

September 8, 2017

Ms. M. Lynn Jarvis  
Chief Clerk  
North Carolina Utilities Commission  
Fifth Floor, Room 5063  
430 N. Salisbury Street  
Raleigh, NC 27699-4325

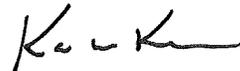
**Re: Rulemaking Proceeding to Implement G.S. 62-110.8  
NCUC Docket No. E-100, Sub 150  
Joint Reply Comments of NC Clean Energy Business Alliance and  
NC Sustainable Energy Association**

Dear Ms. Jarvis:

Please find attached the **Joint Reply Comments of NC Clean Energy Business Alliance and NC Sustainable Energy Association** for filing in the above-captioned docket. As part of our Joint Reply Comments, we have provided a “clean” copy of our revisions to rules proposed by Duke Energy Progress, LLC and Duke Energy Carolinas, LLC (collectively, “Duke Energy”), rather than a red-line version of Duke Energy’s proposed rules. We are not providing a red-line version because it is our understanding that Duke Energy prepared a subsequent version of its proposed rules that we have not seen, and we did not want to make red-line changes to a not-current version of Duke Energy’s proposed rules.

By copy of this letter, I am forwarding a copy of the above to all parties of record. If you have any questions or comments regarding this filing, please do not hesitate to call me. Thank you in advance for your assistance in this matter.

Very truly yours,

  
Karen Kemerait

Enclosures

C: Parties of Record

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION  
DOCKET NO. E-100, SUB 150**

<b>In the Matter of:</b>	)	<b>JOINT REPLY COMMENTS</b>
	)	<b>OF NORTH CAROLINA</b>
<b>Rulemaking Proceeding to Implement</b>	)	<b>CLEAN ENERGY BUSINESS</b>
<b>G.S. 62-110.8</b>	)	<b>ALLIANCE AND NORTH</b>
	)	<b>CAROLINA SUSTAINABLE</b>
	)	<b>ENERGY ASSOCIATION</b>

**JOINT REPLY COMMENTS OF NCCEBA AND NCSEA**

Pursuant to the North Carolina Utilities Commission’s (“Commission”) July 28, 2017 *Order Initiating Rulemaking Proceeding* (“July 28, 2017 Order”), on August 16, 2017 the North Carolina Clean Energy Business Alliance (“NCCEBA”) filed the *Initial Comments of North Carolina Clean Energy Business Alliance* (“NCCEBA’s Initial Comments”)<sup>1</sup>, the North Carolina Sustainable Energy Association (“NCSEA”) filed *NCSEA’s Initial Comments*, and Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) jointly filed *Duke Energy Carolinas, LLC’s and Duke Energy Progress, LLC’s Initial Comments and Proposed Rule to Implement [SIC] N.C. Gen. Stat. § 62-110.8* (“Duke’s Initial Comments”). Duke’s Initial Comments included as an attachment DEC and DEP’s proposed rule for implementing G.S. 62-110.8 (“Duke’s Initial Proposed Rule”). In response to intervenor comments, Duke has engaged with NCCEBA and NCSEA in its development of a revised proposed rule (“Duke’s Revised Proposed Rule”), and shared an initial draft with NCCEBA and NCSEA. While the initial draft of Duke’s Revised Proposed Rule addresses some of the comments made by NCCEBA and NCSEA in their initial comments, the draft was not fully responsive to the

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<sup>1</sup> NCCEBA’s initial comments were re-filed on August 17, 2017 to include a page that was inadvertently omitted from the August 16, 2017 filing.

issues raised by NCCEBA and NCSEA. Pursuant to the Commission's July 28, 2017 Order, as modified by the Commission's August 24, 2017 *Order Granting Extension of Time* and the Commission's subsequent August 30, 2017 *Order Granting Additional Extension of Time*, NCCEBA and NCSEA submit the following joint reply comments. NCCEBA and NCSEA have modified the version of Duke's Revised Proposed Rule that they received, which is included as Attachment A.

**I. ROLE OF THE INDEPENDENT ADMINISTRATOR**

G.S. 62-110.8(d) makes clear that "[t]he competitive procurement of renewable energy capacity established pursuant to this section shall be independently administered by a third-party entity to be approved by the Commission." In their respective initial comments, NCCEBA and NCSEA set forth in detail various considerations for the Commission to take into account when adopting rules pertaining to an independent administrator that will oversee the competitive procurement process. In comparison, neither Duke's Initial Comments nor Duke's Initial Proposed Rule outline the role and ensure the integrity of the independent administrator. Duke's Revised Proposed Rule addresses some of the comments made by NCCEBA and NCSEA in their initial comments, but the draft shared was not fully responsive to the issues raised by NCCEBA and NCSEA in ensuring the fairness and integrity of the solicitation process. Accordingly, Attachment A incorporates the considerations related to the role of the independent evaluator that were raised by NCCEBA and NCSEA in their initial comments.

G.S. 62-110.8(d) is explicit: the competitive procurement process "shall be independently administered by a third-party entity[.]" A utility may participate in the

competitive procurement process, pursuant to G.S. 62-110.8(e), but the program is not to be administered by a utility. NCCEBA and NCSEA's Attachment A incorporates the issues raised in their initial comments and the rules of other states to outline the role and responsibilities of the independent administrator in the solicitation process.

Pursuant to G.S. 62-110.8(d), the independent administrator is "to be approved by the Commission." The statute is silent as to who should select the independent evaluator. Elsewhere in S.L. 2017-192, the legislation makes clear that the utilities are to make a proposal and the Commission is to approve the proposal. *See, e.g.,* S.L. 2017-192, Section 2.(c) ("The program . . . shall be filed by the electric public utility . . . and the Commission shall issue an order to approve, modify, or deny the program[.]"). The silence of the legislature should not be read by the Commission to mean that the utilities should select the independent administrator; rather, inasmuch as G.S. 62-31 grants the Commission "full power and authority to administer and enforce the provisions" of Chapter 62 of the General Statutes, the independent administrator should be selected by the Commission. In the event that the Commission determines it is not appropriate for it to make the selection, then the selection should be made through a stakeholder process that includes notice and an opportunity for comment from all interested parties.

One of the most important issues in the evaluation process is how the winning bid is ultimately selected. Duke's Revised Proposed Rule sets forth a proposal evaluation process that allows the electric public utility to add bids to a short list of bids selected by the independent administrator from which the winning bid is selected and gives final authority to select the winning bidder to the electric public utility, even when the utility itself is a bidder. NCCEBA and NCSEA's proposed rules make it clear that the

independent administrator develops the final short list and makes the determination of the winning bidder. The statutory language of G.S. 62-110.8(d) makes it clear that the independent administrator is to develop the methodology for evaluating proposals. (“The third-party entity shall develop and publish the methodology used to evaluate responses . . .”). Thus, the responsibility for evaluating proposals lies with the independent administrator, and not the utility. Furthermore, G.S. 62-110.8(d) goes on to make it clear that the independent administrator is “to ensure that all responses are treated equitably.” It is impossible for the independent administrator to ensure that all proposals are treated equitably if the proposals are being reviewed by another entity, especially if that entity is also participating in the competitive procurement process.

Finally, Duke’s Revised Proposed Rule sets forth a process by which the utilities will select which proposals are accepted and which are rejected. However, the competitive procurement process is to be administered by the independent administrator, and administration of the process includes selecting which proposals are accepted and which are rejected. While the utilities have authority to determine location and allocation of projects pursuant to G.S. 62-110.8(c), there is nothing in the statute that would suggest that administration of the competitive procurement process by the independent administrator is not to include selecting proposals.

