STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 150

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Implement G.S. 62-110.8	))	ORDER ADOPTING AND AMENDING RULES

BY THE COMMISSION: On July 28, 2017, the Commission issued an order initiating this rulemaking proceeding to adopt and modify the Commission's rules, as necessary, to implement G.S. 62-110.8, enacted S.L. 2017-192, which requires Duke Energy Progress, LLC (DEP), and Duke Energy Carolinas, LLC (DEC) (together, Duke) to file with the Commission a program for the competitive procurement of energy and capacity from renewable energy facilities with the purpose of adding renewable energy to the State's generation portfolio in a manner that allows the State's electric public utilities to reliably and cost-effectively serve customers' future energy needs (Competitive Procurement of Renewable Energy or CPRE Program). G.S. 62-110.8(a). To facilitate the Commission adopting final rules in this proceeding in advance of the mandated utilities' filings, that order set an expedited schedule for filings in this proceeding. In addition, that order made DEP and DEC (together, Duke), parties to this proceeding and recognized the participation of the Public Staff. Consistent with G.S. 62-110.8(h), that Order required the parties' initial and reply filings to specifically address the following:

(1) Oversight of the competitive procurement program.

(2) To provide for a waiver of regulatory conditions or code of conduct requirements that would unreasonably restrict a public utility or its affiliates from participating in the competitive procurement process, unless the Commission finds that such a waiver would not hold the public utility's customers harmless.

(3) Establishment of a procedure for expedited review and approval of certificates of public convenience and necessity (CPCN), or the transfer thereof, for renewable energy facilities owned by the public utility and procured pursuant to this section. The Commission shall issue an order not later than 30 days after a petition for a certificate is filed by the public utility.

(4) Establishment of a methodology to allow an electric public utility to recover its costs pursuant to G.S. 62-110.8(g).

(5) Establishment of a procedure for the Commission to modify or delay implementation of the provisions of this section in whole or in part if the Commission determines that it is in the public interest to do so.

On or after August 11, 2017, the Commission issued orders allowing the following to intervene in this proceeding: North Carolina Sustainable Energy Association (NCSEA), Carolina Utility Customers Association, Inc. (CUCA), Carolina Industrial Group for Fair Utility Rates II and III (collectively, CIGFUR), North Carolina Clean Energy Business Alliance (NCCEBA), North Carolina Electric Membership Corporation (NCEMC), North Carolina Pork Council (NCPC), Virginia Electric and Power Company, d/b/a, Dominion Energy North Carolina (Dominion), and SunEnergy1, LLC (SunEnergy1).

On August 16, 2017, Duke, NCSEA, NCCEBA, and the Public Staff filed initial comments and/or proposed rules. On the same day, the Southern Environmental Law Center (SELC), Kevin Edwards, and Jim Price filed consumer statements of position.

By orders issued in this docket on August 24, 2017, and August 30, 2017, the Commission extended the August 25, 2017 deadline for filing of reply comments and revisions to the proposed rules to September 8, 2017. On September 8, 2017, Duke filed reply comments and an amended proposed rule, NCCEBA and NCSEA jointly filed reply comments and an amended proposed rule, and SunEnergy1 filed comments. In addition, the Public Staff filed a letter stating that it had participated in discussions with other parties regarding their initial comments and proposed rules, reviewed a draft of the proposed rule that Duke intended to file on September 8, and that the Public Staff generally agrees with Duke's revised rule, as drafted. However, the Public Staff further stated that it wishes to continue discussions with Duke and the other parties regarding the consideration of pricing or cost information included in a utility self-build proposal, as well as the treatment of selected projects at the expiration of the initial contract term or the expiration of the term of the market-based cost recovery mechanism.

On September 13, 2017, the Commission issued an Order Allowing Additional Reply Comments and Modifying Procedural Schedule. In that Order, the Commission noted that, based upon a preliminary review of the filings in this proceeding, the issues in controversy are limited but of a tenor that makes compromise challenging. Therefore, that Order allowed the parties an additional opportunity to file reply comments focusing on the issues in controversy and supporting proposed changes with legal and/or policy justifications by filing additional reply comments on or before September 22, 2017.

On September 22, 2017, Duke, NCCEBA and NCSEA, NCEMC, and the Public Staff filed additional reply comments.

No other parties filed comments or proposed rules, and the parties reached agreement on many of the provisions in their proposed rules.

The Commission has carefully weighed all of the comments filed in this docket. On the basis thereof, the Commission adopts a new Commission Rule R8-71 and amends related Commission rules as reflected in the attached Appendix A. In this order, the Commission summarizes the comments filed, identifies and discusses the key provisions of the parties' proposed rules and the major disagreements among the parties, and discusses the Commission's conclusions to resolve these disagreements. In adopting these rules, the Commission has endeavored to give full effect to the intent of the General Assembly as expressed in the enactment of G.S. 62-110.8.

COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY

Subsection 62-110.8(a) establishes the CPRE Program, requiring the Duke utilities to develop and file for Commission approval a program for issuing requests for proposals to procure sufficient energy and capacity from eligible renewable energy facilities in the aggregate amount of 2,660 MW over a 45-month period. Subject to G.S. 62-110.8(b)(1-4), the Duke utilities are granted flexibility to implement the CPRE Program, either jointly or individually, by any of three methods: (1) acquiring renewable energy facilities from third parties and subsequently owning and operating these facilities, (2) constructing, owning, and operating renewable energy facilities, up to 30% of the utility's requirement, and (3) purchasing energy, capacity, and environmental and renewable attributes from third-party facility owners that allow the utility to dispatch, operate, and control the facilities to the same extent as the utility's own generating facilities. Further, the Duke utilities are granted the authority to determine the location and allocated amount of energy and capacity procured within their respective balancing authority areas, whether located within or outside North Carolina, in light of the policy considerations detailed in G.S. 62-110.8(c). Finally, the Duke utilities are authorized to recover the costs of the CPRE Program through an annual rider pursuant to G.S. 62-110.8(g).

Subsection G.S. 62-110.8(b) limits the Duke utilities' requirements and authority under the CPRE Program. First, the required 2,660 MW in renewable energy-fueled generating capacity may be adjusted if, prior to the end of 45-month initial procurement period, the Duke utilities have executed power purchase agreements and interconnection agreements with renewable energy facilities representing 3,500 MW in aggregate generation capacity that is not subject to utility dispatch or curtailment and was not procured pursuant to G.S. 62-159.2 (establishing a program for "direct renewable energy procurement for major military installations, public universities, and other large customers"). G.S. 62-110.8(b)(1). Second, the Duke utilities' procurement obligation is limited to those purchases which they can make below their respective forecasted avoided cost calculated over the term of the power purchase agreement. G.S. 62-110.8(b)(2). Third, the Duke utilities are required to submit pro forma contracts to the Commission that define limits and compensation for resource dispatch and curtailments and provide for a 20-year term (unless the Commission determines a different term is in the public interest). G.S. 62-110.8(b)(3). Fourth, the Duke utilities' option to self-build renewable energy facilities under the CPRE program is limited to 30% of the utility's required procurement obligation. G.S. 62-110.8(b)(4). In addition, to

ensure equitable treatment in the procurement process, the CPRE Program is to be independently administered by a third-party entity to be approved by the Commission. G.S. 62-110.8(d). While the Duke utilities are expressly permitted to participate in a competitive procurement process, the utilities are limited to participating within their own assigned service territory, and limited in the ability to use nonpublic information in the process. Finally, pursuant to G.S. 62-110.8(g), the Duke utilities are authorized to recover certain costs of the CPRE Program, subject to the provisions of that section, including a limitation on the annual increase of 1% of the utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year.

The Commission is assigned an oversight role in the CPRE Program. This role includes adopting the rules that are the subject of this order, approving the Duke utilities' proposed CPRE Program(s), adjusting the total required amount of procurement, requiring a new competitive procurement at the end of the initial 45-month CPRE Program based on a showing of need in a utility's most recent biennial integrated resource plan, approving the pro forma contracts filed by the Duke utilities, approving the third-party entity to independently administer the program, and approving the annual rider for utility cost recovery. The foregoing, as enacted in G.S. 62-110.8, guides the Commission's consideration of the proposed rules and the comments filed in this docket.

SUMMARY OF THE PARTIES' COMMENTS AND PROPOSED RULES

The Commission recognizes and appreciates the effort that the parties undertook to reach consensus on proposed rules. This effort has produced two versions of proposed rules: those filed by Duke, which are generally supported by the Public Staff, and those filed by NCSEA and NCCEBA. The two versions are similar in layout and conform to the general format of the Commission's rules, and the Commission adopts the layout as proposed by the parties. In addition, in recognition that the definitions section of the proposed rule is largely undisputed and for convenience in addressing the disputed issues, the Commission uses these defined terms in this order.

Consistent with the Commission's Order initiating this rulemaking proceeding, the parties' comments were organized around the five specific directives in G.S. 62-110.8(h). The Commission considered all the parties' comments on each of these directives and summarizes the same in the remainder of this section.

Commission Oversight of CPRE Program

By its comments and proposed rule, Duke argues that the Commission's oversight of the CPRE Program should be implemented similarly to the Commission's implementation of the Renewable Energy and Energy Efficiency Portfolio Standard (REPS) through Commission Rule R8-67. Therefore, Duke's proposed rule requires DEC and DEP to annually file CPRE Program plans, compliance reports, and applications for cost recovery, similar to the requirements of Commission Rule R8-67(b) and (c) (requiring the annual filing of a REPS compliance plan, and REPS compliance report, respectively). Duke argues that this approach is appropriate based upon the

CPRE Program framework, which Duke describes as imposing prescriptive requirements as to the amount of renewable resource capacity, but also providing broad flexibility for Duke to develop the program. In support of its argument, Duke states that these annual filings will allow the Duke utilities to refine their individual or aggregate procurement strategies each year during the 45-month procurement period and to provide updated information to the Commission, Public Staff, and market participants. In addition, Duke states that this approach will allow the Commission to monitor overall progress toward meeting the Duke utilities' procurement obligations and the limits on the program. Further, Duke states that the annual compliance report and cost recovery application required in its proposed rule (discussed below) would allow the Commission to oversee Duke's implementation of the CPRE Program and the costs incurred to do so. Finally, Duke states that the compliance report required by its proposed rule would allow the Commission to assure the requirements of the CPRE Program are being met within the limitations provided in G.S. 62-110.8, including the cost-effectiveness limitation and the independent administration by a third-party entity designed to ensure that all bids are treated equitably.

By its initial comments, NCSEA argues that the legislature was interested in creating an equitable and transparent process for all parties involved, both independent power producers and utilities. These "overarching principles," NCSEA argues, should guide the Commission's consideration of the following: (1) the role of the independent administrator, (2) transparency of data, (3) dispute resolution, (4) placing independent power producers and utilities on a "level playing field," (5) several issues that NCSEA argues require clarification, and (6) the content and timing of the utilities' filings. Finally, NCSEA argues that several issues do not require the Commission to adopt rules, but nonetheless necessitate Commission oversight, action, and approval. NCSEA identifies these issues as: (1) bidder qualification requirements, (2) requirements for responses to competitive procurements, and (3) the pro forma power purchase agreement. NCSEA proposes that these issues be addressed through a stakeholder process with a final report to and consideration by the Commission.

By its initial comments, NCCEBA encouraged the Commission to establish a published schedule for competitive procurements, including target dates for each solicitation window and the volume sought for each solicitation. NCCEBA further argues that the Commission's rules should address how and when the Duke utilities will publicize information about the location of desired renewable energy facilities solicited through an RFP and how interconnection costs will be determined. NCCEBA also argues that the independent administrator is key to providing a fair and equitable evaluation of bids received and that the Commission should consider criteria that ensure the administrator is truly independent, in particular, when a utility is participating in the solicitation as a bidder. Finally, NCCEBA argued that the Commission and the Independent Administrator should ensure that all bidding is based upon a clearly communicated common metric, with equal access to the cost limitation information, and that the Commission should establish reasonable thresholds that must be met to demonstrate project viability, including site control, an interconnection agreement application, a CPCN application, security and assurances, and bidder qualifications.

