

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 179

In the Matter of)	
Duke Energy Progress, LLC, and Duke)	JOINT RESPONSE IN OPPOSITION
Energy Carolinas, LLC, 2022 Biennial)	TO DUKE ENERGY’S MOTION TO
Integrated Resource Plans and Carbon)	MODIFY ISSUE REPORT
Plan)	REQUIREMENT

Pursuant to N.C. Gen. Stat. § 62-80 and North Carolina Utilities Commission (“Commission”) Rule R1-7, Carolina Utility Customers Association, Tech Customers (Apple Inc., Google LLC, and Meta Platforms, Inc.), the North Carolina Sustainable Energy Association, Southern Alliance for Clean Energy, Natural Resources Defense Council, and the Sierra Club (collectively, “Joint Respondents”), through counsel, hereby respectfully submit this Joint Response in Opposition to the Motion to Modify Issues Report Requirement (the “Motion”) filed by Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (together, “the Companies” or “Duke Energy”).

Joint Respondents share Duke Energy’s dual desire to promote judicial economy and to ensure all parties have a fair opportunity to respond to documents and evidence presented in this proceeding. However, the Companies’ proposed modification to the *Order Establishing Additional Procedures and Requiring Issues Report* (“Issues Report Order”) is premature. Given the uncertainty of the issues that will be in controversy—in terms of their volume, their scope, and the number of parties raising them¹—the Respondents ask

¹ Moreover, several intervenors have recently discovered serious technical issues with the Encompass datasets provided by the Companies, which casts additional uncertainty over both intervenors’ ability to respond under the current schedule and the issues that could be in controversy at the conclusion of discovery.

the Commission to refrain from making any major modifications to the Issues Report Order at this time. Indeed, Joint Respondents have doubts that the procedural changes requested by the Companies will accomplish judicial economy and a fair process.

At this stage, it is unclear that the requested alteration to the Issues Report Order will reduce the amount of work for the parties and the Commission. At its core, the Companies' Motion seeks to inject another round of filings in an already tightly timed proceeding. The Motion suggests that—by adding a new layer of reply comments targeted at “issues that are in controversy but do not require an evidentiary proceeding”—these reply comments will reduce the number of issues at a subsequent evidentiary hearing. Motion ¶¶ 4–5. However, the Issues Report process itself, as currently directed by the Commission, would already identify and remove such issues from an evidentiary hearing. Thus, the Motion seeks to add another round of pleadings to the proceeding without making further reductions to the scope of the evidentiary hearing. In total, adding reply comments to the procedural schedule in this matter risks increasing—not decreasing—the amount of work for the parties and the Commission. Indeed, the Companies have shared that they currently anticipate a final “briefing process” on all issues²—which seems to make this new layer of reply comments superfluous.

Moreover, without knowing the issues that will be in controversy, the Joint Respondents are worried that authorizing reply comments could create an imbalance of the opportunities to address controverted issues. On July 15, 2022, the Public Staff and intervenors will submit responses and alternatives to Duke Energy's Carbon Plan. As set

² See Exhibit A (email exchange with Jack Jirak and Marcus Trathen (June 6, 2022)).

forth in the Issues Report Order, controverted issues will then travel down one of two paths: the parties can agree that the controverted issue is sufficiently set forth in the Companies' Carbon Plan and the respective responses; or the parties can agree that controverted issue requires additional evidence in a hearing. Importantly, for issues that are excluded from an evidentiary hearing, Duke Energy will have presented evidence on the issue (in its May 16, 2022 Carbon Plan filing) and, likewise, other parties will have presented evidence on the issues (in their responsive filings). Thus, both sides will have an equal opportunity to be heard on the issues. While the Motion allows all parties to file additional comments, practically it would allow the Companies to file *additional* comments and other materials (e.g., new expert reports and/or affidavits) in response to other parties' evidence without giving those other parties the opportunity to respond to the Companies' new evidence. This is not a proceeding in which the Companies have the burden of proof, like a general rate case application, and are entitled to the last word. Here, rather than provide the Companies the last word on those controverted issues not destined for hearing, Joint Respondents believe the current procedure ordered by the Commission is fair: controverted issues are either left standing on the existing filings, or move to an evidentiary hearing in which all parties—not just the Companies—have a second chance to be heard.

WHEREFORE, Joint Respondents respectfully ask the Commission to deny the Motion without prejudice, which would allow the Companies to propose such an alteration after the issues in controversy have become known.

Respectfully submitted, this 6th day of June, 2022.