NCCEBA and NCSEA respectfully request that the Commission recognize that the independent administrator should be the entity that determines the winning bidders to ensure the fairness and integrity of the solicitation process. However, in the event that the Commission allows the utilities to have this authority, NCCEBA and NCSEA ask the Commission to include in its rules implementing G.S. 62-110.8 a requirement that the

electric public utilities provide reasonable and prudent reasons for any departure from the independent administrator's rankings and recommendations as well as a dispute resolution process that is overseen by the Commission to address complaints about the selection process and provide the appropriate remedies.

## **II. REQUIRED COMPONENTS OF THE UTILITIES' INITIAL COMPETITIVE PROCUREMENT PROCESS FILINGS**

In their respective initial comments, NCCEBA and NCSEA set forth in detail why the utilities' initial filings, which are due to be filed on November 27, 2017, should include specifics about the implementation of the competitive procurement process over the entire 45-month period, not just the first year of the process. These suggestions, which have been incorporated in Attachment A, will enable participants in the competitive procurement process to plan and propose projects over the entire 45-month period that will be most cost-effective for ratepayers. In addition, since G.S. 62-110.8(a) requires that competitive procurements after the initial 45-month period be based on a showing of need in the utilities' integrated resource plans, Attachment A makes clear that the competitive procurement process is to be considered as an integral component of integrated resource planning for long-term capacity needs.

NCCEBA and NCSEA also have included provisions in their proposed rules to ensure that the pro forma contracts that will be used in the solicitation process are submitted to the Commission for approval at the front end of the process. It is likely that there will be considerable comment from the prospective bidder community on the proposed contracts, and the Commission may be asked to resolve certain matters on which the utilities and bidders cannot reach agreement. Deferring contract review until later in the process could result in delay of the solicitation process.

### **III. EXPEDITED CPCN PROCESS**

In their initial comments, both NCCEBA and NCSEA focused on a principle of equity between independent power producers and utilities in the competitive procurement process. The principle of equity underlies the inclusion of G.S. 62-110.8(h)(3), which creates an expedited process for certificates of public convenience and necessity (“CPCNs”) for utility-owned facilities. Under current law, the process for a utility to obtain a CPCN is more burdensome than for an independent power producer, and G.S. 62-110.8(h)(3) makes for a more equitable situation. However, Duke’s Initial Proposed Rule and Duke’s Revised Proposed Rule appear to take the provisions of G.S. 62-110.8(h)(3) too far by creating an environment where the process for an independent power producer to obtain a CPCN is more burdensome than for a utility to obtain a CPCN. NCCEBA and NCSEA support the adoption of an expedited process for a utility to obtain a CPCN, but the process should not give an unfair advantage to a utility in the competitive procurement process. Accordingly, Attachment A includes language that would use the same CPCN process for both a utility and an independent power producer.

### **IV. WAIVER OF REGULATORY CONDITIONS OR CODE OF CONDUCT REQUIREMENTS**

In its initial comments, NCCEBA encouraged the Commission to adopt a procedural process for waivers of regulatory conditions or code of conduct requirements to be an exception rather than the norm, and to place the burden on the utility to prove that the waiver is necessary.<sup>2</sup> However, Duke’s Initial Proposed Rule and Duke’s Revised

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<sup>2</sup> In its initial comments, NCSEA did not propose rules or provide initial comments to the Commission on the waiver of regulatory conditions or code of conduct requirements, but did note that it would provide comments on the proposals of other parties as necessary in its reply comments.

Proposed Rule both contain a blanket waiver of regulatory conditions and code of conduct requirements for purposes of the competitive procurement process. This proposal is unnecessarily broad and weakens the protections that regulatory conditions and code of conduct requirements are designed to provide. Attachment A includes language that would allow a utility to petition the Commission to grant a waiver, rather than providing for a blanket waiver.

#### V. INTERCONNECTION WORKING GROUP

In their respective initial comments, NCCEBA and NCSEA both discussed the interrelationship between the interconnection process and the competitive procurement process. However, the interconnection process is not discussed in Duke's Initial Comments, Duke's Initial Proposed Rule or Duke's Revised Proposed Rule. NCCEBA and NCSEA respectfully request that the Commission recognize that the competitive procurement process cannot be successful, and the requirements of G.S. 62-110.8(a) cannot be met, if selected projects are unable to progress through the interconnection process. NCCEBA and NCSEA recommend that the Commission create a working group to address interconnection issues as a part of the competitive solicitation process. Interconnection issues have the potential to affect the bidding process and the ability of winning bidders to deliver the energy capacity to the electric public utilities under the competitive solicitation process. It is important the market participants, the electric public utilities, and the independent administrator address interconnection issues early in the process to ensure the success of the competitive solicitation process.

#### CONCLUSION

NCCEBA and NCSEA recognize the complexity of the issues before the Commission in implementing the competitive procurement process. The organizations respectfully request that the Commission consider the issues raised in these reply comments and the accompanying proposed rule in its deliberations in this proceeding.

Respectfully submitted, this the 8th day of September, 2017.

/s/ Karen M. Kemerait

M. Gray Styers, Jr.  
Karen M. Kemerait  
Deborah K. Ross  
434 Fayetteville Street, Suite 2800  
Raleigh, NC 27601  
E-mail: gray.styers@smithmoorelaw.com  
Telephone: (919) 755-8741  
Attorneys for: North Carolina Clean Energy  
Business Alliance

/s/ Peter H. Ledford

Peter H. Ledford  
4800 Six Forks Road, Suite 300  
Raleigh, NC 27609  
E-mail: peter@energync.org  
Telephone: (919) 832-7601 Ext. 107  
Attorney for: North Carolina Sustainable  
Energy Association

## R8-XX COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY

- (a) Purpose. The purpose of this Rule is to implement the provisions of G.S. 62-110.8, and to provide for Commission oversight of the CPRE Program(s) designed by the electric public utilities subject to G.S. 62-110.8 for the competitive procurement and development of renewable energy facilities in a manner that ensures continued reliable and cost-effective electric service to customers in North Carolina.
- (b) Definitions. Unless listed below, the definitions of all terms used in this Rule shall be as set forth in G.S. 62-110.8. For the purposes of this Rule, the following terms shall be defined as:
- (1) "Affiliate" – is defined as provided in G.S. 62-126.3(1).
  - (2) "Affiliate Bid Team" -- Any affiliate of an electric public utility that intends to submit a bid in response to a CPRE RFP Solicitation, as well as any other persons acting for that affiliate or on its behalf in support of the development and submission of such bid.
  - (3) "Avoided cost rates" – An electric public utility's calculation of its long-term, levelized avoided energy and capacity costs utilizing the methodology most recently approved or established by the Commission (as of 30 days prior to the date of the electric public utility's upcoming CPRE RFP Solicitation) for purchases of electricity from qualifying facilities pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978, as amended. The electric public utility's avoided cost rates shall be used for purposes of determining the maximum amount that the utility will be required or allowed to pay for renewable energy resources procured through the utility's CPRE RFP Solicitation. For each CPRE RFP Solicitation, the electric public utility's avoided costs shall be calculated over the time period of the utility's pro forma contract(s) approved by the Commission. For example, where the electric public utility's pro forma CPRE RFP Solicitation contract is for a term of 20 years, the avoided energy and capacity cost rate applicable to that contract would be a 20-year, levelized long-term rate calculated based upon the Commission's approved avoided cost methodology in effect at the time the solicitation is held.
  - (4) "Competitive Procurement of Renewable Energy (CPRE) Program" – A program proposed by an electric public utility and approved by the Commission pursuant to G.S. 62-110.8 for the competitive procurement of renewable energy resources.
  - (5) "CPRE Program Requirements" – The requirements imposed on an electric public utility with respect to its CPRE Program by G.S. 62-110.8, this Rule, or any applicable order of the Commission.
  - (6) "CPRE RFP Solicitation" – A request for proposals issued by an electric public utility under this Rule for the competitive procurement of renewable energy resources pursuant to the utility's CPRE Program.