By its initial comments, SunEnergy1 addresses several aspects of the Commission's oversight of the CPRE Program. First, SunEnergy1 argues that the Commission should establish and publish a schedule, with targeted dates and anticipated volumes for each solicitation window, over the 45-month initial procurement period. SunEnergy1 states that this would allow interested entities to plan their responses and proposed projects in advance and would be consistent with the goal of transparency and fair competition outline elsewhere in G.S. 62-110.8. Second, SunEnergy1 argues that it is essential that any competitive procurement policy be based on equality of opportunity between developers and between developers and Affiliate(s). SunEnergy1 emphasizes that the 30% limitation on utility-owned renewable energy facilities in G.S. 62-110.8(b)(4) is a ceiling and not a floor; thus, 100% of the Duke utilities' procurement requirement should be open to competition from developers not affiliated with the utilities and proposals, whether from these "independent developers" or Affiliates should be assessed based on the same criteria. In addition, SunEnergy1 comments that the independent administrator, with review and approval of the Commission, should establish and publish in advance criteria that will be applied to all proposals and the weight to be assigned to each criteria. Third, SunEnergy1 argues that that the rules implementing the CPRE Program should include requirements that electric public utilities provide all information necessary for the preparation of competitive bids, including, potentially, non-public information and information about the utility's determined location and allocation of the amount of the competitive procurement. SunEnergy1 cites G.S. 62-110.8(c) and (e) in support of this argument and concludes that the Commission should require this information to be made available to all potential bidders as soon as reasonably possible in the bidding process. Fourth, SunEnergy1 argues that the Commission should establish minimum thresholds that each bid and each potential provider must meet in order to take part in the process. SunEnergy1 suggests that this criteria include demonstrating that the bidder has site control, experience in the field, and the ability to complete projects and render them operational. In addition, SunEnergy1 suggests that the Commission should require that all bidders have submitted applications for an Interconnection Agreement and a CPCN, and that "shortlisted bidders" post reasonable security, such as a posted bond or deposit and a letter of credit.

By its initial comments, and as it recommended in past avoided cost proceedings, the Public Staff reiterated its support for market-based approaches to determine the most cost-effective options for utilities to meet their customers' needs, provided that the competitive bidding process is appropriately structured and an independent administrator is utilized. The Public Staff encourages the Commission to use a competitive bidding process that incorporates the following "best practices": (1) the procurement process should be transparent, fair, and objective, (2) the procurement should be designed to encourage robust competitive offerings and creative proposals from market participants, (3) the procurement should select winning offers based on appropriate evaluation of all relevant price and non-price factors, (4) the procurement should be conducted in an efficient and timely manner, and (5) when using a competitive procurement process, regulators should align their own procedures and actions to

support the development of a competitive response.[1] The Public Staff notes that competitive bidding options have been available in North Carolina since the late 1980s, but has not been utilized on a regular basis for purchases from qualifying facilities. The Public Staff further notes that those RFPs did not involve Commission approval or an independent administrator, and, in this proceeding, the General Assembly has left significant discretion to Duke regarding the CPRE Program. In addition to the NARUC "best practices," the Public Staff recommends that the Commission consider renewable energy competitive procurement processes implemented in other southeastern states, in particular, that process implemented by Georgia Power.[2] Finally, the Public Staff recommends that the Commission periodically review the contract with the independent administrator selected by the Commission to oversee the competitive procurement.

By their reply comments, additional reply comments, proposed rules and revised proposed rules, the parties reached agreement on many of the issues related to Commission oversight of the CPRE Program. In comparing the two competing versions of the proposed rules, the Commission identifies the following issues for decision:

1. Issues related to the initial CPRE Program filings and guidelines (proposed Rule R8-71(c)(1)):

   Should the rule expressly provide for an opportunity for interested parties to comment on the CPRE Program guideline?

   Should the rule require pro forma contracts to be filed as a part of the CPRE Program guidelines?

2. Issues related to the selection and role of the Independent Administrator (proposed Rule R8-71(d)):

   Should the Independent Administrator be retained by the Duke utilities or by the Commission?

   Should the CPRE Program Methodology used to evaluate proposals be published 30 or 60 days prior to the initial CPRE RFP Solicitation?

   Should the Independent Administrator be allowed to interact with Duke utility personnel who are involved in evaluating proposals, and if allowed, how should this interaction take place and what is the appropriate timing of these interactions?

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[1] See Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices, prepared by the Analysis Group for National Association of Regulatory Utility Commissioners (NARUC), July 2008. Online at: http://pubs.naruc.org/pub/4AE5DC97-2354-D714- 5151-A46473B286E7.

[2] See Ga. Comp. R. & Regs. 515-3-4-.04 (2011).

Should the rule address the handling of non-publicly available information about the Duke utilities' transmission or distribution system used in developing proposals, and, if so, what is the appropriate method for publishing this information to CPRE Program participants?

Should the rule require the Independent Administrator to work "in coordination with" the Duke utilities' personnel who are involved in evaluating proposals?

3. Issues related to the CPRE RFP Solicitation Structure and Process (proposed Rule R8-71(f)):

   Should the Duke utilities be required to prepare evaluation factors as part of their initial draft of the CPRE RFP?

   Should the proposal selection process include an opportunity to refresh proposals, allowing market participants to make a "final best offer"?

   What is the appropriate process for resolving discrepancies between the Independent Administrator's proposal selections and those of the Duke utilities?

   Should the Duke utilities be informed of the content of communications between the Independent Administrator and a market participant?

4. Issues related to the CPRE Program Plan and CPRE Compliance Report, and to the Commission's review thereof (proposed Rule R8-71(g), (h), and (i)): Should the rule set November 27, 2017, as the date by which the Duke utilities must file their CPRE Program Plan(s)?

5. Issues related to the CPRE Program Power Purchase Agreements (proposed Rule R8-71(l)):

   Should the Independent Administrator be required to post pro forma contracts to its website 30 or 60 days prior to a solicitation?

   If the Duke utilities' initial proposal(s) include assumptions about pricing after the initial term, should the Duke utilities be required to make these assumptions available to the Independent Administrator and to market participants?

Provision of Waiver of Regulatory Conditions or Code of Conduct Requirements

By its initial comments and proposed rule, Duke argues that provisions enacted in S.L. 2017-192 are aimed at allowing a utility's affiliate companies to participate in the CPRE Program on virtually equal terms with non-affiliated third party developers of renewable energy facilities by easing certain procedural hurdles that apply to transactions between an electric public utility and its affiliates. In support of its argument, Duke cites to the amendment to G.S. 62-153(b), exempting power purchase agreements

entered into pursuant to the CPRE Program from the filing and approval requirements of that subsection, and to the enactment of G.S. 62-110(h)(2), requiring the Commission to adopt rules that provide for a waiver of regulatory conditions or code of conduct requirements that would unreasonably restrict an electric public utility or its affiliates from participating in the CPRE Program, unless the Commission finds that such a waiver would not hold the utility's customer's harmless. Initially, Duke argued that the rules adopted in this proceeding should prospectively waive certain regulatory conditions or code of conduct requirements, subject to an objection by an interested person and the Commission's consideration of whether the wavier would hold the utility's customers harmless. However, in response to comments filed by the Public Staff and NCCEBA, Duke abandoned this procedure in favor of one where the utility, at the time it files its proposed CPRE Program guidelines, also identifies any regulatory conditions or code of conduct provisions that the utility seeks to have waived pursuant to G.S. 62-110.8(h)(2). In addition, Duke's amended proposed rule would require filing of power purchase agreements entered into pursuant to the CPRE Program within 30 days of execution.

By their initial comments, NCCEBA and NCSEA argued that Duke's initial proposal was unnecessarily broad and weakened the protections that regulatory conditions and code of conduct requirements are designed to provide. By their filing of reply comments and a revised proposed rule, NCCEBA and NCSEA agree with Duke that the utilities should identify any regulatory conditions and/or code of conduct provisions in their proposed CPRE Program guidelines. However, NCCEBA and NCSEA propose further details that they believe should be required when a utility seeks such a waiver.

By its initial comments, the Public Staff states that it is not aware of any rulemaking requirements associated with waivers from the Regulatory Conditions or Code of Conduct that are needed at this time. Further, the Public Staff observes that Section 2.3 of the Regulatory Conditions and Section II of the Code of Conduct already provide procedures for utilities and their affiliates to seek a waiver from regulatory conditions or code of conduct requirements. The Public Staff cites to G.S. 62-110.8(c) and (e) as indicating the General Assembly acknowledged the critical nature of the information necessary to participate in the CPRE Program and sought to ensure that it will be made available to CPRE Program market participants. In conclusion, the Public Staff states that it expects utilities and their affiliates to fully comply with these requirements and to seek waivers, if needed, in a timely fashion.

By their reply comments, additional reply comments, proposed rules, and revised proposed rules, the parties reached agreement on many of the issues related to requests for waiver of regulatory conditions and/or code of conduct provisions. In comparing the two competing versions of the proposed rules, the Commission identifies the sole remaining disputed issue related to this rule provision as the extent to which Rule R8-71(c)(2) should address the detailed requirements of a utility's filing requesting a waiver.

Expedited Review of CPCN Applications and Requests to Transfer a CPCN

By its comments and proposed rule, Duke argues that its proposed rule establishes both filing requirements and procedures for reviewing applications for, and requests for transfer of, CPCNs that are generally consistent with the existing procedures for review of a CPCN application filed by a small power producer. See G.S. 62-82(a), 62-110.1 and Rule R8-64. Thus, Duke's proposed subsection (k) requires that these filings meet the requirements of G.S. 62-82(a) and 62-110.1, but otherwise provides that these filings are exempt from Rule R8-61. Duke proposes that the application include the same type of exhibits required by Rule R8-64 and a similar procedure for Commission review.

By its initial comments, the Public Staff cites to two instances where the General Assembly has directed the Commission to consider an application for a CPCN on an expedited basis.[3] The Public Staff suggests that these cases may provide useful context for the Commission because, rather than adopting rules for these proceedings, the Commission addressed the procedure on these applications by orders requesting the Public Staff to investigate and present its findings at a regular Staff Conference. The Public Staff further suggests that the Commission could take a similar approach to this expedited process. However, the Public Staff states that it is critical that the application be complete and include all necessary information to allow the Public Staff to evaluate it, and that the Commission would likely need to issue an order promptly scheduling a public hearing, if needed, to meet the 30-day timeframe as required by G.S. 62-110.8(g)(3). Finally, the Public Staff states that, as to the siting of a transmission line required to interconnect a facility that is the subject of this expedited CPCN review procedure, the waiver provisions of G.S. 62-101(d)(1) would be a straightforward approach to allow the project to proceed in an expedited fashion.

By their comments, NCCEBA and NCSEA argue that the expedited CPCN review process required by G.S. 62-110.8(g)(3) should treat utilities' CPCN applications and independent power producers' CPCN applications equitably. They state that, under current law, the process for a utility to obtain a CPCN is more burdensome than for an independent power producer. They argue that this expedited review procedure was intended to create a more equitable situation. They further argue that Duke's proposed rule appears to take the provisions of this procedure too far by making the process for review of an independent power producer's CPCN application more burdensome than that for review of a utility's CPCN application. Therefore, their proposed rule use the same process for review of both a utility's and an independent power producer's application for CPCN, or transfer thereof, pursuant to the CPRE Program.

[3] See S.L. 2009-390 (authorizing expedited review of a CPCN application for natural gas generating facilities at retiring coal-fired generating facilities that meet certain requirements, and requiring Commission decision within 45 days); S.L. 2015-110 (providing for a 45-day decision process for a natural gas generating facility that meets certain requirements). See also Docket No. E-2, Sub 960 (CPCN issued pursuant to S.L. 2009-390 for DEP's Wayne County Natural Gas Combined Cycle facility); E-2, Sub 1089 (CPCN issued pursuant to S.L. 2015-110 for DEP's Asheville combined cycle facility).

