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July 20, 2021

VIA Electronic Filing

Ms. Antonia Dunston, Interim Chief Clerk
North Carolina Utilities Commission
Dobbs Building
430 North Salisbury Street
Raleigh, North Carolina 27603

Re: Supplemental Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Docket Nos. E-2, Sub 1159 and E-7, Sub 1156

Dear Ms. Dunston:

Enclosed for filing are the *Supplemental Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC* in connection with the above-referenced proceedings.

Please feel free to contact me if you have any questions.

Sincerely,

Jack E. Jirak
Deputy General Counsel

Enclosure

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

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

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Joint Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, for Approval of Competitive Procurement of Renewable Energy Program	))))	SUPPLEMENTAL REPLY COMMENTS OF DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, LLC

Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP" and together with DEC, "Duke Energy" or "the Companies") by and through counsel, and pursuant to the North Carolina Utilities Commission's ("Commission") July 13, 2021 *Order Allowing Supplemental Reply Comments*, respectfully submit these supplemental reply comments in response to the North Carolina Sustainable Energy Association's ("NCSEA") and Southern Alliance for Clean Energy's ("SACE") reply comments regarding the Competitive Procurement of Renewable Energy ("CPRE") Program, the need for CPRE Tranche 3, and interpretation of the initial 45-month CPRE procurement period requirements.

Duke Energy is filing these Supplemental Reply Comments to address arguments presented by NCSEA and SACE in reply comments that could have been timely presented in initial comments. For reasons further described herein, NCSEA's and SACE's new arguments to immediately commence a CPRE Program Tranche 3 that exceeds the targeted 6,160 CPRE Program megawatts ("MW") are not legally or factually supported and would be contrary to the General Assembly's design of N.C. Gen. Stat. § 62-110.8 ("CPRE Statute"). Contrary to these parties' positions and consistent with the Companies' prior

reply comments, Duke Energy renews its request (1) to commence Tranche 3 at or near the close of the 45-month CPRE Program procurement period taking into account the projected to-be achieved Transition MW; or (2) consistent with the Public Staff's recommendation, for the Commission to exercise its authority under the CPRE Statute to delay commencement of Tranche 3 until after the close of the 45-month period, at which time the final Transition MW amount will be known and the Commission can determine the remaining amount of CPRE Program MW to be procured.

This approach also allows for further certainty regarding HB 951, which recently passed the House of Representatives, and, if enacted, would have a material impact on the future of the CPRE Program.

Duke Energy plans to file its 2021 CPRE Program Plan on September 1, 2021, as directed by the Commission, and will include in the Plan a proposed timeline for initiation of CPRE Tranche 3 and estimated, targeted amounts of (1) Transition MW; and (2) additional renewable energy resources demonstrated to be needed based upon the Companies' IRPs, to inform the Commission on the amounts to be procured through a Tranche 3 and/or additional procurements.

SUPPLEMENTAL REPLY COMMENTS

I. NCSEA and SACE's interpretation of the CPRE Program targeted procurement amount as a continuing "uncapped" MW "floor" is inconsistent with the CPRE Statute, as explained by Duke Energy and the Public Staff.

Duke Energy's initial comments explain that pursuant to the CPRE Statute, the Companies are required to add a total of 6,160 MW of renewable energy through a combination of (1) CPRE Program procurement ("CPRE Program MW") and (2) the execution of power purchase agreements ("PPA") and interconnection agreements ("IA")

for renewable energy capacity within its Balancing Authority Areas that are not subject to economic dispatch or curtailment and were not procured pursuant to the Green Source Advantage program authorized under N.C. Gen. Stat. § 62-159.2 (projects satisfying such criteria, "Transition MW").[1] Duke Energy's comments further explain that the actual amount of Transition MW is determined "at the end of the initial 45-month competitive procurement period."[2]

Based on the plain language of the CPRE Statute, the total 6,160 MW mandated to be procured under N.C. Gen. Stat. § 62-110.8(a) and (b)(1) is clearly designed to establish a specific target of renewable energy for the Companies to procure, through a combination of Transition MW and competitively procured CPRE Program MW amounts within 45 months of the Commission's initial approval of the CPRE Program. NCSEA and SACE, however, advance arguments to support an immediate 585 MW Tranche 3 procurement, by arguing that the CPRE Statute is not "cap[ped]"[3] and is a "floor not a ceiling."[4] These parties' arguments for the Companies to immediately procure additional MW potentially above the targeted CPRE Program MW within the initial 45-month period makes the 6,160 MW target essentially meaningless. Such arguments cannot be reconciled with the CPRE Statute and should be rejected.