- (7) “IE Website” – The website established and maintained by the Independent Administrator as required by subsection (d)(7) of this Rule.
  - (8) “Independent Administrator” – Third-party entity to be selected and approved by the Commission that shall develop and publish the methodology used to evaluate all responses received in a given CPRE Program Solicitation to ensure the transparency of the CPRE Program process established by this Rule and to ensure that all responses are treated equitably, and that shall administer the CPRE Program Solicitation and determine the winning bid.
  - (9) “Initial CPRE Program Procurement Period” – The initial 45-month period during which electric public utilities are required by G.S. 62-110.8 to implement a CPRE Program approved by the Commission.
  - (10) “Market price” – The price offered by bidders at which an electric public utility procures renewable energy, capacity, and environmental and renewable attributes through a CPRE RFP Solicitation administered under this Rule. For utility-owned assets selected under the CPRE Program, the revenue requirement shall be no greater than the annual price bid by such utility with respect to such asset in the applicable CPRE RFP Solicitation. The market price shall be used to derive authorized revenues to be recovered by the electric public utility for any utility-owned assets procured in the same CPRE RFP Solicitation where the product offered and procured by the electric public utility is the same as the product procured from the third parties in an arm’s length transaction. The market price shall not exceed the electric public utility’s avoided cost rates established for the same CPRE RFP Solicitation.
  - (11) “Renewable energy certificates” is defined as provided in G.S. 62-133.8(a)(6).
  - (12) “Renewable energy facilities” is defined in G.S. 62-133.8(a)(7), but as used in this Rule and CPRE Program, shall be limited to renewable energy facilities with a nameplate capacity rating of 80 MW or less, and that are placed in service after the date of the electric public utility’s initial CPRE RFP Solicitation.
  - (13) “Renewable energy resources” are as defined in G.S. 62-133.8(a)(8).
- (c) Initial CPRE Program Filings and Program Guidelines
- (1) Each electric public utility shall seek Commission approval of a CPRE Program as required by G.S. 62-110.8 by making a filing with the Commission. Potential bidders shall have the opportunity to submit comments to the Commission on any proposed CPRE Program and the proposed CPRE Program guidelines required by subsection (2) of this section.
  - (2) An electric public utility shall develop and seek Commission approval of guidelines for the implementation of its CPRE Program and to inform

market participants regarding the terms and conditions of, and process for participating in, the CPRE Program. The electric public utility shall initially file its CPRE Program guidelines at the time it initially proposes a CPRE Program for Commission approval and shall thereafter publicize and maintain its then-current CPRE Program guidelines on its website. The CPRE Program guidelines should, at minimum, include the following:

- i. Minimum bidder requirements for participation in the electric public utility's CPRE RFP Solicitation(s);
  - ii. Proposed criteria for the evaluation of bids under the CPRE Program, including project-readiness requirements; and
  - iii. The pro forma contract(s) to be utilized in the CPRE Program in accordance with subsection (l) of this Rule.
- (3) At the time an electric public utility files its proposed CPRE Program guidelines with the Commission, it shall also identify any currently-approved regulatory conditions and/or provisions of the electric public utility's code of conduct for which the electric public utility intends to seek waiver from the Commission as provided for in G.S. § 62-110.8(h)(2).
- (d) Selection and Role of Independent Administrator.
- (1) At least thirty (30) days prior to the electric public utilities' initial CPRE Program filings required by subsection (c) of this Rule, the Commission shall post on the Commission's website a list of all independent third party entities being considered for the role of Independent Administrator and their statements of interest. The Commission shall invite and consider comments and recommendations from the electric public utilities, the Public Staff, and potential market participants regarding the selection of the independent third-party entity to serve as the Independent Administrator. In addition to meeting the requirements set forth in this Rule, the Commission may establish additional minimum qualifications and requirements for an Independent Administrator responsible for administering the electric public utilities' planned CPRE RFP Solicitation(s) under the CPRE Program(s).
  - (2) Any independent third party entity requesting to be considered by the Commission for the Independent Administrator role shall be required to disclose any financial interest involving the electric public utilities or any potential market participant reasonably anticipated to participate in the CPRE Program, including but not limited to all substantive assignments for the electric public utilities, any electric public utility affiliate, or any other potential bidder during the preceding three (3) years.
  - (3) At least seventy-five (75) days prior to the electric public utilities' initial CPRE RFP Solicitation(s), the Commission shall select and approve the third-party entity to serve as Independent Administrator to administer the CPRE RFP Solicitation(s) under the CPRE Program. From the date the Independent Administrator is selected, no bidder or potential market participant shall have

any communication with the Independent Administrator or the electric public utility pertaining to the CPRE RFP Solicitation, the RFP documents and process, the evaluation process, or any related subjects except as those communications are specifically allowed by this Rule or as are made publicly through the Independent Administrator's Website.

- (4) The Independent Administrator will be retained and supervised by the Commission under a contract to be filed with the Commission at least sixty (60) days prior to the electric public utilities' initial CPRE RFP solicitation(s) and shall remain subject to ongoing Commission oversight as part of the Commission's review of the electric public utilities' annual CPRE Program Compliance Reports. The Independent Administrator shall be subject to contract review by the Commission on at least a biennial basis.
- (5) The Independent Administrator's duties shall include:
  - a. Monitoring compliance with CPRE Program requirements and standards of conduct.
  - b. Reviewing and commenting on draft CPRE Program guidelines, plans, and other documents.
  - c. Facilitating and monitoring permissible communications between electric public utilities and other participants in the CPRE RFP solicitations.
  - d. Developing and publishing the methodology to be used in evaluating bids submitted in response to CPRE RFP solicitations, including public electric utility self-build proposals.
  - e. Receiving and evaluating bids, and determining the best competitive options.
  - f. Monitoring post-bid negotiations between the electric public utilities and successful bidders.
  - g. Providing certification to the Commission with a copy to the electric public utility that all public utility and third party bids were evaluated under the published CPRE Program methodology and that all bids were treated equitably through the CPRE RFP Solicitation(s)
- (6) At least 60 days prior to the initial CPRE RFP Solicitation, the third party Independent Administrator entity selected by the Commission shall develop and publish the methodology based on a clearly communicated common metric to be used to independently evaluate all bids submitted in response to the CPRE RFP Solicitations. The methodology shall be designed to achieve the purpose of the CPRE Program, as set forth in G.S. 62-110.8, and shall be consistent with the CPRE Program guidelines approved by the Commission. If the CPRE RFP Solicitation allows for affiliate bidding or self-build options for the electric public utility, the Independent Administrator shall ensure that if any non-publicly available transmission or distribution system information is used in preparing proposals by the electric public utility or its affiliates that such information is made available to third parties that notified the Independent Administrator of their intent to submit a proposal in response to the same CPRE RFP Solicitation.