By its initial comments, SunEnergy1, similar to NCCEBA and NCSEA, requests that any process adopted for CPCN review and approval for utility-owned or acquired facilities be consistent with that for non-utility owned facilities. Thus, SunEnergy1 suggests that to the extent the process is streamlined or expedited for public utilities and their affiliates, other market participants should benefit from the same revisions.

By their reply comments, additional reply comments, proposed rules, and revised proposed rules, the parties reached agreement on the basic framework for expedited review of applications for CPCNs and transfer of CPCNs pursuant to the CPRE Program. For reasons explained below, however, the Commission will reject both versions of the proposed rule because they fail to adequately implement the direction from the General Assembly enacted in G.S. 62-110.8(h)(3).

CPRE Program Cost Recovery Mechanism

By its comments and proposed rule, Duke argues that its proposed subsection (j) presents the mechanism for DEC and DEP to recover the costs of all purchases of energy, capacity, and environmental and renewable attributes from third-party renewable energy facilities and to recover the authorized revenue of any utility-owned assets that are procured pursuant to the CPRE Program, as provided in G.S. 62-110.8(g). In support of its argument, Duke states that the proposed cost recovery mechanism is generally modeled on the REPS cost recovery rider, wherein the utility projects costs to be incurred during a future, fixed, 12-month billing period and adjusts these costs through an experience modification factor. See Rule R8-67(e). By its proposed rule, Duke proposes similar procedural requirements as those provided under Rule R8-67(e), including an annual hearing, publication of notice thereof, required supporting information, and aligning test periods with other rider proceedings. Duke further states that 100% of the CPRE Program costs should be recovered through the annual rider authorized by G.S. 62-110.8(g), and not recovered through the fuel factor adjustment in G.S. 62-133.2, the REPS rider in G.S. 62-133.89(h), or through an adjustment to base rates. Duke's comments and proposed rule also addresses the provision in G.S. 62-110.8(g), allowing the authorized revenue for any utility-owned renewable energy facility to be calculated based on a "market price" rather than cost-of-service, provided it is in the public interest to do so. In its proposed (b)(11), Duke proposes a definition of "market price" that would be used in calculating the revenue to be recovered for costs related to utility-owned renewable energy facilities.

NCCEBA initially focused its comments on the portion of the cost recovery mechanism related to calculating the costs recoverable for utility-owned renewable energy facilities. However, by the joint filing of its additional reply comments with NCSEA, NCCEBA and NCSEA do not identify this as an issue in dispute. However, their proposed rule differs slightly from Duke's proposed rule on this issue.

By its additional reply comments, NCEMC focuses on costs associated with the CPRE Program and calls on the Commission to recognize the potential impacts on retail and wholesale customers. NCEMC argues that the CPRE Program was enacted as a

reform measure intended to save customers – both wholesale and retail – from unchecked increasing system costs. In particular, NCEMC criticizes a section in Duke's revised proposed rule that contemplates the potential for a separate solar energy-specific avoided cost framework. NCEMC further states that Duke's proposed rule provision would create ambiguity as to whether the inclusion of renewable attributes would result in costs above or below the "traditional or non-solar avoided cost methodology approved by the Commission." NCEMC, therefore, argues that a higher solar avoided cost rate would undermine the reform intended by the General Assembly in enacting S.L. 2017-192. The proposed rule provision that NCEMC focused on in its comments was deleted in later drafts.

By its initial comments, the Public Staff suggests that the Commission's existing rider proceedings provide a good starting framework for defining the cost recovery mechanism for the CPRE Program. The Public Staff argues that any cost recovery mechanism should ensure that costs are allocated to the appropriate riders or to base rates, and that costs associated with any utility- or affiliate-owned facility should be allocated to that project in order to prevent any double counting or to eliminate the potential inclusion of any costs in the rider that are more appropriately allocated to the utility's base rates.

By their reply comments, additional reply comments, proposed rules, and revised proposed rules, the parties reached agreement on many of the issues related to the CPRE Program cost recovery methodology. As discussed below, the parties dispute one aspect of the cost recovery methodology related to recovery of costs or collection of revenue for a utility-owned facility that the utility proposes to recover or collect on a "market basis in lieu of cost-of-service based recovery." See G.S. 62-110.8(g).

Procedure to Modify or Delay CPRE Program Requirements

By its comments and proposed rule, Duke proposed a rule provision that would allow for a utility or interested party to petition the Commission to modify or delay the provisions of G.S. 62-110.8, in whole or in part, if the Commission determines that it is in the public interest to do so. In support of its proposed provision, Duke states that this provision is generally based upon the REPS "off-ramp" provision, see G.S. 62-133.8(i)(2), but does not include the "reasonable efforts" requirement that is included in Rule R8-67(c)(5). Duke explains that difference by noting that the "reasonable efforts" requirement was expressly included in G.S. 62-133.8(i)(2), but not included in G.S. 62-110.8(h)(5). Duke argues that adopting NCSEA and NCCEBA's position would prospectively limit the Commission's authority and discretion.

By its initial comments, NCCEBA argues that modification or delay of the CPRE Program requirements should be allowed only in exceptional circumstances. NCCEBA further argues that its members need predictability and reasonable certainty that the Duke utilities will comply with the CPRE Program requirements on schedule. In considering requests to modify or delay the CPRE Program requirements, NCCEBA argues that the Commission should require the utility to demonstrate that the request is not the result of

its own actions or inactions and that it made reasonable efforts to avoid modification or delay. In evaluating whether a modification or delay is in the "public interest," NCCEBA suggests the Commission rely upon the limitations in G.S. 62-110(b)(2) related to cost-effectiveness. Finally, NCCEBA argues that, even if the Commission allows a modification or delay, the Commission should still require the utilities to comply with the CPRE Program's 45-month deadline and 2,660 MW procurement obligation.

By its initial comments, NCSEA argues that the only factor that could lead the Commission to determine that it is in the public interest to modify or delay the requirements of the CPRE Program is the cost-effectiveness limitation in G.S. 62-110.8(b)(2). Similar to NCCEBA, NCSEA argues that even if the Commission allows a modification or delay, the Commission should still require the utilities to comply with the CPRE Program's 45-month deadline and 2,660 MW procurement obligation.

By the proposed rule attached to their joint additional reply comments, NCCEBA and NCSEA argue that an electric public utility should be required to demonstrate that a modification or delay in the CPRE Program requirement is justified based upon clear and convincing evidence that the utility made reasonable efforts to comply. Further, their proposed rule would provide that no delay or modification would be granted during the initial CPRE Program Procurement Period.

By its initial comments, the Public Staff suggests that the REPS "off-ramp" provision would provide a good template for the Commission's rules implementing G.S. 62-110.8(h)(5). In its reply and additional reply comments, the Public Staff expressed general agreement with Duke's proposed rule.

By their reply comments, additional reply comments, proposed rules, and revised proposed rules, the parties reached agreement on many of the issues related to the procedure for delay or modification of the CPRE Program requirements at (i)(2) of the proposed rule. In comparing the two competing versions of the proposed rules, the Commission identifies three issues in dispute: the appropriate burden of persuasion to justify a modification or delay, whether a modification or delay should be allowed during the Initial CPRE Program Procurement Period, and the level of detail required in a petition requesting a delay or modification.

DISCUSSION AND CONCLUSIONS

The Commission has reviewed and carefully considered the parties' comments, proposed rules, and legal and policy arguments supporting their positions. The Commission determines that the undisputed provisions of the proposed rules comport with the legislative intent expressed in G.S. 62-110.8 and are a reasonable means of implementing the provisions of that section. Therefore, the Commission concludes that these undisputed provisions should be adopted with revisions that tend to streamline the text of the rule and conform to the general format of other Commission rules. Of note, these revisions include the use of the term "proposal" rather than "bid," recognizing that responses to a CPRE RFP Solicitation are evaluated on both economic and noneconomic

factors, and changes to the proposed rules to conform to this syntax. In addition, the Commission will refer to the third-party entity tasked with administering the CPRE Program as the "Independent Administrator," consistent with the plain language of G.S. 62-110.8(d).

As for the provisions of the proposed rule that are in controversy, the Commission addresses these provisions, as follows.

Commission Oversight of CPRE Program

1. Issues related to the initial CPRE Program filings and guidelines (Rule R8-71(c)(1)):

The Commission concludes that Rule R8-71(c)(1) should not expressly provide for an opportunity for interested parties to comment on the CPRE Program guidelines; rather, the Commission finds it appropriate to allow such an opportunity through the issuance of a procedural order establishing a schedule for interested persons to file petitions to intervene and comments. While the Commission agrees with NCSEA that an opportunity for interested persons to review and comment on the guidelines is important, the Commission determines that this level of detail is inappropriate for inclusion in the rule. Therefore, the Commission adopts Duke's proposed version of subsection (c)(1), with modifications as discussed immediately below.

The Commission concludes that Rule R8-71(c)(1) should require the Duke utilities to include pro forma contracts to be filed as a part of the CPRE Program guidelines, as proposed by NCCEBA and NCSEA. It appears that there would be little or no additional burden on Duke to include the pro forma contracts in its CPRE Program guidelines because Duke has proposed an informal process for sharing information with the Public Staff and market participants in advance of the filing date, which the Commission understands could include sharing early drafts of the pro forma contracts. To the extent that Duke anticipates a need to revise its pro forma contracts after submission as part of the CPRE Program guidelines, it should alert the Commission, the Public Staff, and market participants to this possibility in its filing of the CPRE Program guidelines. Therefore, the Commission adopts subsection (c)(1)(v) reflecting this conclusion.

2. Issues related to the selection and role of the Independent Administrator (Rule R8-71(d)):

The Commission concludes that the Independent Administrator should be retained by the Duke utilities and not by the Commission. As provided in the plain language of G.S. 62-110.8(d), the Commission will approve the Independent Administrator and the administrative fees to be paid by those participating in the competitive procurement process. Given that the Duke utilities will be collecting these fees and paying the Independent Administrator, the functions that are entailed in retaining the Independent Administrator are appropriately left to the Duke utilities. Although the Duke utilities will be paying and retaining the Independent Administrator,

subsection (d)(4) of the rule makes clear that the Independent Administrator remains subject to Commission oversight. This oversight function could include receiving and acting upon a complaint that a Duke utility or the Independent Administrator is carrying out their respective responsibilities in a manner inconsistent with G.S. 62-110.8, the Commission's rules, or a lawful order issued by the Commission. Therefore, the Commission adopts subsection (d)(4) reflecting this conclusion.

The Commission concludes that it is imprudent to adopt in subsection (d)(6) either a 30- or 60-day deadline for publication of the CPRE Program Methodology. Instead, the Commission will require the Independent Administrator to publish the CPRE Program Methodology prior to the initial CPRE RFP Solicitation and, in any event, to do so no later than a date to be set by the Commission order approving the CPRE Program and Program guidelines. Therefore, the Commission adopts a subsection (d)(6) reflecting this conclusion.

The Commission concludes that practical considerations require allowing the Independent Administrator to interact with the Duke utilities' personnel who are involved in evaluating proposals. This interaction should take place within the Evaluation Team and Proposal Team construct as proposed by Duke and agreed to by the Public Staff. The plain language of G.S. 62-110.8(c) expressly provides that the Duke utilities shall have authority to determine the location and allocated amount of the competitive procurement within their respective balancing authority areas taking into consideration three specific considerations. By necessity, the Independent Administrator will need to obtain some information from Duke and incorporate that information into its CPRE Program Methodology. In addition, Duke's proposed rule contemplates additional communication before subsequent CPRE RFP Solicitations, which the Commission concludes tends to foster continued improvement in the process.

The Commission recognizes NCCEBA, NCSEA, and SunEnergy1's concerns that this puts the Duke utilities and their Affiliates on the inside track when participating in a CPRE RFP Solicitation. However, the Commission determines that the segregation of personnel proposed by Duke, and agreed to by the Public Staff, within the Evaluation Team and Proposal Team construct provides a reasonable protection against the Duke utilities and their Affiliates obtaining an unfair advantage. The Commission notes that this construct includes these personnel making an acknowledgement of compliance with the Commission's rules and filing of the same with the Commission. Therefore, the Commission adopts subsections (d)(6) and (d)(8) reflecting these conclusions.

