petition asks the NCUC and PSCSC to undertake the joint proceeding, in part, to provide a procedural framework for the Companies to demonstrate the continuing benefits of system-wide energy transition through the Carbon Plan for both States. Both the PSCSC—in disallowing recovery of CAMA costs incurred pursuant to North Carolina legislation—and the NCUC—in ordering that the Companies' costs to administer the North Carolina legislatively mandated Competitive Procurement of Renewable Energy Program *should be* allocated to South Carolina[38]—have recently considered whether South Carolina customers "benefit" from North Carolina law and policy such that system-wide allocation of costs is appropriate. The NCUC has more recently noted that this "customer benefit" standard "aligns with recognized cost causation principles" and requires each Commission to assess whether its intrastate customers directly benefit from evolving law and regulation in another State.[39]

Commenters appear fully aligned that Duke Energy should—consistent with past practice—develop the Carbon Plan on system-wide least cost basis to "create cost savings inuring directly for the benefit of Duke's ratepayers."[40] But certain commenters are also perfectly content to assign the significant risk of future inconsistent cost allocation determinations to Duke Energy as the regulated utility (including going so far as to say that the Companies should be forced to accept stranded costs and "not expect to recover the

[37] CUCA Comments, at 9.
[38] *Order Approving CPRE Rider and CPRE Program Compliance Report*, at 9 Docket No. E-7, Sub 1231 (Aug. 19, 2020).
[39] *Order on Petition for Declaratory Ruling*, Docket No. E-22, Sub 601 (Sept. 29, 2021) (denying system-wide allocation of Virginia Regional Greenhouse Gas Initiative Compliance Cost).
[40] CIGFUR Comments, at 4.

difference from ratepayers in the other jurisdiction"[41]). But such commenters do not meaningfully wrestle with the practical impacts of such a misaligned planning and operation process, including how customers would likely be harmed by increased financing costs resulting from a regulatory construct in which investors are asked to provide capital to facilitate the energy transition and ensure continued reliable service while facing significant uncertainty and risk of cost disallowance.

The Companies appreciate Tech Customers' comment that they have "every expectation that South Carolina ratepayers and wholesale customers will pay their 'fair share' of Duke's system costs in the normal course of the regulatory life cycle in the same manner that such costs have been recovered historically."[42] However, in light of the recent South Carolina CAMA disallowance, the NCUC's declaratory ruling disallowing Dominion's regional greenhouse gas initiative ("RGGI") costs, and other considerations, the Companies believe it is prudent, reasonable, and in the public interest for the Commissions in both States to advise what they believe their State's "fair share" is and whether proceeding under a system-wide Carbon Plan framework provides commensurate benefits to the system or might later be viewed as only benefitting North Carolina.

In sum, for the same reason that Duke Energy believes it is patently unfair for the Companies to make significant investments to meet their legal and regulatory obligation under CAMA in North Carolina and for the allocated portion of those just and reasonable costs to later be disallowed in South Carolina, Duke Energy now is proactively and reasonably seeking clarity through a joint proceeding that both North Carolina and South Carolina recognize the benefits that the carbon reduction goals identified in the Carbon

[41] *Id.*
[42] Tech Customers Comments, at 3.

Plan will achieve or, alternatively, that joint system planning and operation should be discontinued going forward. The Companies fully acknowledge that cost allocation and cost recovery based upon shared system benefits to both North Carolina and South Carolina are critically important issues not just for Duke Energy but also for its customers and that such issues are inextricably linked to resource planning today. The Companies believe that after hearing the same evidence and actively participating in the same proceeding the Commissions will be in the best position to make this determination for their respective States.