- (7) The Independent Administrator shall maintain a website to support implementation of the CPRE Programs and shall post the CPRE RFP Solicitation documents, the Independent Administrator's evaluation methodology, bidder FAQs, and any other pertinent documents on the IE Website.
  - (8) If the Independent Administrator becomes aware of a violation of any CPRE Program requirements, the Independent Administrator shall immediately report that violation, together with any recommended remedy, to the Commission.
  - (9) The Independent Administrator's fees shall be funded through reasonable bid fees collected by the Commission. The Commission shall be authorized to collect bid fees up to \$10,000 per bid for the Independent Administrator's costs of administering the CPRE RFP Solicitation. To the extent that insufficient funds are collected to pay all of the Independent Administrator's fees, the electric public utility shall pay the outstanding cost, which will which shall subsequently be recovered from the winning bidders in the CPRE RFP Solicitation.
- (e) Affiliate Communications.
- (1) Within ten (10) days of the date an electric public utility announces the CPRE RFP Solicitation, any Affiliate Bid Team shall be separately identified and physically segregated from the electric public utility for purposes of all activities that are part of the CPRE RFP Solicitation process. The names and complete titles of each member of the Affiliate Bid Team shall be reduced to writing and submitted to the Independent Administrator.
  - (2) There shall be no communications, either directly or indirectly, between the Affiliate Bid Team and the electric public utility during the CPRE RFP Solicitation regarding any aspect of the CPRE RFP Solicitation process, except (i) necessary communications as may be made through the Independent Administrator and (ii) negotiations between the Affiliate Bid Team and the electric public utility for a final power purchase agreement in the event and then only after the Affiliate Bid Team has been selected by the Independent Administrator as a winning bid. The electric public utility shall have no direct or indirect contact or communications with the Affiliate Bid Team or any other bidder, except through the Independent Administrator as described further herein, until such time as a winning bid or bids are selected by the electric public utility from the best competitive options provided by the Independent Administrator, and negotiations for a final power purchase agreement(s) have begun.
  - (3) At no time shall any information regarding the CPRE RFP Solicitation process be shared with any bidder, including the Affiliate Bid Team, unless the information is shared with all competing bidders contemporaneously and in the same manner.
  - (4) Within fifteen (15) days of the date an electric public utility announces a planned CPRE RFP Solicitation, each member of the Affiliate Bid Team shall execute an acknowledgement that he or she agrees to abide by the restrictions and conditions contained in this section for the duration of the CPRE RFP Solicitation. If the Affiliate Bid Team's bid is selected by the electric public utility after completion of the CPRE RFP Solicitation, each member of the Affiliate Bid Team shall then

also execute an acknowledgement that he or she has met the restrictions and conditions contained in this section. The electric public utility shall provide these acknowledgements to the Independent Administrator and shall file the acknowledgements with the Commission as part of its annual CPRE Compliance Report.

(f) CPRE RFP Solicitation Structure and Process.

(1) Identification of Bidders and Design of CPRE RFP Solicitation.

- a. The electric public utility shall provide the Independent Administrator with a list of potential market participants that have expressed interest in participating in the CPRE RFP Solicitation or have participated in recent renewable energy resource solicitations issued by the electric public utilities. The Independent Administrator shall be responsible for publishing notice of the draft CPRE RFP Solicitation on the IE Website, as well as preparation of the final list of potential bidders to whom notice of the upcoming CPRE RFP Solicitation will be sent.
- b. The electric public utility will be responsible for preparing an initial draft of the CPRE RFP Solicitation guidelines and documents, including RFP procedures, evaluation factors, credit and security obligations, the pro forma power purchase agreement(s) approved by the Commission as part of the CPRE Program guidelines, the Avoided Cost Rate against which the RFP bids will be evaluated, and a planned schedule for completing the CPRE RFP Solicitation and selecting winning bids. No later than forty-five (45) days prior to the planned issue date of the CPRE RFP Solicitation, the electric public utility will supply the draft of the CPRE RFP Solicitation documents to the Independent Administrator for posting on the IE Website.
- c. The CPRE RFP Solicitation guidelines shall identify all factors to be considered by the electric public utility in its evaluation of bids. In addition to the guidelines, the pro forma power purchase agreement containing all expected material terms and conditions approved by the Commission as part of the electric public utility's CPRE Program guidelines shall be included in the CPRE RFP Solicitation documents provided to the Independent Administrator and shall be filed with the Commission at least thirty (30) days prior to the planned CPRE RFP solicitation issuance date.
- d. The Independent Administrator, in coordination with the electric public utility, shall conduct a pre-issuance bidders conference to publicly discuss the draft CPRE RFP Solicitation documents with interested parties, including but not limited to potential bidders. Potential bidders may submit written questions or recommendations to the Independent Administrator regarding the draft CPRE RFP Solicitation documents in advance of the bidders' conference. All such questions and recommendations shall be posted on the IE Website. The Independent Administrator shall have no private communication with any potential bidders regarding any aspect of the draft CPRE RFP Solicitation documents.

- e. Based on the input received from potential bidders, and based on its own review of the draft CPRE RFP Solicitation documents, the Independent Administrator will submit a report to the electric public utility at least ten (10) days prior to the planned CPRE RFP Solicitation issuance date detailing market participant comments and any suggested recommendations from the Independent Administrator for changes to the CPRE RFP Solicitation documents. This report shall also be posted on the IE Website for review by potential bidders.
  - f. At least two (2) days prior to the planned CPRE RFP Solicitation issuance date, the electric public utility shall submit its final version of the CPRE RFP Solicitation documents to the Independent Administrator to be posted on the IE Website.
  - g. At any time after the CPRE RFP Solicitation is issued, through the time winning bids are selected by the electric public utility, the schedule for the solicitation may be modified upon mutual agreement of the electric public utility and the Independent Administrator, with equal notice provided to all market participant bidders, or upon approval by the Commission. Any modification to the CPRE RFP Solicitation schedule will be posted to the IE Website.
- (2) Issuance of CPRE RFP Solicitation and Bidder Communications.
- a. The Independent Administrator will transmit the final CPRE RFP Solicitation to the bidder list via the IE Website. Upon issuance of the final CPRE RFP Solicitation, the only bidder communications permitted prior to submission of bids shall be conducted through the Independent Administrator. Bidder questions and Independent Administrator responses shall be posted on the IE Website. To the extent such questions and responses contain competitively sensitive information that a particular bidder deems to be a trade secret, this information may be redacted by the bidder.
  - b. The electric public utility may not communicate with any bidder regarding the RFP Process, the content of the CPRE RFP Solicitation documents, or the substance of any potential response by a bidder to the RFP; provided, however, the electric public utility shall provide timely, accurate responses to an Independent Administrator request for information regarding any aspect of the CPRE RFP Solicitation documents or the CPRE RFP Solicitation process.
  - c. Bidders shall submit bids pursuant to the solicitation schedule contained in the CPRE RFP Solicitation documents, as determined by the electric public utility and the Independent Administrator and posted to the IE Website. The electric public utility and the Independent Administrator shall have access to all bids and all supporting documentation submitted by bidders in the course of the CPRE RFP Solicitation process.
- (3) Evaluation of Responses to CPRE RFP Solicitation.

- a. The Independent Administrator shall have discretion to utilize whatever approach it considers necessary to conduct an independent evaluation based upon its published methodology in order to equitably evaluate all bids in response to the CPRE RFP Solicitation.
  - b. The Independent Administrator may request further information from any bidder regarding its bid. Should it be determined necessary by the Independent Administrator and the bidder, conference calls between the electric public utility and a bidder may be conducted for the sole purpose of clarification and understanding of a particular bid. Communications will be conducted on a confidential basis between the Independent Administrator and the bidder, and may include one face-to-face meeting between the Independent Administrator and each bidder to discuss the bidder's proposal.
  - c. No bidder, including any bidder that is an affiliate of the electric public utility, shall communicate with the electric public utility during the course of the CPRE RFP Solicitation process regarding any aspect of the RFP.
  - d. The Independent Administrator shall independently evaluate all bids received and develop a competitive tier that narrows the bids to a manageable number that the Independent Administrator believes are the best competitive options ("the Competitive Tier").
  - e. shall provide the IE Competitive Tier to the electric public utility.
  - f. The Independent Administrator shall notify all bidders in the Competitive Tier that they have the opportunity to better their bids as final best offers. The Independent Administrator shall post the Competitive Tier list on the IE Website showing each bidder's relative rank and the total evaluated cost of each bid. Each bidder on this list will be identified blindly so each bidder knows the identity of the bidder for only its bid but sees its rank compared to those of all other anonymous bidders who made the Competitive Tier. Any refreshed bids received by the Independent Administrator shall then be evaluated independently by the Independent Administrator, consistent with the process outlined above for initial bids.
- (4) Selection of Resource(s).
- a. After it has completed its final evaluation of the Competitive Tier, and pursuant to the CPRE RFP Solicitation schedule, the Independent Administrator shall notify the electric public utility and Public Staff of the winning bid to meet the renewable energy resource capacity requested in the CPRE RFP Solicitation.
- (g) CPRE Program Plan.
- (1) Each electric public utility shall file its annual CPRE Program plan with the Commission on or before November 27, 2017 and September 1 of each subsequent year as an integral part of its integrated resource plan filing. The CPRE Program plan filed pursuant to this rule will be reviewed in the same docket as the electric public utility's biennial integrated resource plan filing.

