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Via Electronic Filing

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

Re: *Biennial Consolidated Carbon Plan and Integrated Resource Plans of Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC, Pursuant to N.C.G.S. § 62-110.9 and § 62-110.1(c)*
Docket No. E-100, Sub 190

Dear Ms. Dunston:

On behalf of TotalEnergies Renewables USA, LLC (“TotalEnergies”), we submit this letter in the referenced docket in lieu of limited formal comments pursuant to the *Order Requesting Comments on Request for Development of Supplemental Portfolios and Adjustment to Procedural Schedule* issued by the Commission on December 20, 2023. TotalEnergies respectfully thanks the Commission for requesting the views and concerns of stakeholders pertaining to proposed scheduling changes to accommodate additional modeling, analysis and testimony by Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”, and together with DEC, the “Companies”) in these consolidated proceedings.

TotalEnergies’ petition to intervene summarized the reasons it became an intervenor pursuant to the Commission’s order of May 24, 2023. An affiliate of a French-based global energy company, TotalEnergies has an announced goal of becoming one of the world’s top five producers of renewable energy by 2030, and toward that end, expects to finance approximately \$60 billion in renewable projects globally and to own about 100 GW of renewable energy capacity by 2030. TotalEnergies holds lease OCS-A-0545 from the Bureau of Ocean Energy Management (“BOEM”), one of two Wind Energy Areas for the production of offshore wind (“OSW”) energy known collectively as Carolina Long Bay, located off the coast of the Carolinas south and east from the mouth of the Cape Fear River. An unregulated affiliate of the Companies holds BOEM

lease OCS-A-0546, with exclusive rights to develop offshore wind production facilities on the contiguous remainder of Carolina Long Bay. A third BOEM lease area located further north is held by another intervenor, Avangrid Renewables, LLC.

The parties' disputes over process must not be allowed to obscure the distinct but related purposes of these consolidated quasi-legislative proceedings and any associated evidentiary hearing(s). The Commission's review of any resource plan developed by the Companies pursuant to its traditional role of overseeing a utility's resource planning stands on a different footing than its recently assigned responsibility for developing and executing a state-wide Carbon Plan. For reasons summarized below, the Commission may choose for purposes of the Carbon Plan to oversee the hearing more actively; specifically, it may choose to frame issues of fact and law it wants addressed differently than suggested by the Companies or any stakeholder, or to order the development of portfolios or resource-related information in a fashion different from that submitted for other purposes by a party.

There are ample policy reasons for the Commission to take a more independent approach in framing the issues for the upcoming hearing given that the updated load forecasts of the Companies and other utilities in the region suggest the risk of a severe electric capacity shortfall in the Southeast. The economic consequences for failing to meet the current economic development opportunities may not find expression solely in retail electric rates, but much of the economic consequences will likely fall on the Companies' ratepayers nonetheless. Moreover, the interests of the public may be different from those of the Companies or intervenors as to the selection or timing for development of specific resources, particularly some of the long-lead resources that may be required to achieve the reduction of emissions that are central to achieving the decarbonization interim and 2050 goals. Demands for capital and for expertise and equipment to develop new platforms for the decarbonized production of power are global in scope and scale; domestically, the practical availability of tax credits and other funded financial benefits to support specific forms of infrastructure can be forfeited or lost due to delays and indecision in the period before construction commences. For these and the other reasons, TotalEnergies did not consent to the Companies' rescheduling proposal, as summarized below.

By letter filing dated December 18, 2023, the Companies stated an intent to file supplemental portfolios and supporting testimony resulting from updated 2023 forecasts of each operating utility's future loads. The Companies' December 18 proposals arose from "...recent substantial, material changes in the Companies' load forecast since the preparation of the Companies [CPIRP] Plan... [filed on August 17, 2023 (hereinafter the Companies' August 2023 CPIRP)]", as summarized in supplemental direct testimony of Glen A. Snider regarding the Companies' updated 2023 Fall Load Forecast filed on November 30, 2023. [Duke letter dated December 18, 2023, fn1.] The Companies stated an intention to file additional supplemental portfolios and supporting supplemental testimony by January 31, 2024, which the Companies state may have a "potential impact" on the Companies' August 2023 CPIRP, but state no intention to amend or revise their plan as-filed in August. [ibid.] As to scheduling, the Companies suggest revision of the existing procedural schedule for 2024 to require pre-filed expert testimony from the Public Staff and intervenors on April 17, rebuttal testimony from the Companies on May 31, and commencement of the expert witness hearing on June 17. But, "[t]o the extent the Commission adopts a different schedule than the one proposed ..., the Companies request that any schedule be

distributed evenly in the proposed schedule between the various deadlines.” [Duke letter dated December 18, 2023, p. 3.]