First, NCSEA argues that there "is no cap to the CPRE program and it is clearly contemplated that the competitive procurement process continue[s] beyond the initial CPRE Program." NCSEA is correct that the CPRE Statute does not contain an explicit "cap" on the total number of MW to be procured *beyond* the initial 45-month CPRE

[1] Duke Energy Initial Comments, at 1-2.
[2] *Id. citing* N.C. Gen. Stat. § 62-110.8(b)(1).
[3] NCSEA Reply Comments, at 4.
[4] SACE Reply Comments, at 5.

Program procurement period. However, NCSEA conveniently ignores the General Assembly's intent and the statutory construction of N.C. Gen. Stat. § 62-110.8(a) clearly segregate the targeted procurement of CPRE Program MW and the additional Transition MW to achieve 6,160 MW *within* the initial 45-month CPRE Program procurement period. The Commission has recognized that where "statutory language is clear and unambiguous, the Commission must conclude that the Legislature intended the statute to be implemented according to the plain meaning of its terms."[5] Contrary to NCSEA's suggestion, the CPRE Statute explicitly caps the number of CPRE Program MW to be competitively procured in subsection (a) by requiring that "the Commission shall reduce" the CPRE Program MW where the total number of Transition MW exceeds 3,500 MW. If the General Assembly meant for there to be no "cap" on the total number of CPRE Program MW to be competitively procured, there would be no reason to require the CPRE Program MW amount to be adjusted by the Transition MW amount.

Moreover, NCSEA's statement that the CPRE Statute "clearly contemplate[s] that the competitive procurement process continue beyond the initial CPRE Program," while true, fails to recognize that the CPRE Statute conditions additional competitive procurement processes to occur only (1) "at the termination" of the initial 45-month procurement period and (2) where there is "a showing of need evidenced by the electric public utility's most recent biennial integrated resource plan or annual update approved by the Commission pursuant to G.S. 62-110.1(c)."

[5] *Order on Reconsideration,* Docket Nos. E-2, Sub 1170 and E-7, Sub 1169 (Aug. 5, 2019) (quoting *Three Guys Real Estate v. Harnett County*, 345 N.C. 468, 472, 480 S.E.2d 681, 683 (1997) ("Statutory interpretation properly begins with an examination of the plain words of the statute, and if the statute is clear and unambiguous, the Commission must conclude that the Legislature intended the statute to be implemented according to the plain meaning of its terms.").

Consistent with Duke Energy's common sense interpretation of the CPRE Statute, the Commission's rules further evidence how the CPRE Statute specifically prescribes the targeted Transition MW and CPRE Program MW to be added within the initial 45-month CPRE Program procurement period, while providing for potential additional procurements beyond the 45-month period. Commission Rule R8-71(b)(5) defines "CPRE Program Procurement Period" as "the *initial 45-month period in which the aggregate 2,660 MW of renewable energy resource nameplate capacity is required to be procured* under the CPRE Program(s) approved by the Commission." Rule R8-71(g) also specifies that *upon the expiration* of the CPRE Program Procurement Period, DEC and DEP are required to file an additional CPRE Program Plan in the following calendar year identifying any additional CPRE Program procurement requirements (or CPRE Program MW needed for compliance), as provided for in N.C. Gen. Stat. § 62-110.8(a). Accordingly, NCSEA's argument that the Commission require Duke Energy to immediately procure 585 MW in a new Tranche 3 since there is no "cap" in the CPRE Statute and because the CPRE Statute "clearly contemplates" additional competitive procurements ignores the statutory framework established by the General Assembly and should be rejected. [6]

[6] Notably, NCSEA's own website recognizes that HB 589 contemplates a capped 6,160 target where the total number of Transition MW is higher than 3,500 MW:

> As part of HB589, Duke Energy (Duke) is required ***to reach 6,160 megawatts (MW)*** of utility-scale solar on its grid. When HB589 was passed, it was expected that Duke would procure 2,660 MW through the Competitive Procurement of Renewable Energy (CPRE) process, and the remaining 3,500 MW would be procured through legacy Public Utility Regulatory Policies Act (PURPA) projects. However, it became clear that there will be significantly more than 3,500 MW of PURPA projects, ***lowering the amount of solar procured through the CPRE***.

See NORTH CAROLINA SUSTAINABLE ENERGY ASSOCIATION, *HB 589 Competitive Energy Solutions for North Carolina* (2021) *available at* https://energync.org/hb589/ (last visited July 16, 2021) (emphasis added).