- (2) The November 27, 2017 CPRE Program plan shall cover the Initial CPRE Program Procurement Period. Each year thereafter, beginning in 2018, each electric public utility shall file with the Commission an updated CPRE Program plan covering the remainder of the CPRE Program Procurement Period. At a minimum, the plan shall include the following information:
- (i) an explanation of whether the electric public utility is jointly or individually implementing the aggregate CPRE Program requirements
  - (ii) a description of the electric public utility's planned CPRE RFP solicitations and specific actions planned to procure renewable energy resources during the Initial CPRE Program Procurement period;
  - (iii) an explanation of how the electric public utility has allocated the amount of CPRE Program resources projected to be procured during the CPRE Program planning period relative to the aggregate CPRE Program requirements;
  - (iv) if designated by location, an explanation of how the electric public utility has determined the locational allocation within its balancing authority area;
  - (v) an estimate of renewable energy generating capacity that is not subject to economic dispatch or economic curtailment that is under development and projected to have executed power purchase agreements and interconnection agreements with the electric public utility or that is otherwise projected to be installed in the electric public utility's balancing authority area within the Initial CPRE Program Procurement period;
  - (vi) the current and projected levelized avoided cost rates for a 20-year or other contract term, as determined by the Commission, for each year for solar and non-solar renewable energy facilities; and
  - (vii) a copy of the electric public utility's CPRE Program guidelines then in effect including all pro forma power purchase agreement(s) approved by the Commission for use in the utility's CPRE RFP solicitations.
- (3) Upon the expiration of the Initial CPRE Program Procurement Period, the electric public utility shall file a CPRE Program Plan in the following calendar year addressing whether it seeks approval from the Commission to conduct additional CPRE RFP Solicitations as provided for in G.S. 62-110.8.
- (h) CPRE Program Compliance Report.
- (1) Each electric public utility shall file its annual CPRE Program compliance report, together with direct testimony and exhibits of expert witnesses, on the same date that it files its cost recovery request under subsection (i) of this rule, which shall also be the filing date for the information required by Rule R8-55. The Commission shall consider each electric public utility's CPRE Program compliance report at the hearing provided for in subsection (i) of this rule and shall determine whether the electric public utility is in compliance with the CPRE Program requirements of G.S. 62-110.8. Public

notice and deadlines for intervention and filing of additional direct and rebuttal testimony and exhibits shall be as provided for in subsection (j) of this rule.

- (2) Each year, beginning in 2019, each electric public utility subject to this rule shall file with the Commission a report describing the electric public utility's competitive procurement of renewable energy resources under its CPRE Program and ongoing actions to comply with the requirements of G.S. 62-110.8 during the previous calendar year, which shall be the "reporting year." The report shall include the following information, including supporting documentation:
- i. a description of CPRE Program solicitation(s) undertaken by the electric public utility during the reporting year;
  - ii. a description of the sources, amounts, and costs of third-party power purchase agreements and proposed authorized revenues for utility-owned assets for renewable energy resources procured through CPRE Program RFP Solicitation(s) during the reporting year, including the dates of all CPRE Program contracts or utility commitments to procure renewable energy resources during the reporting year;
  - iii. the forecasted nameplate capacity and megawatt-hours of renewable energy and the number of renewable energy certificates obtained through the CPRE Program during the reporting year;
  - iv. identification of all proposed renewable energy facilities under development by the electric public utility that were bid into a CPRE RFP Solicitation during the reporting year, including whether any non-publicly available transmission or distribution system operations information was used in preparing the proposal, and, if so, an explanation of how such information was made available to third parties that notified the utility of their intention to submit a proposal in the same CPRE RFP Solicitation;
  - v. the electric public utility's avoided cost rates applicable to the CPRE RFP Solicitation(s) undertaken during the reporting year and confirmation that all renewable energy resources procured through a CPRE RFP Solicitation are priced at or below the electric public utility's avoided cost based upon the methodology approved by the Commission;
  - vi. the actual total costs and authorized revenues incurred by the electric public utility during the calendar year to comply with G.S. 62-110.8;
  - vii. the status of the electric public utility's compliance with the aggregate CPRE Program procurement requirements set forth in G.S. 62-110.8(a);
  - viii. a copy of the contract then in effect between the electric public utility and third-party entity hired to administer the CPRE RFP Solicitations, supporting information regarding the administrative fees collected from market participants in the CPRE RFP Solicitation during the reporting year, as well as any cost incurred by the electric public utility during the reporting year to implement the CPRE RFP Solicitation; and

- ix. Certification by the Independent Administrator that all public utility and third-party bid responses were evaluated under the published CPRE Program methodology and that all bids were treated equitably through the CPRE RFP Solicitation(s) during the reporting year.
- (i) Compliance with CPRE Program Requirements.
- (1) Based on the electric public utility's CPRE Program compliance report, and the comments on that report by the Independent Administrator, the Public Staff and other interested parties, the Commission shall determine whether the utility is in compliance with the CPRE Program requirements. An electric public utility shall be in compliance with the CPRE Program requirements during a given year where the Commission finds and determines that the electric public utility's CPRE Program plan is reasonably designed to meet the requirements of G.S. 62-110.8 and determines based on the utility's most recently filed CPRE Program compliance report that the electric public utility is reasonably and prudently implementing the CPRE Program requirements.
  - (2) An electric public utility or other interested party may file a petition with the Commission to modify or delay the CPRE Program requirements in whole or in part upon a clear and convincing showing that the electric public utility or other interested party made reasonable efforts to comply with the CPRE Program requirements and that modification or delay is in the public interest. In such petition, the electric public utility or other interested party shall provide an explanation for the reason for the modification or delay, and a date certain when it will fully comply with the CPRE Program requirements. The Commission may grant such petition only upon a finding that the electric public utility or other interested party made a clear and convincing showing that it made reasonable efforts to comply with the CPRE Program requirements, and that it is in the public interest to grant the petition. The Commission shall not grant a modification or waiver request that would allow an electric public utility to procure energy and capacity from renewable energy facilities in an aggregate amount less than the total volume of renewable energy resources required to be procured by electric public utilities during the Initial CPRE Program procurement period.
  - (3) Any facility selected through a CPRE RFP Solicitation shall register with the Commission as a renewable energy facility under Rule R8-66 no later than 60 calendar days following receipt of notification that it was selected and shall assure that renewable energy certificates to be conveyed by the facility to the electric public utility pursuant to its CPRE Program shall be issued by, or imported into, the North Carolina Renewable Energy Tracking System.
- (j) Cost recovery.