/s/ Craig D. Schauer
Marcus W. Trathen
N.C. State Bar No. 17621
Craig D. Schauer
N.C. State Bar No. 41571
BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, LLP
Suite 1700, Wells Fargo Capitol Center
150 Fayetteville Street
P.O. Box 1800 (zip 27602)
Raleigh, NC 27601
(919) 839-0300
mtrathen@brookspierce.com
cschauer@brookspierce.com

*Attorneys for CUCA
and Tech Customers*

/s/ Peter H. Ledford
Peter H. Ledford
N.C. State Bar No. 42999
Taylor Jones
N.C. State Bar No. 58831
NCSEA
4800 Six Forks Road, Ste. 300
Raleigh, NC 27609
(919) 832-7601
peter@energync.org
taylor@energync.org

Attorneys for NCSEA

/s/ Gudrun Thompson
Gudrun Thompson
N.C. Bar No. 28829
David L. Neal
N.C. Bar No. 27992
Nicholas Jimenez
N.C. Bar No. 53708
Southern Environmental Law Center
601 West Rosemary Street, Suite 220
Chapel Hill, NC 27516
Telephone: (919) 967-1450
gthompson@selcnc.org
dneal@selcnc.org
njimenez@selcnc.org

*Attorney for North Carolina Justice
Center, the North Carolina Housing
Coalition, Sierra Club, and Southern
Alliance for Clean Energy*

Certificate of Service

I hereby certify that a copy of the foregoing JOINT RESPONSE IN OPPOSITION TO DUKE ENERGY'S MOTION TO MODIFY ISSUE REPORT REQUIREMENT has been served this day upon all parties of record in this proceeding, or their legal counsel, by electronic mail.

This the 6th day of June 2022.

BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, LLP

/s/ Craig D. Schauer

From: Jirak, Jack <Jack.Jirak@duke-energy.com>
Sent: Wednesday, June 1, 2022 4:01 PM
To: Marcus W. Trathen
Cc: Craig Schauer; Breitschwerdt, Brett -mcguirewoods
Subject: RE: [EXTERNAL] Duke Energy Carbon Plan - Planned Procedural Motion Seeking Leave to File Reply Comments on Certain Issues -- Response Requested by Noon, Thursday, June 2

[EXTERNAL]

Thanks, Marcus.

The reply comment opportunity is distinct from and a predicate to the briefing process and will be more technical in nature. The briefing process will cite to and rely on the comments and testimony (where applicable). Therefore, the reply comments must occur prior to briefing.

Let me know if you have any other questions or would like to discuss further.

All the best,

Jack

From: Marcus W. Trathen <MTRATHEN@brookspierce.com>
Sent: Wednesday, June 1, 2022 3:43 PM
To: Jirak, Jack <Jack.Jirak@duke-energy.com>
Cc: Craig Schauer <CSCHAUER@brookspierce.com>; Breitschwerdt, Brett -mcguirewoods <bbreitschwerdt@mcguirewoods.com>
Subject: RE: [EXTERNAL] Duke Energy Carbon Plan - Planned Procedural Motion Seeking Leave to File Reply Comments on Certain Issues -- Response Requested by Noon, Thursday, June 2

Jack – thanks for this revised version. My clients are still mulling this over, but quick question: my assumption is that the Commission will permit briefing after the hearing (assuming there is a hearing); wouldn't it be more efficient to brief all issues at the same time?

[Marcus W. Trathen](#)



t: 919.839.0300

f: 336.232.9207

1700 Wells Fargo Capitol Center
150 Fayetteville Street
Raleigh, NC 27601
P.O. Box 1800 (27602)

From: Jirak, Jack <Jack.Jirak@duke-energy.com>

Sent: Wednesday, June 1, 2022 2:48 PM

To: Breitschwerdt, Brett -mcguirewoods <bbreitschwerdt@mcguirewoods.com>; Edmondson, Lucy <lucy.edmondson@psncuc.nc.gov>; Luhr, Nadia <Nadia.Luhr@psncuc.nc.gov>; 'robert.josey@psncuc.nc.gov' <robert.josey@psncuc.nc.gov>; Christina Cress <ccress@bdixon.com>; John Burns <counsel@carolinasceba.com>; Snowden, Benjamin L. <BSnowden@foxrothschild.com>; David Neal (SELC) <dneal@selcnc.org>; joe.eason@nelsonmullins.com; Ledford, Peter-energync <peter@energync.org>; Dodge, Tim <Tim.Dodge@ncemcs.com>; Craig Schauer <CSCHAUER@brookspierce.com>; james.west@faypwc.com; pbuffkin@gmail.com; Margaret A. Force <pforce@ncdoj.gov>; ddrooz@foxrothschild.com; Stephanie U. (Roberts) Eaton <seaton@spilmanlaw.com>; andrea@attybryanbrice.com; Youth, Michael <Michael.Youth@ncemcs.com>; Nick Jimenez <njimenez@selcnc.org>; 'ben@energync.org' <ben@energync.org>; Gray Styers, Jr. <gstyers@foxrothschild.com>; Marcus W. Trathen <MTRATHEN@brookspierce.com>; cathy@attybryanbrice.com; Weston Adams <weston.adams@nelsonmullins.com>; Carrie H. Grundmann <cgrundmann@spilmanlaw.com>; temoore@ncdoj.gov
Cc: Higginbotham, Jason A. <Jason.Higginbotham@duke-energy.com>; Fentress, Kendrick C <Kendrick.Fentress@duke-energy.com>; DeMarco, Tracy S. <TDeMarco@mcguirewoods.com>; Kells, Andrea R. <AKells@mcguirewoods.com>
Subject: RE: [EXTERNAL] Duke Energy Carbon Plan - Planned Procedural Motion Seeking Leave to File Reply Comments on Certain Issues -- Response Requested by Noon, Thursday, June 2