The Commission determines that it is appropriate to address the handling of non-publicly available information about the Duke utilities' transmission or distribution systems used in developing proposals by requiring the Independent Administrator make this information available to persons who have expressed an intent to submit a proposal in response to a CPRE RFP Solicitation. This conclusion is supported by the plain language of G.S. 62-110.8(e). The Commission expects that Duke, the Independent Administrator, and the market participants will develop and implement appropriate

protections for this information, such as nondisclosure agreements. Therefore, the Commission adopts subsection (d)(6) reflecting this conclusion.

3. Issues related to the CPRE RFP Solicitation structure and process (Rule R8-71(f)):

The Commission concludes that the Duke utilities should be required to include evaluation factors in the initial draft of the CPRE RFP Solicitation guidelines. The Commission finds merit in beginning the discussions about the evaluation factors and the other matters required to be included in the CPRE RFP Solicitation guidelines and documents earlier rather than later, and requiring the inclusion of the evaluation factors tends to facilitate that discussion. Therefore, the Commission adopts subsection (f)(1)(ii) reflecting this conclusion.

The Commission recognizes the inherent tension in the parties' dispute over proposed subsection (f)(3) (evaluation of responses to CPRE RFP Solicitation) and proposed subsection (f)(4) (selection of CPRE Program Resources). This tension arises, in part, from the legislative direction in G.S. 62-2(3) to promote "adequate, reliable, and economical utility service" to Duke's customers, and the construct of the CPRE Program, allowing Duke and its Affiliates to make proposal(s) in Duke's competitive procurement of energy and capacity from renewable energy facilities, which "shall be independently administered by a third-party entity." G.S. 62-110.8. A proposal process that forces proposals selections on the utility could be viewed as undermining the Commission's ability to look solely to the utility in meeting the directive in G.S. 62-2(3), while a proposal process that grants the utility unilateral authority to select proposals could be viewed as undermining the "independence" of the administration of the CPRE Program. The Commission resolves this tension by adopting Commission Rule R8-71(f)(3).

Under Rule R8-71(f)(3), the evaluation of proposals will occur on a single track, in two steps. In the first step, the Independent Administrator will use the CPRE Program Methodology to evaluate proposals based on the CPRE RFP Solicitation evaluation factors, including economic and noneconomic factors. The Independent Administrator's review will produce a list of proposals that meet the specifications of the CPRE RFP Solicitation, ranked in order from most competitive to least competitive. This ranked list shall be redacted of any information that identifies the market participant that submitted the proposal and any other information that is not reasonably necessary for the utility to complete step two of the evaluation process, including any economic factors such as cost and pricing information. The Independent Administrator will deliver this ranked list of proposals to the utility.

In the second step, the utility shall select the proposals in the ranked order presented by the Independent Administrator until the total generating capacity sought in the CPRE RFP Solicitation is satisfied. The utility may deviate from the ranked order only where the utility determines that the interconnection and operation of a proposed facility, together with a facility or multiple facilities that were the subject of proposals already selected by the utility, would significantly undermine the utility's ability to provide

adequate and reliable electric service to its customers. In such a case, the utility may eliminate that proposal from consideration in the CPRE RFP Solicitation. When the utility completes its selection and elimination of proposals, the utility shall notify the Independent Administrator of its selections and eliminations, and include an explanation for the elimination of each proposal. The Independent Administrator shall then provide the utility with the identity of each market participant that submitted a proposal selected by the utility, and the utility shall proceed to execute a contract with each such market participant.

The Commission determines that this evaluation and selection process strikes an appropriate balance between retaining traditional utility authority for the provision of adequate and reliable service and fostering the independence in the CPRE Program that the General Assembly intended. The Commission acknowledges that in adopting this process for evaluation and selection of proposals, the opportunity for refreshed bids by making a best and final offer has been eliminated. The Commission, in its discretion, determines that the better approach is to incentivize market participants to make their best offer in their proposal and to eliminate this additional step in the selection process. In addition, the approach the Commission adopts may shorten the time required to complete the evaluation and selection process, which, in the context of the 45-month CPRE Program Procurement Period, is important to the success of the CPRE Program. Finally, in adopting this evaluation and selection process, the Commission recognizes that opportunities for improvements may arise or become apparent after there is a sufficient historical record of working through the process. Therefore, the Commission will remain open to these opportunities in the future.

Finally, the Commission notes that substantive issues related to restricting communications between market participants and between the Proposal Team(s) and Evaluation Team(s) have been moved from subsection (f) to subsection (e) or deleted. The Commission generally agrees that the deleted restrictions are appropriate, although the level of detail as proposed by the parties is unnecessarily prescriptive for a Commission rule. The Commission expects communication to occur through the Independent Administrator such that the anonymity of market participants is preserved. In addition, the Commission expects the electric public utility to cooperate with the Independent Administrator by providing full access to the personnel and the resources used to develop and evaluate proposals, consistent with the provisions proposed by the parties in this proceeding. These expectations are consistent with the positions Duke takes in advocating for its proposed rule provisions.

4. Issues related to the CPRE Program Plan and CPRE Compliance Report, and to the Commission's review thereof (Rule R8-71(g), (h), and (i)):

The Commission concludes that it is unnecessary to establish, by rule, November 27, 2017, as the date by which the Duke utilities must file their CPRE Program Plan(s). This deadline is established in Section 2(c) of S.L. 2017-192, and Duke has demonstrated its commitment to meet this deadline through its filings in this proceeding.

Therefore, the Commission adopts sections (g), (h), and (i) reflecting the deletion of reference to this date.

5. Issues related to the CPRE Program power purchase agreements (Rule R8-71(l)):

For reasons similar to those discussed above, the Commission adopts section (l) reflecting the deletion of the proposed 30- or 60-day publication requirements. As in other contexts of this rule, the Commission intends to address these deadlines in the process of reviewing Duke's CPRE Program guidelines and documents.

The Commission concludes that the Duke utilities should be required to make available to the Independent Administrator and market participants assumptions about pricing after the initial term, if the utilities' initial proposal(s) include such assumptions. This requirement tends to foster transparency in the competitive procurement process and supports the General Assembly's intent to encourage a market-based approach to adding renewable energy resources to the state's generation resources. Therefore, the Commission adopts subsection (l)(4) reflecting this conclusion.

Waiver of Regulatory Conditions and Code of Conduct Provisions

The Commission concludes that it is not necessary to include the prescriptive filing requirement for a request for waiver of regulatory conditions or code of conduct provisions, as proposed by NCSEA. While the Commission generally agrees that this type of information should be included in such a request filed by a utility, the Commission does not find this level of detail appropriate for adoption of filing requirements by rule. Therefore, the Commission adopts subsection (c)(2) as proposed by Duke and agreed to by the Public Staff.

Procedure for Expedited Review and Approval of CPCNs for Renewable Energy Facilities Owned by an Electric Public Utility

In comparing the two competing versions of the proposed rules, the Commission finds both fail to adequately implement G.S. 62-110.8(h)(3). The Commission acknowledges, as the parties have appropriately identified, that there is inherent tension between G.S. 62-110.8(h)(3) and the existing statues and Commission rules that govern the procedure on an application for a CPCN. See G.S. 62-82 and Rules R8-61 and R8-64. This tension arises from the conflict between the plain language of the two statutes: G.S. 62-82 requires publication of notice of a pending application for four consecutive weeks and provides for a hearing upon compliant or upon the Commission's own motion, while G.S. 62-110.8(h)(3) requires the Commission to issue an order within 30 days of an electric public utility filing an application for CPCN or petition to transfer a CPCN pursuant to the CPRE Program. It is apparent, on the face of the statutes, that the Commission cannot meet the 30-day deadline using the G.S. 62-82 procedure.

There being no resolution to this tension in the plain language of the statue, the Commission must resort to statutory interpretation. The cardinal principle of statutory interpretation is to ensure that legislative intent is accomplished. Harris v. Nationwide Mut. Ins. Co., 332 N.C. 184, 191, 420 S.E.2d 124, 128 (1992). When a general statute and a special or particular statute are in conflict, the special or particular statute is controlling; the special statute is viewed as an exception to the provisions of the general statute, since it is presumed that the General Assembly did not intend to create a conflict. Domestic Electric Service, Inc. v. Rocky Mt., 20 N.C. App. 347, 351 (1974). This rule of construction is especially applicable where the specific provision is the later enactment. Food Stores v. Board of Alcoholic Control, 268 N.C. 624, 151 S.E. 2d 582 (1966). While it is true that statutes dealing with the same subject matter must be construed in pari materia and harmonized to give effect to each, Gravel Co. v. Taylor, 269 N.C. 617, 153 S.E. 2d 19 (1967), when the section dealing with the specific matter is clear and understandable on its face, it requires no construction. State ex. rel. Utils. Comm'n. v. Lumbee River Electric Membership Corp., 275 N.C. 250, 260 (1969).

The Commission concludes that the plain language of G.S. 62-110.8(h)(3) is clear and understandable on its face: the General Assembly intended for the Commission to establish an expedited procedure for review of applications for CPCNs, and for the transfer thereof, for renewable energy facilities owned by an electric public utility pursuant to the CPRE Program, wherein the Commission "shall issue an order not later than 30 days after" the electric public utility makes the relevant filing. Subsection 62-110.8(h)(3) being the later enactment, the Commission determines that it is the controlling statute. The Commission concludes that Duke's proposed rule incorporating the 4-week publication requirement of G.S. 62-82 will not effectuate the legislative intent of G.S. 62-110.8(h)(3). Therefore, the Commission declines to adopt Duke's proposed subsection (k).

The Commission also determines that NCCEBA, NCSEA, and SunEnergy1's proposals to include independent power producers in the expedited CPCN review process are inconsistent with the plain language of G.S. 62-110.8(h)(3). The General Assembly could have included in that expedited review process applications filed by these facilities owners, but it chose not to do so. It would be inappropriate for the Commission to expand the scope of this expedited review process beyond what the General Assembly has provided by statute. Therefore, the Commission also declines to adopt NCCEBA and NCSEA's proposed section (k).

Instead, consistent with the Public Staff's comments, the Commission concludes that the proceedings in Docket No. E-2, Subs 960 and 1089 provide the most appropriate model for implementing the expedited CPCN review process required by G.S. 62-110.8(h). Therefore, section (k) incorporates procedures used in both proceedings and modeled on G.S. 62-82(a) and Rules R8-61 and R8-64. The Commission concludes that this combination of procedures best effectuates the legislative intent expressed in G.S. 62-110.8(h). In summary, section (k) provides for processing these applications as follows: filing of preliminary plans and publication of notice of that filing, filing of the application and public notice of that filing, Public Staff investigation and recommendation, and the Commission's consideration of the matter at

a Regular Commission Staff Conference approximately three weeks after the application is filed. When no significant complaints are filed with the Commission, these applications should routinely be considered at a Regular Commission Staff Conference within 30 days of the filing of the application. In those cases where significant complaints are filed with the Commission, the Commission will proceed as expeditiously as possible to conduct a public hearing and issue an order on the application. The Commission may issue notices of decision where a final order cannot be issued prior to the 30-day deadline. Petitions to transfer CPCNs would be processed in a similar manner, but foregoing the required filing of preliminary plans. Therefore, the Commission adopts section (k) reflecting this conclusion.

In addition, the Commission adopts a revision to Commission Rule R8-64(a)(1) to clarify that any person, other than an electric public utility, who seeks a CPCN for a facility that will participate in the CPRE Program should make application pursuant to that rule. Finally, the Commission notes that like the deadline in G.S. 62-82, the 30-day deadline in G.S. 62-110.8(h) is properly regarded as "directory" rather than mandatory because the legislature did not express a consequence for failure to comply within the time period. State ex rel. Utils. Comm'n v. Empire Power Co., 112 N.C. App. 265, 276, 435 S.E.2d 553, 558-559 (1993).