In its Initial Carbon Plan adopted on December 30, 2022, the Commission made clear that the consolidation of its function reviewing the Companies’ integrated resource planning under N.C.G.S. § 62-110.1(c), with the Commission’s “... development and execution oversight function pursuant to N.C.G.S. § 62-110.9”, was for purposes of “regulatory efficiency”. The consolidation of proceedings and some Commission functions did not appear to be intended to conflate the related but separate endeavors for all purposes. For example, for purposes of the decades old integrated resource planning function, the Commission traditionally has regarded its primary role as one of study and comment resulting in an analysis of a utility-developed plan, because the “...least-cost integrated resource planning proceeding [is] not intended to provide an occasion for the issuance of mandatory orders requiring substantive changes in a given utility’s operations.” State ex. Rel Utilities Comm’n. v. N.C. Electric Membership Corp., 105 N.C. App. 136, 143, 412 S.E.2d 166, 170 (1992).

By comparison, under N.C.G.S. § 62-110.9, the General Assembly unambiguously assigned responsibility and authority to the Commission for developing and updating a Carbon Plan to reduce a specific class of emissions, and for enforcing that Carbon Plan’s execution to achieve the statutorily stated target dates; the Commission fulfills this role “...with the electric utilities, including stakeholder input...”, but the Commission develops the plan and selects facilities and resources. N.C.G.S. §62-110.9 (1) & (2). Thus, while both types of proceedings are quasi-legislative rather than adjudicatory in nature, each portion appears to involve materially different roles for the Commission and the Companies. As a result, the evidentiary hearings of these two portions of these consolidated proceedings may result in common factual findings, but the materiality of facts and their use in the process of applying existing law are subject to the different “lens” of different purposes and different legal standards.

Moreover, any assessment of the significance of the materially increased 2023 load forecasts, which the Companies rightly shared promptly with the Commission and intervenors, may vary depending on which “lens” is used for that assessment. In his recently filed Supplemental Testimony, for example, Mr. Snider refers to the Companies’ consideration of accelerated actions, including “accelerated deployment of customer programs, utility scale storage and new natural gas resources in both North Carolina and South Carolina...”, and actions to “...continue exploration of the potential for offshore wind generation...”. [Supplemental Direct Testimony of Glen A. Snider filed November 30, 2023, p. 11, ln. 1-4.] He forecasts “it is likely that further actions” pertaining to OSW will be presented to the Commission “...at the appropriate time.” There is no indication, however, whether an “appropriate time” takes into account pre-construction activities necessary to develop a project that qualifies for currently available, federally funded benefits and tax incentives for OSW.

As the capacity needs for undisputedly long-lead and capital intensive OSW resources becomes more clearly a matter of timing, the risk of higher costs from delay may exceed the risk of prematurity, due to the risks of alternative deployments of currently available capital for other purposes, or limits on federally authorized and allocated funds for tax incentives and other federal funding for OSW and other renewable resources under the Inflation Reduction Act; the Initial

Page 4

Carbon Plan reiterated that "...the Commission has expected and will continue to expect Duke to pursue every opportunity that may arise through tax incentives or federal funding to benefit its customers." [Initial Carbon Plan, p.9.]

As a result of these materially different roles of the Commission and the Companies in the two portions of these consolidated proceedings as described above, TotalEnergies declined to consent to the Companies' comprehensive scheduling motion. Through the "lens" of the Carbon Plan portion of these proceedings, the relief requested seemed premature from the perspective of intervenors who will not see the Companies' new filings before January 31; and, that relief also appeared to pre-suppose that the Commission would prefer for the Companies or stakeholders to determine what information the Commission needs or wants to fulfill its role under N.C.G.S. §62-110.9.

TotalEnergies sincerely thanks the Commission for the opportunity to submit these comments as to scheduling for the remainder of these consolidated proceedings.

TotalEnergies looks forward to collaboratively working with the Commission, the Companies and other stakeholders during 2024 in pursuit of the development and adoption of an "all of the above" strategy to decarbonize the Companies' generation resources and maintain a diverse and reliable electric generation and fuel resource mix to serve the Carolinas.

Sincerely,

Electronically submitted
/s/Joseph W. Eason

Nelson, Mullins, Riley & Scarborough LLP
Counsel for TotalEnergies Renewables USA, LLC

cc: Weston Adams, Nelson, Mullins, Riley & Scarborough LLP

CERTIFICATE OF SERVICE

The undersigned attorney for TotalEnergies Renewables USA, LLC, hereby certifies that he caused the foregoing letter to be served electronically upon counsel of record for all parties to this proceeding, consistent with the Service List maintained by the NCUC Chief Clerk's office, by electronic mail.

This the 3rd day of January, 2024.

/s/ Joseph W. Eason

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