VI. The Joint Petition Does Not Raise State Sovereignty Concerns

CUCA asserts that the Petition "raise[es] fundamental state sovereignty concerns"[43] while NCSEA suggests the Petition would make the PSCSC "subservient" to the NCUC and would somehow "infringe[] upon the PSCSC's ability to hold its own hearings."[44] Both comments fundamentally misunderstand the Companies' request, which is for the two Commissions to participate jointly in the procedural aspects of Carbon Plan development, but to maintain separate, independent dockets, and issue separate, independent orders. As clearly stated in their Petition, the Companies' intent in pursuing a joint proceeding is to provide "a way for the PSCSC to participate in the important issues that will be addressed in the Carbon Plan and to have a 'seat at the table' as decisions are made on those issues."[45] Duke Energy agrees with CIGFUR that "[r]egardless of whether this Commission and the [PSCSC] grant Duke's petition for a joint bistate proceeding on the Carbon Plan, . . . each

[43] CUCA Comments, at 3.
[44] NCSEA Comments, at 7.
[45] Petition, at 8.

Commission should and would retain its full jurisdiction and regulatory authority over all aspects of Duke's retail electric service and rates within each respective state." [46]

To the extent not clearly articulated in the Petition, Duke Energy's Initial Comments expressly "recognize[] that each Commission has separate regulatory responsibilities to its State and Duke Energy is not advocating that the PSCSC should have a decision-making authority over the Commission's task under HB 951 to develop and approve a Carbon Plan. Similarly, Duke Energy is not asking the PSCSC to simply adopt the Commission's Order adopting a Carbon Plan without its own independent assessment of whether the Carbon Plan is the most reasonable and prudent resource planning pathway for South Carolina."[47] It is precisely the fact that each State independently regulates the Companies' operations and rates that justifies the joint proceeding as a vehicle for coordinated regulation of Duke Energy's resource planning process in the immediate future between the two sovereign States.

VII. No Party has Identified Any Procedural Challenge to the Proposed Joint Proceeding that Cannot be Overcome Through Coordination Between the NCUC and PSCSC

Several commenters argue against the proposed Joint Proceeding on the grounds that it would be an "unwieldy"[48] and procedurally complex undertaking. While these commenters make cursory claims that a Joint Proceeding would create "logistical and procedural headaches that render the proposal simply unworkable"[49] and "unduly burden"[50] intervenors as well as both Commissions and their respective staffs, their

[46] CIGFUR Comments, at 2.
[47] Duke Energy Initial Comments, at 6.
[48] AGO Comments, at 2.
[49] Environmental Parties Comments, at 1-2.
[50] NCSEA Comments, at 11.

Comments raise strikingly few direct procedural concerns. The Companies recognize that a Joint Proceeding will necessarily present additional procedural challenges. However, these procedural complexities must be balanced and weighed against the critically important objective of implementing a system-wide energy transition—with costs shared through traditional jurisdictional allocation methods—which no commenting party appears to oppose. As detailed below, the limited procedural issues identified by intervenors can be addressed through reasonable coordination and should not serve as grounds upon which to reject the Companies' Petition.

Intervention in the NCUC and PSCSC Dockets. In Appendix A, the Companies proposed that "[a]ll intervenors should be parties to the NCUC proceeding but should also, if desired, separately seek intervention in the applicable PSCSC docket."[51] With respect to filings, the Companies further proposed that parties should file all pleadings and testimony simultaneously in both the NCUC and PSCSC dockets.[52] Environmental Parties and NCSEA each raised concerns that intervention in both dockets, including potentially engaging local counsel and obtaining *pro hac vice* admission, could place an additional burden on certain intervenors. While the Companies recognize that there will be some additional burden on South Carolina parties who would otherwise not participate in a North Carolina docket, the Companies believe their proposal mitigates this additional burden in a number of ways. First and as noted in the Companies' Petition, a number of parties, including CCEBA and Environmental Parties, have recently intervened and participated in both the Companies' North Carolina and South Carolina 2020 IRP proceedings.[53] Given

[51] Petition, at 19 (Appendix A).
[52] *Id.*
[53] Duke Energy's Initial Comments identified that interested stakeholders including NCSEA have intervened in both the above-captioned proceedings as well as the PSCSC companion docket (2021-349-E). Duke Initial

these parties' historical and recent participation in resource planning dockets in both States and the likelihood that they will continue to participate in similar future proceedings, the Companies believe that the additional burden on these parties to make simultaneous filings in both States' dockets will be minimal.