Methodology to Allow an Electric Public Utility to Recover CPRE Program Costs

In the two competing versions of subsection (j) of the proposed rule, the parties dispute centers on how to implement the following sentence in G.S. 62-110.8(g):

> Provided it is in the public interest, the authorized revenue for any renewable energy facilities owned by an electric public utility may be calculated on a market basis in lieu of cost-of-service based recovery, using data from the applicable competitive procurement to determine the market price in accordance with the methodology established by the Commission pursuant to subsection (h) of this section.

The parties' dispute over implementing this sentence is further complicated by their conflicting and confusing proposed definitions of "market price."

In resolving this issue, the Commission looks first to the text of G.S. 62-110.8(g). The Commission concludes that the General Assembly intended subsection (g) to allow a utility to recover costs or collect revenues in excess of its cost of service upon a showing that it is in the public interest to do so. The higher cost or revenue amount allowed is "calculated on a market basis." G.S. 62-110.8(g). Underlying subsection (g) is the assumption that the utility's cost of service will be less than the cost calculated on a market basis. Further, because the CPRE Program limits a utility to procuring energy and capacity from renewable energy facilities that it can procure at a price less than its current forecasted avoided cost, see G.S. 62-110.8(b)(2), it follows that a second assumption underlies subsection (g): that the market-price will be less than the utility's forecasted avoided costs. Thus, the Commission concludes that G.S. 62-110.8(g) is intended to accomplish at least three interrelated goals: (1) providing the utility an additional incentive

to participate in the CPRE Program, at least up to the 30% limitation on utility-developed renewable energy facilities, (2) providing other market participants incentive to behave efficiently by forcing them to compete with other market participants and the utilities, and (3) putting downward pressure on CPRE Program costs through competition among market participants and limiting the utility's payment at less than forecasted avoided cost rates.

In light of these legislative directives and goals, the appropriate conceptualization of "market price" is simply the price included in a proposal selected by the utility, regardless of whether that proposal was submitted by a utility, an Affiliate, or another participant in the CPRE RFP Solicitation. That price, on an annual basis, determines the amount of costs that are appropriately recovered or revenue that is appropriately collected through the rider established in G.S. 62-110.8(g). The Commission considered the concept proposed by Duke that would use the term "product" to attempt to quantify the value of the contractual rights under the power purchase agreement not necessarily based upon dollars per megawatt-hour ($/MWh). The Commission declines to adopt this concept because all prices in proposals must be compared to avoided cost rates, which are expressed in $/MWh. The utility or Affiliate is expected to capture all the value in its proposal price, similar to other market participants. Further, the Commission does not understand the CPRE Program to be comparable to market auctions where a clearing price is established. Attempting to graft that regime onto the CPRE Program raises the potential for odd results such as a utility's market-based recovery being more or less than its actual price. Finally, while these principles hold for the purposes of cost recovery, the Commission recognizes, as reflected in this order and the text of the rule, that noneconomic factors should be considered and incorporated into the CPRE RFP Solicitation evaluation factors. Consideration of those factors could, for example, make one of two identically priced proposals more competitive than the other.

Therefore, the Commission determines that it is unnecessary to adopt a definition of "market price" or to address this issue in the level of detail proposed by the parties. Instead, the Commission adopts subsection (j)(2) requiring the utility, when its application for cost recovery proposes recovery on a market basis, to specifically address the calculation of its costs or revenue on a market basis by testimony sufficient to demonstrate that the proposed recovery is in the public interest.

Procedure to Modify or Delay CPRE Program Requirements

The three disputed issues related to the implementation of the procedure for delay or modification of the CPRE Program requirements in subsection (i)(2) of the proposed rule are: (1) the appropriate burden of persuasion required to justify a modification or delay, (2) whether a modification or delay should be allowed during the Initial CPRE Program Procurement Period, and (3) the level of detail required in a filing requesting a delay or modification.

The Commission determines that NCCEBA and NCSEA's proposed requirement that a utility make a "clear and convincing showing" that a delay or modification is in the

public interest inappropriately applies a heightened burden of persuasion. NCSEA's argument in support of its proposal is that no other standard is set forth in G.S. 62-110.8 and, accordingly, the "baseline" standard should be strict compliance with the law. The Commission concludes that in the absence of express legislative intent indicating otherwise, the generally applicable standard, preponderance of the evidence, should apply. Generally, the Commission only requires clear and convincing evidence in unusual or extraordinary cases, for example, requests for deferral treatment of unusual costs.[4] The General Assembly has directed the Commission to establish a procedure to modify or delay the CPRE Program requirements when the Commission determines it is in the public interest to do so. The Commission determines that this directs it to undertake a broad inquiry, weighing any relevant factors brought to the Commission's attention, and should not require a heightened burden of persuasion.

The Commission is also concerned that NCCEBA and NCSEA's proposed limitation on the availability of modification or delay during the intitial CPRE Program Procurement Period would inappropriately limit the Commission's discretion, which the General Assembly has expressly required the Commission to exercise. The Commission concludes, based on the plain language of the statute, that the intent of the General Assembly is to allow the Commission flexibility to address the CPRE Program requirements in light of unforeseen circumstances.

The Commission also concludes that NCCEBA and NCSEA's proposed subsection (i)(2) is overly prescriptive as to the contents of a petition seeking a modification or delay. The Commission generally agrees that a showing of reasonable efforts to comply, supported by an explanation that includes when compliance might be achieved, are matters that should be included in a petition to modify or delay the CPRE Program requirements. However, the Commission determines that it is prudent to leave this level of detail to the proceeding on such a petition. In the proceeding, if the petition falls short of demonstrating the requested relief is in the public interest, then the Commission expects the Public Staff or other parties would present those arguments to the Commission, and the Commission would proceed appropriately. Therefore, the Commission adopts subsection (i)(2) as proposed by Duke and agreed to by the Public Staff.

Issues Not Addressed in the Proposed Rules.

The Commission notes that neither the proposed rules nor Rule R8-71 adopted herein address the details of the CPRE Program Methodology or the evaluation factors for a CPRE RFP Solicitation. This is appropriate in light of the forthcoming initial CPRE Program filings, which are required to include proposed evaluation factors used in the evaluation of proposals. In reviewing the parties' proposed rules and in developing Rule R8-71, the Commission considered the State purchase and contract laws. See,

[4] See, e.g., Order Establishing Reporting Requirements for Progress Energy Carolinas, Inc., and Dominion North Carolina Power, at 20, issued October 18, 2011 (Docket No. E-100, Sub 112); and Order Denying Deferral Accounting for Warren County Combined Cycle Generating Facility, at 24, issued March 29, 2016 (Docket No. E-22, Sub 519).

generally, G.S. Ch. 143, Art. 3. Two features of those laws, and long-standing aspects of State policy, are the promotion of opportunity for historically underutilized businesses, see, e.g., G.S. 143-128.4, and the prohibition of discrimination based upon race, religion, color, national origin, age, sex, or handicap. See G.S. 7A-761, et. seq., and 143-422.2. While the Commission recognizes that the CPRE Program is not readily comparable to public contracting generally, the Commission will require Duke to incorporate into the CPRE Program appropriate features that promote opportunity for historically underutilized business and prohibit discrimination based upon race, religion, color, national origin, age, sex, or handicap.

CONCLUSION

Based upon the foregoing and the entire record in this proceeding, the Commission amends Rules R8-64(a)(1) and R8-66(b) and adopts Rule R8-71, as set forth in Appendix A to this order, incorporating the conclusions reached herein. The Commission also adopts, as part of the appendix to Chapter 8, a form public notice that shall be used by electric public utilities to give public notice of filing of preliminary plans to make an application for a CPCN under the expedited procedure established in Rule R8-71(k), and which is set forth in Appendix B to this order. Finally, the Commission notes that it has made a number of edits to the proposed rules for formatting and style.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of November, 2017.

NORTH CAROLINA UTILITIES COMMISSION

Linnetta Threatt

Linnetta Threatt, Acting Deputy Clerk

Commission Rule R8-64(a)(1) is amended to read as follows:

R8-64 APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BY CPRE PROGRAM PARTICIPANT, QUALIFYING COGENERATOR, OR SMALL POWER PRODUCER; PROGRESS REPORTS.

(a) Scope of Rule.

(1) This rule applies to applications for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) filed by any person, other than an electric public utility, who is an owner of a renewable energy facility that is participating in the Competitive Procurement of Renewable Energy Program established in G.S. 62-110.8, or by any person who is seeking the benefits of 16 U.S.C. 824a-3 or G.S. 62-156 as a qualifying cogenerator or a qualifying small power producer as defined in 16 U.S.C. 796(17) and (18), or as a small power producer as defined in G.S. 62-3(27a), except persons exempt from certification by the provisions of G.S. 62-110.1(g).

…

Commission Rule R8-66 is amended to read as follows

R8-66 REGISTRATION OF RENEWABLE ENERGY FACILITIES; ANNUAL REPORTING REQUIREMENTS.

…

(b) The owner, including an electric power supplier, of each renewable energy facility, whether or not required to obtain a certificate of public convenience and necessity pursuant to G.S. 62-110.1, that intends for renewable energy certificates it earns to be eligible for use by an electric power supplier to comply with G.S. 62-133.8, or for its facility to participate in the Competitive Procurement of Renewable Energy Program, shall register the facility with the Commission. The registration statement may be filed separately or together with an application for a certificate of public convenience and necessity, or with a report of proposed construction by a person exempt from the certification requirement. All relevant renewable energy facilities shall be registered prior to their having RECs issued in the North Carolina Renewable Energy Tracking System (NC-RETS) pursuant to Rule R8-67(h). Contracts for power supplied by an agency of the federal government are exempt from the requirement to register and file annually with the Commission if the renewable energy certificates associated with the power are bundled with the power purchased by the electric power supplier.

Commission Rule R8-71 is adopted as follows:

Rule R8-71 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.

(1) "Affiliate" is defined as provided in G.S. 62-126.3(1).

(2) "Avoided cost rates" – means 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 cost effectiveness of renewable energy resources procured through a CPRE RFP Solicitation. With respect to 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.

(3) "Competitive Procurement of Renewable Energy (CPRE) Program" means the program(s) established by G.S. 62-110.8 requiring Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC, to jointly or individually procure an aggregate 2,660 megawatts (MW) of renewable energy resource nameplate capacity subject to the requirements and limitations established therein.

(4) "CPRE Program Methodology" means the methodology used to evaluate all proposals received in a given CPRE RFP Solicitation.

(5) "CPRE Program Procurement Period" means the initial 45-month period in which the aggregate 2,660 MW of renewable energy resource nameplate capacity is required to be procured under the CPRE Program(s) approved by the Commission.

(6) "CPRE RFP Solicitation" means a request for proposal solicitation process to be followed by the electric public utility under this Rule for the competitive procurement of renewable energy resource capacity pursuant to the utility's CPRE Program.

(7) "Evaluation Team" means employees and agents of an electric public utility that will be evaluating proposals submitted in response to the CPRE RFP Solicitation, including those acting for or on behalf of the electric public utility

regarding any aspect of the CPRE RFP Solicitation evaluation or selection process.

(8) "IA Website" means the website established and maintained by the Independent Administrator as required by subsection (d)(7) of this Rule.

(9) "Independent Administrator" means the third-party entity to be approved by the Commission that is responsible for independently administering the CPRE Program in accordance with G.S. 62-110.8 and this rule, developing and publishing the CPRE Program Methodology, and for ensuring that all responses to a CPRE RFP Solicitation are treated equitably.

(10) "Electric public utility" means an electric public utility that is required to comply with the requirements of G.S. 62-110.8.

(11) "Market participant" means a person who has expressed interest in submitting a proposal in response to a CPRE RFP Solicitation or has submitted such a proposal, including, unless the context requires otherwise, an Affiliate or an electric public utility, through its Proposal Team.

(12) "Proposal Team" means employees and agents of an electric public utility or an Affiliate that proposes to meet a portion of its CPRE Program requirements as provided in G.S. 62-110.8(b)(i) or (ii), which is more particularly described as a "Self-developed Proposal" in subsection (f)(2)(iv) of this rule, who directly support the Self-developed Proposal.

(13) "Renewable energy certificate" is defined as provided in G.S. 62-133.8(a)(6).