- (1) Beginning in 2018, for each electric public utility, the Commission shall schedule an annual public hearing pursuant to G.S. 62-110.8(g) to review the costs projected to be incurred by the electric public utility to comply with G.S. 62-110.8. The annual hearing for each electric public utility will be scheduled as soon as practicable after the hearing held by the Commission for the electric public utility under Rule R8-55.
- (2) The Commission shall permit each electric public utility to charge an increment or decrement as a rider to its rates to recover in a timely manner the reasonable costs and authorized revenues prudently-incurred to implement its CPRE Program and to comply with G.S. 62-110.8. For utility-owned assets selected under the CPRE Program, the utility shall propose a revenue requirement no greater than the annual price bid by such utility with respect to such asset in the applicable CPRE RFP Solicitation. Where the electric public utility proposes to determine authorized revenues based upon the market price of renewable energy resources procured through a CPRE RFP Solicitation, the Commission shall approve authorized revenue to be recovered under this section upon finding that such recovery is in the public interest.
- (3) Unless otherwise ordered by the Commission, the test period for each electric public utility shall be the same as its test period for purposes of Rule R8-55.
- (4) Rates set pursuant to this section shall be recovered during a fixed cost recovery period that shall coincide, to the extent practical, with the recovery period for the cost of fuel and fuel-related cost rider established pursuant to Rule R8-55.
- (5) The costs and authorized revenue to be recovered by the electric public utility pursuant to this Rule will be further modified through the use of a CPRE Program experience modification factor (CPRE EMF) rider. The CPRE EMF rider will reflect the difference between reasonable and prudently-incurred CPRE Program projected costs, authorized revenue, and the revenues that were actually realized during the test period under the CPRE Program rider then in effect. Upon request of the electric public utility, the Commission shall also incorporate in this determination the experienced over-recovery or under-recovery of the costs and authorized revenue up to 30 days prior to the date of the hearing, provided that the reasonableness and prudence of these costs and authorized revenues shall be subject to review in the utility's next annual CPRE Program cost recovery hearing.
- (6) The CPRE EMF rider will remain in effect for a fixed 12-month period following approval by the Commission and will carry through as a rider to rates established in any intervening general rate case proceedings.
- (7) Pursuant to G.S. 62-130(e), any over-collection of incurred costs to be refunded to an electric public utility's customers through operation of the CPRE EMF rider shall include an amount of interest, at such rate as the

- Commission determines to be just and reasonable, not to exceed the maximum statutory rate.
- (8) Each electric public utility shall follow deferred accounting with respect to the difference between actual reasonable and prudently-incurred costs or authorized revenue and related revenues realized under rates in effect.
  - (9) The annual increase in CPRE Program-related amounts to be recovered by an electric public utility in any cost recovery period from its North Carolina retail customers shall not exceed one percent (1%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year determined as of December 31 of the previous calendar year. Any amount in excess of that limit shall be carried over and recovered in the next recovery period, provided that in no event shall an annual increase exceed one percent (1%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for that period.
  - (10) Each electric public utility, at a minimum, shall submit to the Commission for purposes of investigation and hearing the information required for the CPRE Program compliance report for the 12-month test period established in subsection (3) consistent with Rule R8-55, accompanied by supporting workpapers and direct testimony and exhibits of expert witnesses, and any change in rates proposed by the electric public utility at the same time that it files the information required by Rule R8-55.
  - (11) Beginning at least 60 days prior to the hearing, the electric public utility shall publish a notice of the annual hearing for 2 successive weeks in a newspaper or newspapers having general circulation in its service area, notifying the public of the hearing before the Commission pursuant to G.S. 62-110.8(g) and setting forth the time and place of the hearing.
  - (12) Persons having an interest in said hearing may file a petition to intervene setting forth such interest at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed at the discretion of the Commission for good cause shown.
  - (13) The Public Staff and other intervenors shall file direct testimony and exhibits of expert witnesses at least 30 days prior to the hearing date. If a petition to intervene is filed less than 15 days prior to the hearing date, it shall be accompanied by any direct testimony and exhibits of expert witnesses the intervenor intends to offer at the hearing.
  - (14) The electric public utility may file rebuttal testimony and exhibits of expert witnesses no later than 5 days prior to the hearing date.
  - (15) The burden of proof as to whether CPRE Program-related costs to be recovered under this section were reasonable and prudently-incurred shall be on the electric public utility.
- (k) Expedited review and approval of Certificate of Public Convenience and Necessity (CPCN) for generating facilities procured under the CPRE Program.

- (1) Where a renewable energy facility is selected through a CPRE RFP Solicitation award and is planned to be (i) constructed, owned, and operated by an electric public utility requiring a CPCN; (ii) acquired from a third party to be owned and operated by the electric public utility requiring transfer of an existing CPCN, or (iii) owned and operated by a third party, the electric public utility or third party may file a petition for the expedited review and approval of a CPCN, or, where applicable, transfer of CPCN, to construct, own, and operate the generating facility.
- (2) Petitions for CPCNs filed and approved pursuant to this section shall satisfy the requirements of G.S. 62-110.1(a), G.S. 62-82, and the electric public utility and third party shall not otherwise be required to follow the procedures for obtaining a CPCN under Rule R8-61.
- (3) An application to obtain a new CPCN for a renewable energy facility that is selected through a CPRE RFP Solicitation or is planned to be constructed by the electric public utility under this section shall be comprised of the following information and Exhibits:
  - (i) The full and correct name, business address, business telephone number, and electronic mailing address of the facility owner;
  - (ii) A statement of whether the facility owner is an individual, a partnership, or a corporation, and, if a partnership, the name and business address of each general partner and, if a corporation, the state and date of incorporation and the name, business address, business telephone number, and electronic mailing address of an individual duly authorized to act as corporate agent for the purpose of the application, and if a foreign corporation, whether domesticated in North Carolina;
  - (iii) The ownership of the facility site and, if the owner is other than the applicant, the applicant's interest in the facility site;
  - (iv) Exhibit 1 shall include:
    - (a) A color map or aerial photo showing the location of the generating facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks, with the proposed location of major equipment indicated on the map or photo, including: the generator, fuel handling equipment, plant distribution system, startup equipment, site boundary, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities. A U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system is preferred; and
    - (b) The E911 street address, county in which the proposed facility would be located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree; and
  - (v) Exhibit 2 shall include:

- (a) The nature of the renewable energy facility, including the type and source of its power or fuel;
  - (b) A description of the buildings, structures and equipment comprising the renewable energy facility and the manner of its operation;
  - (c) The gross and net projected maximum dependable capacity of the renewable energy facility as well as the renewable energy facility's nameplate capacity, expressed as megawatts (alternating current);
  - (d) The projected date on which the renewable energy facility will come on line;
  - (e) If other than a renewable energy facility to be owned by an electric public utility, the applicant's general plan for sale of the electricity to be generated, including the electric public utility to which the applicant plans to sell the renewable energy, capacity, and environmental and renewable energy attributes;
  - (f) The service life of the project;
  - (g) The projected annual production of the renewable energy facility in kilowatt-hours, including a detailed explanation of the anticipated kilowatt and kilowatt-hour outputs, on-peak and off-peak, for each month of the year; and
  - (h) The projected annual production of renewable energy certificates that is eligible for compliance with the State's renewable energy and energy efficiency portfolio standard.
  - (i) A detailed explanation of arrangements for fuel supply, including the length of time covered by the arrangements, to the extent known at the time of the application.
- (vi) Exhibit 3 shall include:
- (a) A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the renewable energy facility and a statement of whether each has been obtained or applied for.
  - (b) A copy of those that have been obtained should be filed with the application; a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained.
- (vii) Exhibit 4 shall contain the expected cost of the proposed facility.
- (viii) All applications shall be signed and verified by the applicant or by an individual duly authorized to act on behalf of the applicant for the purpose of the application.
- (ix) Applications filed on behalf of a corporation are not subject to the provisions of R1-5(d) that requires corporate pleadings to be filed by a member of the Bar of the State of North Carolina.