[EXTERNAL]

All,

Based on some helpful feedback from Public Staff and CIGFUR, Duke has updated the motion as shown in the attached. The key changes are:

- Reframing the request so that the reply comment opportunity is for all parties on all issues in controversy but that do require an evidentiary proceeding. This is substantively the same outcome but just is a cleaner way to describe the issue and does not require adding a fourth category to the Issues List.
- Asking Commission to confirm a date certain by which it would resolve any disputes concerning the Issues List.
- Permissive reply comments would be due six weeks from date that the Commission confirms scope of evidentiary hearing.

Duke respectfully requests feedback on the revised motion by COB today.

Thanks to those that have already provided feedback. Duke believes that the changes reflected in the draft do not fundamentally change the intent of the motion. Nevertheless, for the sake of clarity, Duke would appreciate confirmation from those parties that have previously provided feedback that their position is still the same based on these changes.

Please let me know if you have any questions.

All the best,

Jack

From: Breitschwerdt, E. Brett <bbreitschwerdt@mcguirewoods.com>

Sent: Tuesday, May 31, 2022 7:19 PM

To: Edmondson, Lucy <lucy.edmondson@psncuc.nc.gov>; Luhr, Nadia <Nadia.Luhr@psncuc.nc.gov>; 'robert.josey@psncuc.nc.gov' <robert.josey@psncuc.nc.gov>; Christina Cress <ccress@bdixon.com>; John Burns <counsel@carolinasceba.com>; Snowden, Benjamin L. <BSnowden@foxrothschild.com>; David Neal (SELC) <dneal@selcnc.org>; joe.eason@nelsonmullins.com; Ledford, Peter-energync <peter@energync.org>; Dodge, Tim <Tim.Dodge@ncemcs.com>; Craig Schauer <CSCHAUER@brookspierce.com>; james.west@faypwc.com; pbuffkin@gmail.com; Margaret A. Force <pforce@ncdoj.gov>; ddrooz@foxrothschild.com; Stephanie U. (Roberts) Eaton <seaton@spilmanlaw.com>; andrea@attybryanbrice.com; Youth, Michael <Michael.Youth@ncemcs.com>; Nick Jimenez <njimenez@selcnc.org>; 'ben@energync.org' <ben@energync.org>; Gray Styers, Jr. <gstyers@foxrothschild.com>; Marcus W. Trathen <MTRATHEN@brookspierce.com>; cathy@attybryanbrice.com; Weston Adams <weston.adams@nelsonmullins.com>; Carrie H. Grundmann <cgrundmann@spilmanlaw.com>; tmoore@ncdoj.gov

Cc: Jirak, Jack <Jack.Jirak@duke-energy.com>; Higginbotham, Jason A. <Jason.Higginbotham@duke-energy.com>; Fentress, Kendrick C <Kendrick.Fentress@duke-energy.com>; DeMarco, Tracy S. <TDeMarco@mcguirewoods.com>; Kells, Andrea R. <AKells@mcguirewoods.com>

Subject: [EXTERNAL] Duke Energy Carbon Plan - Planned Procedural Motion Seeking Leave to File Reply Comments on Certain Issues -- Response Requested by Noon, Thursday, June 2

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Good evening Counsel,

I hope you all had a nice Memorial Day.

Duke Energy plans to file the attached Motion on Thursday asking the Commission to amend the procedural schedule for identifying issues that require consideration in an evidentiary hearing. The Companies believe efficiencies can be gained by allowing potentially less significant issues to be address through responsive comments versus pre-filed testimony and at an evidentiary hearing. While we expect that Duke will primarily be the party seeking to respond to the comments and potential alternative Carbon Plan proposals submitted by intervenors, the Motion states that Duke does not oppose all parties being authorized to file responsive comments on issues identified as appropriate for comment versus evidentiary hearing in the July 22 Issues Report. The comments will be due on September 2, 2022, which is also the same date that Public Staff and intervenor responsive testimony is due to be filed.

Duke would appreciate feedback from parties regarding whether we can state that your client supports/does not object to the relief requested in the Motion. Please feel free to give me a call if you have any questions.

Thanks,
BB

E. Brett Breitschwerdt

Partner

McGuireWoods LLP

501 Fayetteville St.

Suite 500

Raleigh, NC 27601

T: +1 919 755 6563

M: +1 828 279 8726

F: +1 919 755 6579

bbreitschwerdt@mcguirewoods.com

[Bio](#) | [VCard](#) | www.mcguirewoods.com



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