(14) "Renewable energy facility" means an electric generating facility that uses renewable energy resource(s) as its primary source of fuel, has a nameplate capacity rating of 80 MW or less, and is placed into service after the beginning of the CPRE Program Procurement Period.

(15) "Renewable energy resource" is as defined as provided in G.S. 62-133.8(a)(8).

(c) Initial CPRE Program Filings and Program Guidelines

(1) Each 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 file its initial CPRE Program guidelines at the time it initially proposes a CPRE Program for Commission approval. The CPRE Program guidelines should, at minimum, include the following:

(i) Planned allocation between the electric public utilities of the 2,660 MW required to be procured during the CPRE Program Procurement Period;

(ii) Proposed timeframe for each electric public utility's initial CPRE RFP Solicitation(s) and planned initial procurement amount, as well as plans for additional CPRE RFP Solicitation(s) during the CPRE Program Procurement Period;

(iii) Minimum requirements for participation in the electric public utility's initial CPRE RFP Solicitation(s);

(iv) Proposed evaluation factors, including economic and noneconomic factors, for the evaluation of proposals submitted in response to CPRE RFP Solicitation(s); and

(v) Pro forma contract(s) to be utilized in the CPRE Program.

(2) At the time an electric public utility files its proposed CPRE Program guidelines with the Commission, it shall also identify any regulatory conditions and/or provisions of the electric public utility's code of conduct that the electric public utility seeks to waive for the duration of the CPRE Program Procurement Period pursuant to G.S. 62-110.8(h)(2).

(d) Selection and Role of Independent Administrator.

(1) In advance of the filing the initial CPRE Program required by subsection (c) of this Rule, the Commission shall invite and consider comments and recommendations from the electric public utilities, the Public Staff, and other interested persons, including market participants, regarding the selection of the Independent Administrator. In addition to the requirements in this Rule, the Commission may establish additional minimum qualifications and requirements for the Independent Administrator.

(2) Any person requesting to be considered for approval as the Independent Administrator shall be required to disclose any financial interest involving the electric public utilities implementing CPRE Programs or any market participant, including, but not limited to, all substantive assignments for electric public utilities, Affiliate(s), or market participant during the preceding three (3) years.

(3) In advance of the initial CPRE RFP Solicitation(s), the Commission shall select and approve the Independent Administrator. From the date the Independent Administrator is selected, no 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, or the evaluation process or any related subjects, except as those communications are specifically allowed by this rule.

(4) The Independent Administrator will be retained by the electric public utility or jointly by the electric public utilities for the duration of the CPRE Program Procurement Period under a contract to be filed with the Commission at least sixty (60) days prior to the public utilities' initial CPRE RFP Solicitation(s). The Independent Administrator shall remain subject to ongoing Commission oversight as part of the Commission's review of the electric public utilities' annual CPRE Program Compliance Reports.

(5) The Independent Administrator's duties shall include:
   (i) Monitor compliance with CPRE Program requirements.
   (ii) Review and comment on draft CPRE Program filings, plans, and other documents.
   (iii) Facilitate and monitor permissible communications between the electric public utilities' Evaluation Team and other participants in the CPRE RFP solicitations.
   (iv) Develop and publish the CPRE Program Methodology that shall ensure equitable review between an electric public utility's Self-developed Proposal(s) as addressed in subsection (f)(2)(iv) and proposals offered by third-party market participants.
   (v) Receive and transmit proposals.
   (vi) Independently evaluate the proposals.
   (vii) Monitor post-proposal negotiations between the electric public utilities' Evaluation Team(s) and participants who submitted winning proposals.
   (viii) Evaluate the electric public utility's Self-developed Proposals.
   (ix) Provide an independent certification to the Commission in the CPRE Compliance Report that all electric public utility and third party proposals were evaluated under the published CPRE Program methodology and that all proposals were treated equitably through the CPRE RFP Solicitation(s).

(6) Prior to the initial CPRE RFP Solicitation, but on or before the date determined by Commission order, Independent Administrator shall develop and publish the CPRE Program Methodology. Prior to developing and publishing the CPRE Program Methodology, the Independent Administrator shall meet with the Evaluation Team(s) to share evaluation techniques and practices. The Independent Administrator shall also meet with the Evaluation Team(s) at least 60 days prior to each subsequent CPRE RFP Solicitation to discuss the efficacy of the CPRE Program Methodology and whether changes to the CPRE Program Methodology may be appropriate based upon the anticipated contents of the next CPRE RFP Solicitation. If the CRPE RFP Solicitation allows for electric public utility self-build options or Affiliate proposals, 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 Affiliate(s), such information is made available to third parties that notified the Independent Administrator or their intent to submit a proposal in response to the that CPRE RFP Solicitation.

(7) The Independent Administrator shall maintain the IA Website to support administration and implementation of the CPRE Program and shall post the CPRE RFP Solicitation documents, the CPRE Program Methodology, participant FAQs, and any other pertinent documents on the IA Website.

(8) In carrying out its duties, the Independent Administrator shall work in coordination with the Evaluation Team(s) with respect to CPRE Program

implementation and the CPRE RFP Solicitation proposal evaluation process in the manner and to the extent as more specifically provided in subsection (f) of this rule.

(9) 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.

(10) The Independent Administrator's fees shall be funded through reasonable proposal fees collected by the electric public utility. The electric public utility shall be authorized to collect proposal fees up to $10,000 per proposal to defray its costs of evaluating the proposals. In addition, the electric public utility may charge each participant an amount equal to the estimated total cost of retaining the Independent Administrator divided by the reasonably anticipated number of proposals. To the extent that insufficient funds are collected through these methods to pay of the total cost of retaining the Independent Administrator, the electric public utility shall pay the balance and subsequently charge the winning participants in the CPRE RFP Solicitation.

(e) Communications Between CPRE Market Participants.

(1) From the date an electric public utility announces a CPRE RFP Solicitation, until the Independent Administrator declares the CPRE RFP Solicitation closed, there shall be no communications between market participants regarding the substantive aspects of their proposals or between the electric public utility and market participants. Such communications shall be conducted through the Independent Administrator as permitted by this subsection.

(2) The Evaluation Team or the Independent Administrator may request further information from any market participant regarding its proposal during the process of evaluating and selecting proposals. These communications shall be conducted through the Independent Administrator and shall be conducted in a manner that keeps confidential the identity of the market participant.

(3) On or before the date an electric public utility announces a CPRE RFP Solicitation, the Proposal Team shall be separately identified and physically segregated from the Evaluation Team for purposes of all activities that are part of the CPRE RFP Solicitation process. The names and job titles of each member of the Proposal Team and the Evaluation Team shall be reduced to writing and submitted to the Independent Administrator.

(4) There shall be no communications, either directly or indirectly, between the Proposal Team and Evaluation Team 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 Proposal Team and the Evaluation Team for a final power purchase agreement after the Proposal

Team has been selected by the electric public utility as a winning proposal. The Evaluation Team will have no direct or indirect contact or communications with the Proposal Team or any other participant, except through the Independent Administrator as described further herein, until such time as a winning proposal or proposals are selected by the electric public utility and negotiations for a final power purchase agreement(s) have begun.

(5) At no time shall any information regarding the CPRE RFP Solicitation process be shared with any market participant, including the Proposal Team, unless the information is shared with all competing participants contemporaneously and in the same manner.

(6) Within fifteen (15) days of the date an electric public utility announces a planned CPRE RFP Solicitation, each member of the Proposal Team shall execute an acknowledgement that he or she agrees to abide by the restrictions and conditions contained in subsection (e) of this rule for the duration of the CPRE RFP Solicitation. If the Proposal Team's proposal is selected by the electric public utility after completion of the CPRE RFP Solicitation, each member of the Proposal Team shall then also execute an acknowledgement that he or she has met the restrictions and conditions contained in subsection (e) of this rule. The electric public utility shall provide these acknowledgements to the Independent Administrator and shall file the acknowledgements with the Commission in support of its annual CPRE Compliance Report.

(7) Should any participant, including an Affiliate or electric public utility's Proposal Team, attempt to contact a member of the Evaluation Team directly, such participant shall be directed to the Independent Administrator for all information and such communication shall be reported to the Independent Administrator by the Evaluation Team member. Within ten (10) days of the date that the Independent Administrator issues the CPRE RFP Solicitation, each Evaluation Team member shall execute an acknowledgement that he or she agrees to abide by the conditions contained in subsection (e) of this rule for the duration of the CPRE RFP Solicitation. If the Proposal Team's proposal is selected by the electric public utility after completion of the CPRE RFP Solicitation, the Evaluation Team shall also execute an acknowledgement that he or she has met the restrictions and conditions contained in subsection (e)(3)-(5) above. The electric public utility shall provide these acknowledgements to the Independent Administrator and shall file the acknowledgements with the Commission in support of its annual CPRE Compliance Report.

(f) CPRE RFP Solicitation Structure and Process.

(1) Identification of Market Participants; Design of CPRE RFP Solicitation.

(i) Prior to the initial CPRE RFP Solicitation, the electric public utility shall provide the Independent Administrator with a list of potential market participants that have expressed interest, in writing, 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 publish notice of the draft CPRE RFP Solicitation on the IA Website, and prepare the list of potential participants to whom notice of the upcoming CPRE RFP Solicitation will be sent.

(ii) The electric public utility shall prepare an initial draft of the CPRE RFP Solicitation guidelines and documents, including RFP procedures, evaluation factors, credit and security obligations, a pro forma power purchase agreement, the Avoided Cost Rate against which proposals will be evaluated, and a planned schedule for completing the CPRE RFP Solicitation and selecting winning proposals. No later than sixty (60) days prior to the planned issue date of the CPRE RFP Solicitation, the electric public utility shall provide the initial draft of the CPRE RFP Solicitation guidelines and documents to the Independent Administrator for posting on the IA Website.

(iii) The evaluation factors included in the CPRE RFP Solicitation guidelines shall identify all economic and noneconomic factors to be considered by the Independent Administrator in its evaluation of proposals. In addition to the guidelines, a pro forma power purchase agreement containing all expected material terms and conditions 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.

(iv) The Independent Administrator, in coordination with the electric public utility, may conduct a pre-issuance market participants' conference to publicly discuss the draft CPRE RFP Solicitation guidelines and documents with market participants. Market participants may submit written questions or recommendations to the Independent Administrator regarding the draft CPRE RFP Solicitation guidelines and documents in advance of the market participants' conference. All such questions and recommendations shall be posted on the IA Website. The Independent Administrator shall have no private communication with any potential participants regarding any aspect of the draft CPRE RFP Solicitation documents.

(v) Based on the input received from potential participants, and on its own review of the draft CPRE RFP Solicitation documents, the Independent Administrator shall submit a report to the electric public utility, at least twenty (20) days prior to the planned CPRE RFP Solicitation issuance date, detailing market participants' comments and the Independent Administrator's recommendations for changes to the CPRE RFP Solicitation documents, if any. This report shall also be posted on the IA Website for review by potential participants.

(vi) At least five (5) 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 IA Website.

(vii) At any time after the CPRE RFP Solicitation is issued, through the time winning proposals 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 participants, or upon approval by the Commission. Any modification to the CPRE RFP Solicitation schedule will be posted to the IA Website.

(2) Issuance of CPRE RFP Solicitation.

(i) The Independent Administrator shall transmit the final CPRE RFP Solicitation to the market participants via the IA Website. Upon issuance of the final CPRE RFP Solicitation, the only communications permitted prior to submission of proposals shall be conducted through the Independent Administrator. Participants' questions and the Independent Administrator's responses shall be posted on the IA Website, but, to the extent possible, shall be posted in a manner that the identity of the participant remains confidential. To the extent such questions and responses contain competitively sensitive information that a particular participant deems to be a trade secret, this information may be redacted by the participant.

(ii) The electric public utility shall not communicate with any market participant regarding the RFP Process, the content of the CPRE RFP Solicitation documents, or the substance of any potential response by a participant to the RFP; provided, however, the electric public utility shall provide timely, accurate responses to the Independent Administrator's request for information regarding any aspect of the CPRE RFP Solicitation documents or the CPRE RFP Solicitation process.