Second, for *pro hac vice* purposes, the Companies have proposed that the proceeding will be conducted in North Carolina pursuant to North Carolina rules related to the admission of attorneys. Accordingly, while South Carolina entities may need to seek local counsel and *pro hac vice* admission in North Carolina to participate in the Joint Proceeding, the same is not true for North Carolina entities. NCSEA suggests that, practically, all parties will be required to intervene in the PSCSC docket because the South Carolina Regulations regarding practice before the PSCSC require intervention and, correspondingly, appearance of counsel to receive filings, represent a party, and/or offer evidence in a proceeding.[54] Because there is no South Carolina regulation that speaks directly to the rules that should govern a cross-jurisdictional joint hearing, the Companies agree that the PSCSC's rules regarding intervention and appearance of counsel present somewhat of a gray area. However, S.C. Code Ann. Reg. § 103-803 allows the PSCSC to waive any rule or regulation "where compliance . . . produces unusual hardship or difficulty, or where circumstances indicate that a waiver is appropriate" so long as "such waiver is not contrary to the public interest."[55] Accordingly, it is entirely within the power of the PSCSC to allow non-parties to make and receive filings, submit evidence, and/or

Comments, at 4. Counsel for NCSEA has expressed concern that this statement of fact was an unauthorized representation that NCSEA supports the Companies' Petition. NCSEA's comments speak for themselves and, for the avoidance of doubt, Duke is not making any representations regarding NCSEA's position in this proceeding.

[54] NCSEA Comments, at 12-13.

[55] S.C. Code Ann. Reg. § 103-803.

cross-examine witnesses as part of the proposed Joint Proceeding. In any event, all of the relevant testimony and evidence presented at the hearing will be part of the official record in both dockets, if allowed by the PSCSC, meaning that evidence presented by parties who do not wish to seek intervention in the PSCSC docket could still be accepted in the PSCSC record.[56] In this way, the Companies' petition is *not*, as NCSEA asserts, "an attempt to financially burden intervenors by requiring them to retain counsel in South Carolina."[57] To the contrary, the Companies seek to minimize costs for intervenors by streamlining important long-term, system-wide resource planning into a single docket, which has the potential to provide increased regulatory certainty and reduce the number of contested issues in future IRP and other dockets.

Burden on NCUC, PSCSC, and Commission Staffs. NCSEA suggests the Companies' proposal that the NCUC and PSCSC staffs should work together to address procedural and logistical issues[58] is "fraught with legal risk not normally within the purview of the Commission staff."[59] While the Companies recognize that a Joint Proceeding would place additional burdens on the NCUC as well as the NCUC and PSCSC staffs, the Companies' request is based on statutory authority that affords each Commission the flexibility to work with regulators in neighboring states as may be necessary to plan for future resource needs and ensure "just and reasonable service and rates"[60]—and *no intervenor has challenged that statutory authority*. Procedural complexities are inherent

[56] The Tech Customers also question whether South Carolina entities would have standing to participate in a North Carolina proceeding. Tech Customers Comments, at 7. Given that the Companies' efforts to prepare a system-wide Carbon Plan will impact stakeholders located in South Carolina as well as North Carolina, Duke believes that such stakeholders should not be denied standing to participate in the North Carolina proceeding simply because they are customers located outside of the State.
[57] NCSEA Comments, at 13.
[58] Petition, at 18.
[59] NCSEA Comments, at 15.
[60] *See* Petition, at 9-10, *citing* N.C. Gen. Stat. §§ 62-48 & 62-110.1(c).