- (x) Falsification of or failure to disclose any required information in the application may be grounds for denying or revoking any certificate.
  - (xi) The application and 12 copies shall be filed with the Chief Clerk of the Utilities Commission.
- (4) Upon the filing of an application appearing to meet the requirements set forth above, the Commission will process such application as follows:
  - (i) The Commission will issue an order requiring the applicant to publish notice of the application once a week for four successive weeks in a newspaper of general circulation in the county where the renewable energy facility is proposed to be constructed. If other than a renewable energy facility to be owned by an electric public utility, the applicant shall mail a copy of the application and the notice, no later than the first date that such notice is published, to the electric public utility to which the applicant plans to sell the renewable energy, capacity, and environmental and renewable attributes. The applicant shall be responsible for filing with the Commission an affidavit of publication after the final publication of the notice and a signed and verified certificate of service to the effect that the application and notice have been mailed to the electric public utility to which the applicant plans to sell the renewable energy, capacity, and environmental and renewable attributes.
  - (ii) The Chief Clerk will deliver 2 copies of the application and the notice to the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration for distribution by the Coordinator to State agencies having an interest in the application. The Chief Clerk will request comments from state agencies within 20 days of delivering notice to the Clearinghouse Coordinator.
  - (iii) If a written complaint is filed with the Commission within 10 days after the last date of the publication of the notice, the Commission will schedule a public hearing to determine whether a certificate should be awarded and will give reasonable notice of the time and place of the hearing to the applicant and to each complaining party and will require the applicant to publish notice of the hearing in the newspaper in which the notice of the application was published. If no complaint is received within the time specified, the Commission may, upon its own initiative, order and schedule a hearing to determine whether a certificate should be awarded and, if the Commission orders a hearing upon its own initiative, it will require notice of the hearing to be published by the applicant in the newspaper in which the notice of the application was published.
  - (iv) If no complaint is received within the time specified and the Commission does not order a hearing upon its own initiative, the Commission will enter an order awarding the CPCN requested in the application.
- (5) Where an electric public utility procures a renewable energy facility through a CPRE RFP Solicitation that will be owned and operated by the electric public utility and the renewable energy facility has been previously granted

a CPCN by the Commission, the electric public utility shall apply to the Commission to assign or transfer the CPCN. The Commission shall issue an Order within 30 days of the electric public utility's filing of the application, either approving the transfer of the CPCN or directing further review of the CPCN transfer application if circumstances so require. In support of its application to transfer the CPCN, the electric public utility shall:

- (i) Describe the terms and conditions of the electric public utility's procurement of the renewable energy facility under its CPRE Program;
  - (ii) Identify any significant changes to the information previously filed by the third party CPCN applicant that was reviewed and approved the Commission in granting the CPCN to be assigned or transferred.
  - (iii) All applications to transfer an existing CPCN shall be signed and verified by the electric public utility applicant. An application to transfer an existing CPCN shall also be verified by the entity which was initially granted the CPCN that it intends to transfer the CPCN to the electric public utility.
- (6) Where an electric public utility purchases assets from a third party developer that has previously obtained a CPCN with the intent of further developing the project and submitting the renewable energy facility in to a future CPRE RFP Solicitation, the electric public utility shall provide notice to the Commission in the docket in which the CPCN was granted that the electric public utility has acquired ownership of the project development assets and shall submit an application for transfer of the CPCN. No rights under the CPCN shall transfer to the electric public utility unless and until the Commission approves transfer of the CPCN.

(l) CPRE Program Power Purchase Agreement Requirements

At least 60 days prior to holding a CPRE RFP Solicitation, the electric public utility shall post the pro forma contract to be utilized during the CPRE Program solicitation on its website to inform market participants of terms and conditions of the competitive solicitation. The electric public utility shall also file the pro forma contract with the Commission and identify any material changes to the pro forma contract terms and conditions from the contract used in the electric public utility's most recent CPRE Program solicitation.

- (1) Each electric public utility shall include appropriate language in all pro forma contracts (i) providing the procuring public utility rights to dispatch, operate, and control the solicited renewable energy facilities in the same manner as the utility's own generating resources; (ii) defining limits and appropriate compensation for resource dispatch and curtailments in a levelized manner; (iii) setting the term of the contract for 20 years, unless the Commission determines a term of a different duration is in the public interest; (iv) defining environmental and renewable energy attributes to

include all attributes that would be created by renewable energy facilities owned by the electric public utility; and (iv) prohibiting the seller from claiming or otherwise remarketing the environmental and renewable energy attributes, when the renewable energy certificates are purchased by the electric public utility under power purchase agreements entered into under the CPRE Program. An electric public utility may redefine its rights to dispatch, operate, and control solicited renewable energy facilities, including defining limits and appropriate compensation for resource dispatch and curtailments, in pro forma contracts to be offered in future CPRE RFP Solicitations consistent with the CPRE Program and Integrated Resource Plans, and may also elect to solicit multiple products based upon differing rights to dispatch, operate, and control solicited renewable energy facilities through developing multiple pro forma contracts within a single CPRE RFP Solicitation.

- (2) No later than 30 days after the electric public utility selects the renewable energy resource capacity requested in the CPRE RFP Solicitation, the electric public utility shall provide an executable power purchase agreement.
- (3) No later than 30 days after an electric public utility executes a power purchase agreement that is competitively procured pursuant to a CPRE RFP Solicitation, the electric public utility shall file the power purchase agreement with the Commission with the price terms filed confidentially. If the power purchase agreement is with an affiliate, the electric public utility shall file the power purchase agreement with the Commission pursuant to G.S. § 62-153(a). The electric public utility shall have the burden of proof to demonstrate that the power purchase agreement is just and reasonable and was not made for the purpose or with the effect of concealing, transferring, or dissipating the earnings of the electric public utility. No later than 30 days after the filing of such filing, any interested party, including the Public Staff of the North Carolina Utilities Commission, may file an objection on any pertinent grounds, including that the power purchase agreement is unjust, unreasonable or made for the purpose or with the effect of concealing, transferring, or dissipating the earnings of the electric public utility, such that the power purchase agreement should be modified or voided. The electric public utility, the affiliate, or any other interested party may file a reply to any objection within 10 days of the objection. In accordance with G.S. § 62-153(a), the Commission may disapprove, after hearing, any such purchase power agreement if it is found to be unjust, unreasonable, or made for the purpose or with the effect of concealing, transferring, or dissipating the earnings of the electric public utility. Such purchase power agreements so disapproved by the Commission shall be void and shall not be carried out by the electric public utility, nor shall any payments be made thereunder.
- (4) Upon expiration of the contract term of a power purchase agreement procured pursuant to this Section, the electric public utility may enter into a new contract with a generating facility owner at a negotiated rate not to exceed the electric public utility's avoided cost market rate set pursuant to G.S. 62-156. For

resources owned by the electric public utility and procured pursuant to this Section, the electric public utility shall similarly be permitted to continue recovery based on an updated market based avoided cost rates calculated pursuant to G.S. 62-156 if market-based recovery is initially determined by the Commission to be in the public interest.

(m) Request for Waiver of Electric Public Utility Regulatory Conditions and/or Code of Conduct Restrictions.

(1) As provided for in G.S. 62-133.8(h)(2), to the extent an electric public utility or an affiliate of the electric public utility opts to participate in a CPRE RFP Solicitation, the regulatory conditions or code of conduct requirements applicable to the electric public utility or its affiliate will not be waived for purposes of its participation in the CPRE RFP Solicitation until the Commission grants a waiver of the regulatory conditions or code of conduct requirements. An electric public utility or its affiliate seeking such a waiver must file a waiver application with the Commission pursuant to the process established in subsection (i)(2) of this section and subject to Federal Energy Regulatory Commission ("FERC") rules and guidance.