SACE also presents a novel but equally incorrect legal argument to advocate that the Commission should order Duke Energy to immediately commence a 585 MW Tranche 3 procurement based on the fact that the CPRE Statute purportedly establishes a "floor not a ceiling" for future renewable energy procurement.[7] SACE states that "the CPRE [S]tatute requires procurement 'in the aggregate amount of 2,660 megawatts (MW), N.C. Gen. Stat. § 62-110.8(a), making this figure—as reduced pursuant to N.C. Gen. Stat. § 62-110.8(b)(1)—a floor and not a ceiling for actual procurement."[8] This argument similarly ignores the structure of the CPRE Statute and should be rejected. As explained above, the CPRE Statute does not establish a "floor" for the CPRE Program MW, but, instead, specifically prescribes that Transition MW and CPRE Program MW be added together to reach the 6,160 MW target within the initial 45-month CPRE Program procurement period and then prescribes what happens in the future after the initial 45-month period.

Duke Energy's position is supported by the fact that, as SACE itself recognizes, the CPRE Program MW amount is "limit[ed]"[9] by the amount of Transition MW procured prior to the end of the 45-month procurement period.[10] It is illogical for the General Assembly in the CPRE Statute to set a procurement target that is "limit[ed]" and shall be "reduce[d]" by Transition MW "at the end of the initial 45-month competitive procurement period" if the CPRE Statute was intended to set a floor, as SACE argues, to justify

[7] SACE Reply Comments, at 5.
[8] *Id*.
[9] *Id.*
[10] N.C. Gen. Stat. § 62-110.8(b). SACE's reliance on its prior comments and legal argument on the meaning of "procur[ing]", as cited in the Commission's *Order on Reconsideration* in the GSA Program proceeding, is also inapposite. The Commission found the GSA Program language at issue "susceptible to more than one reasonable interpretation" and ultimately did not rely upon this argument in its determination not to modify the GSA Program. *Order on Reconsideration*, at 7 Docket Nos. E-2, Sub 1170, E-7, Sub 1169 (Aug. 5, 2019).

immediate procurement above the targeted procurement amount. Like NCSEA, SACE asks the Commission to deviate from the General Assembly's clear intent by requiring the Companies to competitively procure amounts beyond the targeted CPRE Program MW within the 45-month CPRE Procurement Period. As established above, the CPRE Statute is clear and does not require (or provide for) the Companies to procure amounts above the targeted total 6,160 MW total procurement amount within this initial period.

Practically speaking, the entire point of the Commission's *Order Requesting Update* establishing this comment proceeding is to provide a status update on the current Transition MW so the Commission and parties can understand "*the need for* and appropriate timing of a CPRE Tranche 3."[11] As implicitly recognized by the Commission's Order, where there is no "need for" additional CPRE Program MW, there is no requirement that Duke Energy issue additional procurements for CPRE Program MW (understanding that at the termination of the initial 45-month period, the offering of a new renewable energy resources competitive procurement may be appropriate based on a future IRP showing of need).

As the Public Staff Staff's initial comments explain, there is an express "statutory procurement *target*"[12] that the Companies must achieve through competitively procured CPRE Program MW and Transition MW. And, as Duke Energy and the Public Staff propose, the most reasonable way to ensure this express target is achieved is to wait until the end of the CPRE Procurement Period when the actual amount of Transition MW has been determined, before procuring the final needed CPRE Program MW amount through Tranche 3.

[11] *Order Requesting Update*, at 2.
[12] Public Staff Initial Comments, at 5.

II. NCSEA misinterprets Duke Energy's position regarding Transition MW, and Duke Energy's and the Public Staff's proposal to update the Commission on the number of Transition MW through the CPRE Program Plan solves NCSEA's concerns.

NCSEA's reply comments allege that "Duke and the Public Staff[] propose to reduce the statutorily-required 2,660 MW by the Potential Transition MW, which includes projects where Power Purchase Agreements ("PPA") or Interconnection Agreements ("IA") have not been executed."[13] This statement is incorrect. To the contrary, Duke Energy agrees with NCSEA that the CPRE Statute does not "contemplate[] that the [CPRE Program MW amount] be adjusted based on projects that have not executed [PPAs] and [IAs]."[14] The purpose of this limited comment proceeding is to inform the Commission, to the extent achievable at this time, what the target Transition MW will actually be at the end of the 45-month CPRE Program procurement period.

Duke Energy's (and the Public Staff's) initial and reply comments explain that "it will not actually be known until November, 2021 what amount of procurement is needed to meet the initial CPRE procurement requirement, because pursuant to the CPRE Statute, total Transition MW are required to be accounted for at the end of the 45-month period."[15] Moreover, Duke Energy and the Public Staff both agree with NCSEA and interpret the CPRE Statute as requiring Transition MW to only include those projects where both a PPA and IA have been executed. In fact, this is precisely why Duke Energy and the Public Staff propose that Duke Energy update the Commission on the actual number of Transition MW through the CPRE Program Plan and again in November, 2021, as opposed to relying upon

[13] NCSEA Reply Comments, at 3.
[14] *Id.* at 3-4.
[15] Duke Energy Reply Comments, at 6 (citing Public Staff Initial Comments, at 4-5 and Duke Energy Initial Comments, at 6).