to any proceeding that departs from standard practices. Nevertheless, legislators in both North Carolina and South Carolina understood the importance of allowing each Commission to pursue coordinated efforts with other jurisdictions in exceptional circumstances. In enacting the Public Utilities Act, which grants this discretion to the NCUC, the General Assembly indicated its confidence that the NCUC could orchestrate multi-jurisdictional coordination as needed. The Companies believe that development of the Carbon Plan—a resource planning endeavor that will impact system planning over the next thirty years—presents an exceptional challenge that warrants an exceptional cross-jurisdictional coordination effort to determine whether the benefits of system-wide least cost resource planning should be continued.

Simply put, significant, multi-jurisdictional endeavors require effort, coordination, and cooperation to be successful, and the Companies appreciate the NCUC's willingness to consider their Petition and exercise the authority granted by the General Assembly to coordinate with the PSCSC on an issue that will have an enormous impact on customers in both North and South Carolina.

Hearing Logistics. Several intervenors argue that the Companies' proposal of a hybrid hearing—held in person at the NCUC with the PSCSC participating virtually—would be unworkable. Environmental Parties questioned whether a remote PSCSC could meaningfully participate in a hearing that was otherwise in person,[61] and the AGO suggested that the proposed structure could "add unexpected complications to the proceedings."[62] However, as even Environmental Parties acknowledge, both Commissions now have extensive experience with remote hearings, and the Companies note that it is not

[61] Environmental Parties Comments, at 3.
[62] AGO Comments, at 2.

uncommon for the PSCSC to conduct hybrid meetings and/or hearings, with some Commissioners attending in person while others participating remotely. Given the now vast experience of the parties and the respective commissions with remote hearings, the Companies believe that any unexpected complications arising from a hybrid proceeding can be overcome through good faith coordination and cooperation between the two Commissions.

Independent Final Orders. NCSEA takes issue with the Companies' proposal that each Commission should enter a separate, independent order on the Carbon Plan, suggesting that the Companies could simply ask the PSCSC to take judicial notice of the North Carolina record and enter an order in an independent docket. NCSEA's "solution," however, would deny the PSCSC an opportunity to participate meaningfully in the proceeding, including by questioning witnesses at a potential hearing, requesting supplementary evidence through late-filed exhibits, etc. Moreover, it is unlikely that the PSCSC would render an order based solely upon a record developed entirely in a North Carolina proceeding over which it did not preside or otherwise participate. While the PSCSC could certainly supplement the North Carolina record by noticing a hearing, requiring parties to present witnesses for questioning, and/or requesting the development of further evidence for use in a follow-on South Carolina proceeding, the Companies believe it would be more efficient to afford the PSCSC an opportunity to ask questions and supplement the record contemporaneously to and in tandem with the NCUC.

CUCA similarly criticizes the Companies' proposal for independent final orders, arguing that the proceedings "would not be determinative of anything."[63] The Companies

[63] CUCA Comments, at 10.

acknowledge the possibility that the two Commissions may arrive at different conclusions after hearing the evidence, but that result in and of itself is "determinative" (albeit not in a manner that would be beneficial to customers, as is explained throughout these Reply Comments). Nevertheless, a Joint Proceeding presents the best opportunity for alignment—especially on the accelerated timeline needed to allow the NCUC to develop either an initial system-wide Carbon Plan or a North Carolina-only Carbon Plan by December 31, 2022. By hearing the same evidence, reviewing the same pleadings, hearing the same cross-examination and commission questions, and actively participating in a single proceeding, the Companies believe that the two Commissions would independently arrive at consistent conclusions.[64]