(2) An application by an electric public utility or an affiliate for waiver of regulatory conditions and code of conduct requirements shall be verified by an authorized representative of the applicant and shall contain the following information:

(a) The regulatory condition or code of conduct requirement of which the electric public utility or affiliate is requesting a waiver;

(b) The reason that the regulatory condition or code of conduct requirement unreasonably restricts the electric public utility or its affiliates from participating in the CPRE RFP Solicitation;

(c) A statement, with supporting explanation, that the waiver will not result in an unfair competitive advantage for the electric public utility or its affiliate; and

(d) A statement, with supporting explanation, that the electric public utility's customers will not be harmed by the waiver.

(3) The electric public utility shall have the burden of proof to demonstrate that the waiver will not result in an unfair competitive advantage for the electric public utility or its affiliate, and that the waiver will hold its customers harmless.

(4) No later than 10 days after the filing of such application, any interested party, including the Public Staff of the North Carolina Utilities Commission, may file an objection to the waiver application on any pertinent grounds, including that the waiver will result in an unfair competitive advantage for the electric public utility or its affiliate or that the waiver will not hold the electric public utility's customers harmless. The electric public utility, the affiliate, or any other interested party may file a reply to any objection within 10 days of the objection.

## CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing **Joint Reply Comments of NC Clean Energy Business Alliance and NC Sustainable Energy Association** has been duly served upon counsel of record for all parties to this docket by either depositing a true and exact copy of same in a depository of the United States Postal Service, first-class postage prepaid, and/or by electronic delivery as follows:

NC Public Staff  
Christopher J. Ayers, Esq.  
Executive Director – NC Public Staff  
E-Mail: [Chris.Ayers@psncuc.nc.gov](mailto:Chris.Ayers@psncuc.nc.gov)

David Drooz, Esq.  
Chief Counsel  
NC Public Staff – Legal  
4326 Mail Service Center  
Raleigh, NC 27699  
E-mail: [David.Drooz@psncuc.nc.gov](mailto:David.Drooz@psncuc.nc.gov)

Dianna Downey, Esq.  
NC Public Staff – Legal  
E-mail: [Dianna.Downey@psncuc.nc.gov](mailto:Dianna.Downey@psncuc.nc.gov)

Layla Cummings, Esq.  
NC Public Staff – Legal  
E-mail: [Layla.Cummings@psncuc.nc.gov](mailto:Layla.Cummings@psncuc.nc.gov)

Counsel for CIGFUR  
Ralph McDonald, Esq.  
Adam Olls, Esq.  
Bailey & Dixon, LLP  
Post Office Box 1351  
Raleigh, NC 27602-1351  
E-mail: [rmcdonald@bdixon.com](mailto:rmcdonald@bdixon.com)  
E-mail: [aolls@bdixon.com](mailto:aolls@bdixon.com)

Counsel for Carolina Utility Customers Association, Inc.  
(CUCA)

Robert F. Page, Esq.  
Crisp & Page, PLLC  
4010 Barrett Drive, Suite 205  
Raleigh, NC 27609  
E-mail: [rpage@crisppage.com](mailto:rpage@crisppage.com)

Sharon C. Miller  
Executive Director  
Carolina Utility Customers Association, inc.  
Trawick Professional Center  
1708 Trawick Road, Suite 210  
Raleigh, NC 27604  
E-mail: [smiller@cucainc.org](mailto:smiller@cucainc.org)

Counsel for Duke Energy Carolinas, LLC  
and Duke Energy Progress, LLC

Kendrick C. Fentress, Esq.  
Associate General Counsel  
Duke Energy Corporation  
P. O. Box 1551 / NCRH 20  
Raleigh, NC 27602-1551  
E-mail: [Kendrick.Fentress@duke-energy.com](mailto:Kendrick.Fentress@duke-energy.com)

Heather Smith, Esq.  
Duke Energy Carolinas, LLC  
526 S. Church Street  
Charlotte, NC 28202  
E-mail: [heather.smith@duke-energy.com](mailto:heather.smith@duke-energy.com)

Enel Green Power North America  
100 Brickstone Square  
Suite 300  
Andover, MD 01810

Molly M. Jagannathan, Esq.  
Troutman Sanders LLP  
One Wells Fargo, Suite 3400  
301 South College Street  
Charlotte, NC 28202  
E-mail: [molly.jagannathan@troutmansanders.com](mailto:molly.jagannathan@troutmansanders.com)

NC Clean Energy Business Alliance (NC CEBA)

Christopher M. Carmody  
Executive Director  
811 Ninth Street, Suite 120-158  
Durham, NC 27705  
E-mail: [Director@nceba.com](mailto:Director@nceba.com)

Counsel for NC Electric Membership Corporation (NC EMC)

Richard M. Feathers, Esq.  
Michael D. Youth, Esq.  
Associate General Counsel  
P. O. Box 27306  
Raleigh, NC 27611  
E-mail: [Rick.Feathers@NCEMCS.com](mailto:Rick.Feathers@NCEMCS.com)  
E-mail: [Michael.Youth@NCEMCS.com](mailto:Michael.Youth@NCEMCS.com)

Counsel for NC Pork Council (NCPC)

Kurt J. Olson, Esq.  
Law Offices of Kurt J. Olson  
3737 Glenwood Avenue  
Suite 100  
Raleigh, NC 27612  
P. O. Box 10031  
Raleigh, NC 27605  
E-mail: [Kurt.J.Olson@gmail.com](mailto:Kurt.J.Olson@gmail.com)

Angie Whitener Maier  
Director of Policy Development & Communications  
1300 Rexwoods Drive, Suite 340  
Raleigh, NC 27607  
E-mail: [Angie@ncpork.org](mailto:Angie@ncpork.org)

Counsel for NC Sustainable Energy Association (NCSEA)

Peter H. Ledford, Esq.  
Regulatory Counsel  
4800 Six Forks Road  
Suite 300  
Raleigh, NC 27609  
E-mail: [peter@energync.org](mailto:peter@energync.org)

Spencer Mountain Hydroelectric Generating Plant

Kevin D. Edwards  
916 Corner Road  
Stoneville, NC 27048  
E-mail: [SMHydro@pht1.com](mailto:SMHydro@pht1.com)

Counsel for SunEnergy1  
Mackenzie Meinhold, Esq.  
Chief Counsel  
192 Raceway Drive  
 Mooresville, NC 28117  
E-mail: [mackenzie.meinhold@sunenergy1.com](mailto:mackenzie.meinhold@sunenergy1.com)

Jennifer A. Morgan, Esq.  
P. O. Box 1000  
Raleigh, NC 27602  
E-mail: [jmorgan@williamsmullen.com](mailto:jmorgan@williamsmullen.com)

Counsel for Virginia Electric and Power Company, d/b/a  
Dominion Energy North Carolina (Dominion)  
Horace P. Payne, Jr., Esq.  
Andrea R. Kells, Esq.  
434 Fayetteville Street, Suite 2600  
Raleigh, NC 27601  
E-mail: [Horace.P.Payne@Dominionenergy.com](mailto:Horace.P.Payne@Dominionenergy.com)  
E-mail: [AKells@mcguirewoods.com](mailto:AKells@mcguirewoods.com)

Mark W. Bishopric  
P. O. Box 3207  
Eden, NC 27289  
E-mail: [markb@irvineriver.com](mailto:markb@irvineriver.com)

This the 8<sup>th</sup> day of August, 2017.

SMITH MOORE LEATHERWOOD LLP

BY: 

Karen M. Kemerait  
Attorneys for: North Carolina Clean Energy  
Business Alliance