current estimated Transition MW and issuing Tranche 3 immediately—actual Transition MW, and therefore the amount of CPRE Program MW to be competitively procured through Tranche 3, cannot be known until November, 2021.[16]

In sum, NCSEA's suggestion that Duke Energy (or the Public Staff) may be seeking to rely upon "potential Transition MW" to avoid fully achieving the CPRE Program MW requirements is not correct. Consistent with the Companies' reply comments, Duke Energy requests the Commission either allow the Companies time to more conclusively determine the *actual* Transition MW and to commence a limited procurement for the remaining CPRE Program MW within the 45-month period or, if the Commission determines it to be in the public interest, adopt the Public Staff's recommendation to delay additional procurement until after November, 2021, when Transition MW can be accurately accounted and a new procurement can be commenced under the CPRE Statute.[17]

III. NCSEA's reply comments significantly mischaracterize the Companies' future IRP-projected need for solar.

NCSEA's reply comments state that "[i]n Duke's most recent approved integrated resource plan update, 4,142 MW of solar was listed as a needed resource across the two Duke territories in 2020 alone, and, for each year after that through 2034 Duke estimated an even higher yearly solar procurement capacity MW number."[18] NCSEA's characterization of Duke Energy's 2019 IRP Updates is wholly incorrect.

As an initial matter, NCSEA presents no basis for relying on now outdated information from the 2019 IRP Updates, filed nearly two years ago. Putting aside the

[16] Duke Reply Comments, at 14; Public Staff Initial Comments, at 8.
[17] Duke Energy Reply Comments, at 6; Public Staff Initial Comments, at 4, *citing* N.C. Gen. Stat. 62-110.8(h)(5).
[18] NCSEA Reply Comments, at 4.

inexplicable attempt to rely on substantially outdated information, NCSEA then proceeds to completely mischaracterize the 4,142 MW figure from DEC's and DEP's 2019 IRP Updates. The data NCSEA references includes *already installed* solar capacity plus all forecasted solar (including mandated and designated[19]) projected to be added in 2020 and was not presented by Duke Energy in its 2019 IRP Updates as "needed" solar capacity selected by the Companies' IRP model. Accordingly, this 4,142 MW amount in no way reflects Duke Energy's future need for renewable energy based on the Companies' most current IRPs or IRP Updates, which, for whatever reason, NCSEA chose to ignore by citing (and mischaracterizing) the Companies' 2019 IRP Updates. In fact, NCSEA's gross error in this respect underscores the appropriateness of the Companies' position stated in their reply comments: namely, that the Commission's *Order Requesting Update* did not expressly request parties to comment on the CPRE Statute's provision regarding future IRP-based procurement and that this limited update proceeding is not the appropriate forum to determine such a crucial question as the amount of additional future IRP-based procurement. For these reasons, the Commission should disregard NCSEA's statement and, instead, rely upon the Companies' forthcoming CPRE Program Plans.

IV. NCSEA's Comments on HB 951 further support allowing additional time to determine the Transition MW and establish the next CPRE procurement.

NCSEA "recognizes there are a number of competing interests that may affect the future of the CPRE and the next CPRE tranche" such as the "pending energy legislation before the General Assembly."[20] The Companies note that since NCSEA filed reply comments, the North Carolina House of Representatives passed HB 951. As stated by

[19] Duke Reply Comments, at 13, Footnotes 24 & 25.
[20] NCSEA Reply Comments, at 5.

NCSEA, there is a "value" to "certainty,"[21] further evidencing the reasonableness of Duke Energy and the Public Staff's position of waiting to commence Tranche 3 once the final Transition MW are known.

Accordingly, Duke Energy continues to support the Public Staff's plan to update the Commission on both needed Transition MW as well as future needed renewable capacity to be procured both within and after the initial 45-month period through an updated CPRE Program Plan. Duke Energy also plans to update the Commission once the final Transition MW is known (in November 2021) to ensure the targeted CPRE procurement amount and goals of the CPRE Statute are achieved and to allow the Commission to render its final decision regarding the adjustment needed to the targeted CPRE procurement amount.

CONCLUSION

WHEREFORE, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC respectfully request that the Commission accept these supplemental reply comments as set forth herein.

Respectfully submitted, this the 20th day of July, 2021.

DUKE ENERGY CAROLINAS, LLC AND
DUKE ENERGY PROGRESS, LLC

By: /s/*E. Brett Breitschwerdt*

[21] NCSEA Reply Comments, at 6.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Supplemental Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC* as filed in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156, was served via electronic delivery or mailed, first-class, postage prepaid, upon all parties of record.

This, the 20th day of July, 2021.

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