Logistical Issues in the Event of Appeal. Finally, NCSEA attempts to create controversy where none exists by suggesting that the Companies "fail[ed] as a matter of law . . . to consider the logistics of appeal[.]"[65] NCSEA suggests that procedural uncertainty would arise if an appellate court were to exclude certain evidence from the record or even overturn part or all of the NCUC's or PSCSC's decision. Under the Companies' proposal, however, each Commission would maintain a separate evidentiary record attached to a state-specific docket number, and each Commission would issue a separate, independent final order, with the NCUC discharging its duty under HB 951 to "adopt a Carbon Plan on or before December 31, 2022"[66] and the PSCSC exercising its statutory authority under South Carolina law to make a determination based upon the relief the Companies requested in their South Carolina Petition. In other words, the PSCSC's

[64] Duke Energy Initial Comments, at 6.
[65] NCSEA Comments, at 14-15.
[66] Petition, at 6.

decision in its South Carolina docket will not have any legal impact on the NCUC's order adopting a Carbon Plan in the North Carolina proceeding. To the extent either Commission's order was subject to appeal, that appeal would have no impact on the record or order of the other Commission. NCSEA has thus failed to identify any specific hurdle created by a proceeding in which both the NCUC and PSCSC preside and hear the same evidence regarding the Companies' proposed Carbon Plan.

VIII. Neither the Unprecedented Nature of the Requested Joint Proceeding Nor the Fact that the Request is Limited to Joint Consideration of the *Initial* Carbon Plan Support Rejecting the Companies' Petition

The Companies do not dispute that their Petition is unprecedented; however, they are asking the NCUC and the PSCSC to exercise their respective statutory authority to conduct a joint proceeding to address this unprecedented moment in the Companies' system-wide resource planning efforts to achieve a clean, reliable, and affordable energy transition for the Carolinas. The imminent need for alignment between the States on the scope and targets of North Carolina Carbon Plan implementation and the impact on Duke Energy's continued system wide energy transition are unprecedented and support this significant undertaking.

Ignoring the unique nature of the instant task—development of the *initial* 30-year Carbon Plan—as compared to subsequent Carbon Plan proceedings or a bi- or triennial comprehensive IRP filing, NCSEA makes the nonsensical argument that the NCUC should reject the Companies' Petition because they have not also requested joint proceedings for future Carbon Plan or IRP proceedings.[67] If the NCUC and the PSCSC grant the Companies' Petition and allow the Joint Proceeding to move forward, it will be a first-of-

[67] NCEA Comments, at 3-4.

its-kind cooperative endeavor between the NCUC and PSCSC. Given the novelty of their Petition, the Companies believed the relief they have requested is appropriately narrowly tailored to the initial Carbon Plan proceeding. While the Petition does not definitively state whether the Companies would seek a joint proceeding for any future Carbon Plan or IRP proceedings, NCSEA is correct to note that the Companies do not believe there will be a need to conduct future Carbon Plan and/or IRP proceedings jointly between the States as the alignment the Companies hope can be achieved through a Joint Proceeding to develop the *initial* Carbon Plan will inform and set the tone for future IRPs such that the number of contested issues should be reduced.[68]

NCSEA also wrongly suggests that the Petition fails to address how the Carbon Plan will interact with the Companies' IRP process.[69] To the contrary, the Petition specifically proposes consolidation of the Companies' system-wide IRPs and subsequent Carbon Plan filings beginning in 2023 and continuing in odd-numbered years. [70] In this way, the Companies are recognizing the need for alignment of future IRP and Carbon Plan proceedings and proposing to proceed on a consistent timeline in both jurisdictions.

Finally, NCSEA's bluster and criticism that the Companies have not sought to involve the NCUC in the South Carolina Electricity Market Reform Measure Study Committee (the "Market Reform Study Committee" or the "Committee") is entirely misplaced. The Market Reform Study Committee is a legislative committee that was established by South Carolina Act 187 of 2020 with the mandate to study whether to recommend any of a variety of electricity market reform measures. While the Chief

[68] Petition, at 7.
[69] NCSEA Comments, at 5.
[70] Petition, at 6-7.