(iii) Participants shall submit proposals pursuant to the solicitation schedule contained in the CPRE RFP Solicitation, and in the format required by the Independent Administrator to facilitate the evaluation and selection of proposals. The Independent Administrator shall have access to all proposals and all supporting documentation submitted by market participants in the course of the CPRE RFP Solicitation process.

(iv) If the electric public utility wishes to consider an option for full or partial ownership of a renewable energy facility as part of the CPRE RFP solicitation, the utility must submit its construction proposal (Self-developed Proposal) to provide all or part of the capacity requested in the CPRE RFP solicitation to the Independent Administrator at the time all other proposals are due. Once submitted, the Self-developed Proposal may not be modified, except

in the event that the electric public utility demonstrates to the satisfaction of the Independent Administrator that the Self-developed Proposal contains an error and that correction of the error will not be unduly harmful to the other market participants, the electric public utility may correct the error. Persons who have participated or assisted in the preparation of the Self-developed Proposal on behalf of the electric public utility's Proposal Team in any way may not be a member of the Affiliate's Proposal Team, nor communicate with the Affiliate's Proposal Team during the RFP Process about any aspect of the RFP Process.

(3) Evaluation and Selection of Proposals. The evaluation and selection of proposals received in response to a CPRE RFP Solicitation shall proceed in two steps as set forth in this subdivision, and shall be subject to the Commission's oversight as provided in G.S. 62-110.8 and this rule.

(i) In step one, the Independent Administrator shall evaluate all proposals based upon the CPRE RFP Solicitation evaluation factors using the CPRE Program Methodology. The Independent Administrator shall conduct this evaluation in an appropriate manner designed to ensure equitable review of all proposals based on the economic and noneconomic factors contained in the CPRE RFP Solicitation evaluation factors. As a result of the Independent Administrator's evaluation, the Independent Administrator shall eliminate proposals that fail to meet the CPRE RFP Solicitation evaluation factors and shall develop and deliver to the electric public utility a list of proposals ranked in order from most competitive to least competitive. The Independent Administrator shall redact from the proposals any information that identifies the market participant that submitted the proposal and any information in the proposal that is not reasonably necessary for the utility to complete step two of the evaluation process, including economic factors such as cost and pricing information.

(ii) In step two, the electric public utility shall select the proposals in the order ranked by the Independent Administrator until the total generating capacity sought in the CPRE RFP Solicitation is satisfied, provided, however, that if the electric public utility determines that the interconnection and operation of a proposed facility, together with a facility or multiple facilities that were the subject of proposal(s) already selected by the utility, would significantly undermine the utility's ability to provide adequate and reliable electric service to its customers, then the electric public utility may eliminate such proposal(s) from further consideration. The electric public utility shall notify the Independent Administrator of the proposals it has selected and those it has eliminated, if any. If the electric public utility eliminates proposal(s), it shall provide to the Independent Administrator a short and plain explanation of why each proposal

was eliminated at the same time that the utility notifies the Independent Administrator of the proposals it has selected.

(iii) Upon receipt of notification of proposals selected by the electric public utility, the Independent Administrator shall provide the electric public utility with the identity of the market participants that submitted proposals selected and shall publish the list of proposals selected and the utility's explanation(s) for eliminating proposal(s), if any. Upon publication of the list of proposals selected and the utility's explanation(s), if any, the Independent Administrator shall declare the CPRE RFP Solicitation closed.

(iv) The electric public utility shall proceed to execute contracts with each of the market participants who submitted a proposal that was selected.

(g) CPRE Program Plan.

(1) Each electric public utility shall file its initial CPRE Program plan with the Commission at the time initial CPRE Program Guidelines are filed under subsection (c) and thereafter shall be filed on or before September 1 of each year. The electric public utility may file its CPRE Program plan as part of its future biennial integrated resource plan filings, or update thereto, and 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 or update filing.

(2) Each year, 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 mandated by G.S. 62-110.8(a);

(ii) a description of the electric public utility's planned CPRE RFP Solicitations and specific actions planned to procure renewable energy resources during the CPRE Program planning 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 Procurement 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 CPRE Program planning period; and

(vi) a copy of the electric public utility's CPRE Program guidelines then in effect as well as a pro forma power purchase agreement used in its most recent CPRE RFP Solicitation.

(3) Upon the expiration of the CPRE Program Procurement Period, the electric public utility shall file a CPRE Program Plan in the following calendar year identifying any additional CPRE Program procurement requirements, as provided for in G.S. 62-110.8(a).

(4) In any year in which an electric public utility determines that it has fully complied with the CPRE Program requirements set forth in G.S. 62-110.8(a), the electric public utility shall notify the Commission in its CPRE Program Plan, and may petition the Commission to discontinue the CPRE Program Plan filing requirements beginning in the subsequent calendar year.

(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 application to recover costs pursuant to subsection (j) of this rule. The Commission shall consider each electric public utility's CPRE Program compliance report at the hearing provided for in subsection (j) and shall determine whether the electric public utility is in compliance with the CPRE Program requirements of G.S. 62-110.8.

(2) Beginning in 2019, and each year thereafter, each electric public utility 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 RFP Solicitation(s) undertaken by the electric public utility during the reporting year, including an identification of each proposal eliminated pursuant to subsection (f)(3)(ii) of this rule and an explanation of the utility's basis for elimination of each proposal;

(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 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 proposal 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 rates;

(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 Independent Administrator, supporting information regarding the administrative fees collected from 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 proposal responses were evaluated under the published CPRE Program Methodology and that all proposals were treated equitably through the CPRE RFP Solicitation(s) during the reporting year.

(i) Compliance with CPRE Program Requirements.

(1) An electric public utility shall be in compliance with the CPRE Program requirements during a given year where the Commission determines that the electric public utility's CPRE Program plan is reasonably designed to meet the requirements of G.S. 62-110.8 and, 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 petition the Commission to modify or delay the provisions of G.S. 62-110.8 in whole or

in part. The Commission shall allow a modification or delay upon finding that it is in the public interest to do so.

(3) Renewable energy certificates purchased or earned by an electric public utility while complying with G.S. 62-110.8 must have been earned after January 1, 2018, and may be retired to meet an electric public utility's REPS compliance obligations under G.S. 62-133.8.

(4) The owner of any renewable energy facility included as part of a proposal selected through a CPRE RFP Solicitation shall register the facility as a new renewable energy facility under Rule R8-66 no later than 60 calendar days from receiving written notification that the facility was included as part of a proposal selected and shall participate in the North Carolina Renewable Energy Tracking System (NC-RETS) to facilitate the issuance or importation of renewable energy certificates contracted for under the CPRE Program.

(j) Cost or authorized revenue 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 incurred or anticipated to be incurred by the electric public utility to comply with G.S. 62-110.8. The annual rider 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 and prudent costs incurred and anticipated to be incurred to implement its CPRE Program and to comply with G.S. 62-110.8. In any application for cost recovery and collection of authorized revenues wherein the utility proposes to recover costs or collect revenues attributable to a utility-owned renewable energy facility calculated on a market basis, in lieu of a cost-of-service basis, the utility shall support its application with testimony specifically addressing the calculation of those costs and revenues sufficient to demonstrate that recovery on a market basis 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 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 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 establishment 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 reasonably and prudently-incurred costs and authorized revenues 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 reasonably and prudently-incurred costs or authorized revenue and related revenues realized under rates in effect.

(9) The annual increase in the aggregate amount of costs recovered under G.S. 62-110.8(g) in any 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 when the annual increase in the aggregate amount of costs to be recovered is less than one percent (1%).

(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) 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, normally beginning at least 30 days prior to the hearing, 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 intervenors shall file direct testimony and exhibits of expert witnesses at least 15 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 or authorized revenues 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 for renewable energy facilities owned by an electric public utility and procured under the CPRE Program.

(1) Scope of Section.

(i) This section applies to applications for a certificate of public convenience and necessity pursuant to G.S. 62-110.8(h)(3) filed by an electric public utility for the construction and operation of renewable energy facilities owned by an electric public utility for compliance with the requirements of G.S. 62-110.8, and to petitions to transfer a certificate of public convenience and necessity to an electric public utility for compliance with the requirements of G.S. 62-110.8. Applications and petitions filed pursuant to this subsection shall be required to comply with the requirements of this subsection and shall not otherwise be required to comply with the requirements of G.S. 62-82 or 62-110.1, or Commission Rules R8-61 or R8-64.

(ii) The construction of a renewable energy facility for the generation of electricity shall include not only the building of a new building, structure or generator, but also the renovation or reworking of an existing building, structure or generator in order to enable it to operate as a generating facility.

(iii) This section shall apply to any person within its scope who begins construction of a renewable energy facility without first obtaining a certificate of public convenience and necessity. In such circumstances, the application shall include an explanation for the applicant’s beginning of construction before the obtaining of the certificate.

(iv) This section applies to a petition to transfer an existing certificate of public convenience and necessity issued for renewable energy facilities that an electric public utility acquires from a third party with the intent to own and operate the renewable energy facility to comply with the requirements of G.S. 62-110.8.

(2) The Application. The application shall be comprised of the following exhibits:

(i) Exhibit 1 shall contain:

1. The full and correct name, business address, business telephone number, and electronic mailing address of the electric public utility;
2. A statement describing the electric public utility's corporate structure and affiliation with any other electric public utility, if any; and
3. The ownership of the facility site and, if the owner is other than the applicant, the applicant's interest in the facility site.

(ii) Exhibit 2 shall contain the following site information:

1. 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;
2. 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
3. Whether the electric public utility is the site owner, and, if not, providing the full and correct name of the site owner and the electric public utility's interest in the site.

(iii) Exhibit 3 shall include:

1. The nature of the renewable energy facility, including the type and source of its power or fuel;
2. A description of the buildings, structures and equipment comprising the renewable energy facility and the manner of its operation;
3. 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);
4. The projected date on which the renewable energy facility will come on line;
5. The service life of the project;
6. 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

7. The projected annual production of renewable energy certificates that is eligible for compliance with the State's renewable energy and energy efficiency portfolio standard.

(iv) Exhibit 3 shall include:

1. 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; and
2. 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.

(v) Exhibit 4 shall contain the expected cost to construct, operate and maintain the proposed facility.

(vi) Exhibit 5 shall contain the following resource planning information:

1. The utility's most recent biennial report and the most recent annual report filed pursuant to Rule R8-60, plus any proposals by the utility to update said reports;
2. The extent to which the proposed facility would conform to the utility's most recent biennial report and the most recent annual report that was filed pursuant to Rule R8-60;
3. A statement of how the facility would contribute to resource and fuel diversity, whether the facility would have dual-fuel capability, and how much fuel would be stored at the site;
4. An explanation of the need for the facility, including information on energy and capacity forecasts; and
5. An explanation of how the proposed facility meets the identified energy and capacity needs, including the anticipated facility capacity factor, heat rate, and service life.

(3) Petition for transfer of certificate of public convenience and necessity. When an electric public utility procures an operating renewable energy facility through a CPRE RFP Solicitation with intent to own and operate the facility and the renewable energy facility has been previously issued a certificate of public convenience and necessity, the electric public utility shall petition the Commission to transfer the certificate of public convenience and necessity. A petition requesting that the Commission transfer a certificate of public convenience and necessity shall include the following:

(i) a description of the terms and conditions of the electric public utility's procurement of the renewable energy facility under the CPRE Program and an identification of any significant changes to the information in the application for the certificate of public convenience and necessity, which the Commission considered in the issuance of the certificate for that facility;

(ii) The signature and verification of the electric public utility's employee or agent responsible for preparing the petition stating that the

contents thereof are known to the employee or agent and are accurate to the best of that person's knowledge; and

(iii) The verification of a person authorized to act on behalf of the certificate holder that it intends to transfer the certificate of public convenience and necessity to the electric public utility.