Executive Officer of the PSCSC (or his designee) serves, by statutory mandate, on the non-voting advisory board of the Committee, the eight members of the Committee (all of whom are elected South Carolina legislators) and all members of the non-voting advisory Board are specifically identified by statute.[71] Because the Committee is a legislative body, governed by statute—and *not* administered by the PSCSC—no mechanism exists by which the Companies could promote the participation of the NCUC (nor was the NCUC invited to participate by the SC legislature which established the Committee). Moreover, despite advocacy by NCSEA and other parties, neither the NCUC nor PSCSC directed the Companies to study the potential costs and/or benefits to establishing or joining an existing regional transmission organization as part of the IRP process.

IX. Simply "Monitoring the Docket" or Promoting South Carolina Stakeholder Participation in Developing the Carbon Plan Would Not Create the Same Opportunity for Alignment as a Joint Proceeding

Several commenters argue that the Companies' goals in requesting the joint proceeding could be achieved more simply, suggesting, for example, that the PSCSC could open an informational docket to monitor Carbon Plan development[72] or that the participation of South Carolina stakeholders in the HB 951-mandated stakeholder meetings would be sufficient to ensure multi-state alignment on the initial Carbon Plan.[73] None of these options, however, would provide the type of meaningful participation from South Carolina stakeholders and clarity from the PSCSC that the Companies believe is necessary to ensure that the interests of both States are represented in development of the initial Carbon Plan. While an informational docket or simply monitoring the North Carolina

[71] *See* Act 187, Section I.
[72] Environmental Parties Comments, at 3; *see also* CUCA Comments, at 3 ("the South Carolina Commission could . . . monitor[ ] the docket if it wished to do so").
[73] AGO Comments, at 2.

docket could keep the PSCSC apprised of the Carbon Plan development process, neither option would allow the PSCSC to consider the evidence as it would presiding over a Joint Hearing where Commissioners could request additional supporting evidence, question witnesses, and otherwise actively participate in the proceeding and arrive at its own decision of whether South Carolina customers will benefit from the accelerated energy transition that Duke Energy supports and that North Carolina has now legislated in HB 951.

Similarly, the participation of South Carolina parties in Carbon Plan stakeholder meetings likely would not be sufficient to "gain support from South Carolina . . . for a collaborative approach that addresses carbon emissions reduction" as the AGO suggests.[74] To be sure, the Companies agree with the AGO that South Carolina participation in the stakeholder meetings is critical to ensuring that the Carbon Plan considers the needs of all interested parties. However, the positions of stakeholder groups are (rightly) influenced by the interests of their unique membership and do not necessarily reflect the position of the PSCSC, which is tasked by statute to "supervise and regulate the rates and service of every public utility in [South Carolina] and to fix just and reasonable standards, classifications, regulations, practices, and measurements of services to be . . . followed by every public utility[.]"[75] The PSCSC cannot effectively carry out its mandate to supervise utilities and determine a system-wide Carbon Plan that benefits South Carolina through third-party participation in stakeholder meetings or by merely monitoring development of the Carbon Plan.

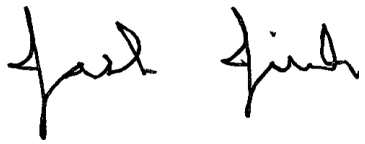
[74] AGO Comments, at 2-3.
[75] S.C. Code Ann. § 58-3-140(A).

Instead, presiding over a joint hearing would allow the NCUC and PSCSC to review the same pleadings, hear the same evidence, exercise the same opportunity to question witnesses. With such active participation from both Commissions, the Companies believe that the NCUC and PSCSC are likely to independently arrive at consistent conclusions, providing the Companies necessary clarity regarding the scope of the Carbon Plan to be pursued.

CONCLUSION

WHEREFORE, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC respectfully request that the NCUC take these Reply Comments into consideration in considering the Companies' Petition.

Respectfully submitted this, the 10th day of January, 2022.



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