(4) Procedure for Acquiring Project Development Assets. — When an electric public utility purchases from a third party developer assets that include the rights to construct and operate a renewable energy facility that has been issued a certificate of public convenience and necessity 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 where the certificate of public convenience and necessity was issued that the electric public utility has acquired ownership of the project development assets. The electric public utility shall not be required to submit a petition for transfer of the certificate of public convenience and necessity unless and until the project is selected through a CPRE RFP Solicitation or the electric public utility otherwise elects to proceed with construction of the renewable energy facility. If the project is selected through a CPRE RFP Solicitation or the electric public utility otherwise elects to proceed with construction of the renewable energy facility, the electric public utility shall file a petition to transfer the certificate of public convenience and necessity, and the Commission shall process the petition in the same manner provided in (6) of this subsection. In any event, the petition shall be filed prior to the electric public utility commencing the construction or operation of the renewable energy facility, and no rights under the certificate of public convenience and necessity shall transfer to the electric public utility unless and until the Commission approves transfer of the certificate.

(5) Procedure for expedited review of applications for a certificate of public convenience and necessity. – The Commission will process applications for certificates of public convenience and necessity filed pursuant to this section as follows:

(i) The electric public utility shall file with the Commission its preliminary plans at least 30 days before filing an application for a certificate of public convenience and necessity. The preliminary plans shall include the following:

1. Exhibit 1 shall contain the following site information:

a. A color map or aerial photo (a U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system is preferred) showing the proposed site boundary and layout, with all major equipment, including the generator and inverters, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities;

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;
c. The full and correct name of the site owner and, if the owner is other than the applicant, the applicant's interest in the site;
d. A brief general description of practicable transmission line routes emanating from the site, including a color map showing their general location; and
e. The gross, net, and nameplate generating capacity of each unit and the entire facility's total projected dependable capacity in alternating current (AC).

2. Exhibit 2 shall contain a list of all agencies from which approvals will be sought covering various aspects of any generation facility constructed on the site and the title and nature of such approvals; and
3. Exhibit 3 shall include a schedule showing the anticipated beginning dates for construction, testing, and commercial operation of the generating facility.

(ii) Within ten days of the filing of its preliminary plans, the Applicant shall cause to be published a notice of its filing of preliminary plans to apply for an expedited certificate of public convenience and necessity in a newspaper having general circulation in the area where the generating facility. The notice shall be in the form provided in the Appendix to this Chapter, and the applicant shall be responsible for filing with the Commission an affidavit of publication to the effect that the notice was published as required by this rule;

(iii) The Chief Clerk will deliver 2 copies of the electric public utility's preliminary plans 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 30 days of delivering notice to the Clearinghouse Coordinator.

(iv) The applicant shall file the application within 60 days of filing of its preliminary plans.

(v) The Commission will issue an order requesting the Public Staff to investigate the application and present its findings, conclusions, and recommendations at the Regular Commission Staff Conference to be held on the third Monday following the filing of the application, and requiring the applicant to publish notice of the application and of the time and place of the Staff Conference where the application will be considered. The notice shall be published once in a newspaper of general circulation in the area where the generating facility is

proposed to be constructed. The applicant shall be responsible for filing with the Commission an affidavit of publication to the effect that the notice was published as required by this rule.

(vi) If significant complaint(s) are filed with the Commission prior to the Regular Commission Staff Conference where the application is to be considered, the Public Staff shall report the same to the Commission and the Commission shall schedule a public hearing to determine whether a certificate should be awarded. The Commission will give reasonable notice of the time and place of the hearing to the applicant and to each complaining party, and require the applicant to publish notice of the time and place of the hearing. The notice shall be published once in a newspaper of general circulation in the area where the generating facility is proposed to be constructed. The applicant shall be responsible for filing with the Commission an affidavit of publication to the effect that the notice was published as required by this rule.

(vii) If no significant complaint(s) are 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. The Commission will give reasonable notice of the time and place of the hearing to the applicant and require the applicant to publish notice of the time and place of the hearing. The notice shall be published once in a newspaper of general circulation in the area where the generating facility is proposed to be constructed. The applicant shall be responsible for filing with the Commission an affidavit of publication to the effect that the notice was published as required by this rule.

(viii) The Commission, for good cause shown, may order such additional investigation, further hearings, and required filings as it deems necessary and appropriate to address the issues raised in the application or by parties opposing the issuance of the requested certificate; and

(ix) If no significant complaint(s) are filed with the Commission and the Commission does not order a hearing on its own initiative nor order additional investigation, further hearings, or required filings, then the Commission shall consider the application at the Regular Commission Staff Conference as scheduled and, thereafter, issue an order on the application within 30 days after the application is filed, or as near after the 30th days as reasonably practicable. Where the Commission deems issuance of an order on the application within 30 days is impossible, the Commission may issue a notice of decision within 30 days after the application is filed and subsequently issue a final order in the matter.

(6) Procedure for Expedited Transfer of certificate of public convenience and necessity. — The Commission shall process a petition to transfer a certificate of public convenience pursuant to the CPRE Program as follows:

(i) Any petition to transfer an existing certificate of public convenience and necessity shall be signed and verified by the electric public utility applicant. A petition to transfer an existing certificate of public convenience and necessity shall also be verified by the entity which was initially granted the certificate of public convenience and necessity that it intends to transfer the certificate of public convenience and necessity to the electric public utility.

(ii) The Commission will issue an order requesting the Public Staff to investigate the petition and present its findings, conclusions, and recommendations at the Regular Commission Staff Conference to be held on the third Monday following the filing of the application, and requiring the applicant to publish notice of the petition and of the time and place of the Staff Conference where the application will be considered. The notice shall be published once in a newspaper of general circulation in the area where the generating facility is located. The applicant shall be responsible for filing with the Commission an affidavit of publication to the effect that the notice was published as required by this rule.

(iii) If significant complaint(s) are filed with the Commission prior to the Regular Commission Staff Conference where the petition is to be considered, the Public Staff shall report the same to the Commission and the Commission shall schedule a public hearing to determine whether the petition for transfer of the certificate should be granted. The Commission will give reasonable notice of the time and place of the hearing to the applicant and to each complaining party, and require the applicant to publish notice of the time and place of the hearing. The notice shall be published once in a newspaper of general circulation in the area where the generating facility is located. The applicant shall be responsible for filing with the Commission an affidavit of publication to the effect that the notice was published as required by this rule.

(iv) If no significant complaint(s) are 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. The Commission will give reasonable notice of the time and place of the hearing to the applicant and require the applicant to publish notice of the time and place of the hearing. The notice shall be published once in a newspaper of general circulation in the area where the generating facility is located. The applicant shall be responsible for filing with the Commission an affidavit of publication to the effect that the notice was published as required by this rule.

(v) The Commission, for good cause shown, may order such additional investigation, further hearings, and required filings as it deems necessary and appropriate to address the issues raised in the application or by parties opposing the issuance of the requested certificate; and

(vi) If no significant complaint(s) are filed with the Commission and the Commission does not order a hearing on its own initiative nor order additional investigation, further hearings, or required filings, then the Commission shall consider the petition at the Regular Commission Staff Conference as scheduled and, thereafter, issue an order on the application within 30 days after the application is filed, or as near after the 30th days as reasonably practicable. Where the Commission deems issuance of an order on the application within 30 days is impossible, the Commission may issue a notice of decision within 30 days after the application is filed and subsequently issue a final order in the matter.

(l) CPRE Program Power Purchase Agreement Requirements

(1) Prior to holding a CPRE RFP Solicitation, and on or before the date set by Commission order, the Independent Administrator shall post the pro forma contract to be utilized during the CPRE RFP Solicitation on the IA 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 RFP Solicitation.

(2) Each electric public utility shall include appropriate language in all pro forma contracts (i) providing the procuring electric 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 compensation for resource dispatch and curtailments; (iii) 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, including the renewable energy certificates being procured by the electric public utility under power purchase agreements entered into under the CPRE Program. An electric public utility may propose redefining its rights to dispatch, operate, and control solicited renewable energy facilities, including defining limits and compensation for resource dispatch and curtailments, in pro forma contracts to be offered in future CPRE RFP Solicitations. In addition, an electric public utility may, within a single CPRE RFP Solicitation, propose multiple pro forma contracts that offer different rights to dispatch, operate, and control renewable energy facilities.

(3) No later than 30 days after an electric public utility executes a power purchase agreement pursuant to a CPRE RFP Solicitation, the public utility shall file the power purchase agreement with the Commission. 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).

(4) Upon expiration of the term of a power purchase agreement procured pursuant to a CPRE RFP Solicitation, a renewable energy facility owner, other than the electric public utility, may enter into a new contract with the electric public utility pursuant to G.S. 62-156 or obtain a new contract based on an updated market based mechanism, as determined by the Commission pursuant to G.S. 62-110.8(a). If market-based authorized revenue for a generating facility owned by the electric public utility and procured pursuant to this Rule was initially determined by the Commission to be in the public interest, then the electric public utility shall similarly be permitted to continue to receive authorized revenue based on an updated market based mechanism, as determined by the Commission pursuant to G.S. 62-110.8(a). Any market based rate for either utility owned or non-utility owned facilities shall not exceed the electric public utility's avoided cost rate established pursuant to G.S. 62-156. If the electric public utility's initial proposal includes assumptions about pricing after the initial term, such information shall be made available to the Independent Administrator and all participants.

The Appendix to Chapter 8 of the Commission's Rules is amended by adding the following:

PUBLIC NOTICE OF FILING OF PRELIMINARY PLANS TO MAKE APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-__, SUB ___

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of (Electric Public Utility) for a Certificate of Public Convenience and Necessity to Construct a (Nameplate Generating Capacity) (Renewable Resource Fuel Source) Electric Generating Facility in (County Name) County, North Carolina	)))))))	PUBLIC NOTICE

NOTICE IS HEREBY GIVEN that on (DATE), (ELECTRIC PUBLIC UTILITY), filed a letter in this docket giving notice of its intent to file an application on or after (DATE), for a certificate of public convenience and necessity (CPCN) to construct a (NAMEPLATE GENERATING CAPACITY) (RENEWABLE RESOURCE FUEL SOURCE) located at (E911 ADDRESS, IF AVAILABLE; LOCATION DESCRIPTION, IF E911 ADDRESS IS NOT AVAILABLE) in (COUNTY NAME) County, North Carolina. (ELECTRIC PUBLIC UTILITY) will apply for this certificate under the procedure for expedited review of a CPCN for a facility that is owned by an electric public utility and participating in the Competitive Procurement of Renewable Energy Program established pursuant to G.S. 62-110.8.

The North Carolina Utilities Commission anticipates considering this matter at the Regular Commission Staff Conference scheduled for (DATE OF 3rd MONDAY FOLLOWING FILING OF APPLICATION) to be held at 10:00 a.m., in the Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

Details of the application, once filed, may be obtained from the Office of the Chief Clerk of the North Carolina Utilities Commission, 430 N. Salisbury Street, 5th Floor, Dobbs Building, Raleigh, North Carolina 27603 or 4325 Mail Service Center, Raleigh, North Carolina 27699-4325 or on the Commission's website at www.ncuc.net.

Persons desiring to be heard with respect to the application may file a statement with the Commission and should include in such statement any information that they wish to be considered by the Commission in connection with the application. If significant complaint(s) are filed with the Commission prior to the Regular Commission Staff Conference on (DATE OF 3rd MONDAY FOLLOWING FILING OF APPLICATION), the Commission will schedule this matter for hearing. Such statements will be included in the Commission's official files; however, any such written statements are not evidence unless those persons appear at a public hearing and testify concerning the information contained in their written statements. Such statements should reference Docket No. E-__, Sub ____ and should be addressed to Chief Clerk, North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, NC 27699-4325.

Statements may also be directed to Christopher J. Ayers, Executive Director, Public Staff-North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699-4326 or to The Honorable Josh Stein, Attorney General of North Carolina, 9001 Mail Service Center, Raleigh, North Carolina 27699-9001.

PUBLISHED PURSUANT TO COMMISSION RULE R8-71(k).

NOTE TO PRINTER: Advertising cost shall be paid by (Electric Public Utility). It is required that an Affidavit of Publication be filed with the Commission by (Electric Public Utility).