STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 128

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In The Matter of Investigation of Integrated Resource Planning in North Carolina – 2010 - 2011	)))	ORDER APPROVING 2011 ANNUAL UPDATES TO 2010 BIENNIAL INTEGRATED RESOURCE PLANS AND 2011 REPS COMPLIANCE PLANS

HEARD: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, January 17, 2012, at 7 p.m.

BEFORE: Commissioner William T. Culpepper, III, Presiding; Chairman Edward S. Finley, Jr.; and Commissioners Bryan E. Beatty; Susan W. Rabon; ToNola D. Brown-Bland; and Lucy T. Allen

APPEARANCES:

For Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc.:

Len S. Anthony, General Counsel, 410 South Wilmington Street, Post Office Box 1551, Raleigh, North Carolina 27602-1551

For Duke Energy Carolinas, LLC, and Virginia Electric and Power Company, d/b/a Dominion North Carolina Power:

Robert W. Kaylor, Law Office of Robert W. Kaylor, P.A., 3700 Glenwood Avenue, Suite 330, Raleigh, North Carolina 27612

For North Carolina Electric Membership Corporation and GreenCo Solutions, Inc.:

Richard Feathers, P.O. Box 27306, Raleigh, North Carolina 27615

For Southern Alliance for Clean Energy:

Gudrun Thompson, 601 West Rosemary Street, Suite 220, Chapel Hill, North Carolina 27516

For North Carolina Sustainable Energy Association:

Michael Youth, 1111 Haynes Street, Suite 109, Raleigh, North Carolina 27609

For the Using and Consuming Public:

Lucy Edmondson, Staff Attorney, Public Staff – North Carolina Utilities Commission (Public Staff), 4326 Mail Service Center, Raleigh, North Carolina 27699-4326

BY THE COMMISSION: Integrated Resource Planning (IRP) is intended to identify those electric resource options that can be obtained at least cost to the ratepayers consistent with adequate, reliable electric service. IRP considers demand-side alternatives, including conservation, efficiency, and load management, as well as supply-side alternatives in the selection of resource options. Commission Rule R8-60 defines an overall framework within which the IRP process takes place in North Carolina. Analysis of the long-range need for future electric generating capacity pursuant to G.S. 62-110.1 is included in the Rule as a part of the IRP process.

G.S. 62-110.1(c) requires the Commission to "develop, publicize, and keep current an analysis of the long-range needs" for electricity in this State. The Commission's analysis should include: (1) its estimate of the probable future growth of the use of electricity; (2) the probable needed generating reserves; (3) the extent, size, mix, and general location of generating plants; and (4) arrangements for pooling power to the extent not regulated by the Federal Energy Regulatory Commission (FERC). G.S. 62-110.1 further requires the Commission to consider this analysis in acting upon any petition for construction. In addition, G.S. 62-110.1 requires the Commission to submit annually to the Governor and to the appropriate committees of the General Assembly: (1) a report of the Commission's analysis and plan; (2) the progress to date in carrying out such plan; and (3) the program of the Commission for the ensuing year in connection with such plan. G.S. 62-15(d) requires the Public Staff to assist the Commission in this analysis and plan.

G.S. 62-2(a)(3a) declares it a policy of the State to:

> assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills….

To meet the requirements of G.S. 62-110.1 and G.S. 62-2(a)(3a), the Commission conducts an annual investigation into the electric utilities' IRP. Commission Rule R8-60 requires that each of the investor-owned utilities, the North Carolina Electric Membership Corporation, and any individual electric membership corporation to the extent that it is responsible for procurement of any or all of its individual power supply resources (hereinafter, collectively, the electric utilities) furnish the Commission with a biennial report in even-numbered years that contains the specific information set out in that Rule. In odd-numbered years, each of the electric utilities must file an annual report updating its most recently filed biennial report.

Further, Commission Rule R8-67(b) requires any electric power supplier subject to Rule R8-60 to file a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) compliance plan as part of its IRP report. Within 150 days after the filing of each electric utility's biennial report, and within 60 days after the filing of each electric utility's annual report, the Public Staff or any other intervenor may file its own plan or an evaluation of, or comments on, the electric utilities' IRP reports. Furthermore, the Public Staff or any other intervenor may identify any issue that it believes should be the subject of an evidentiary hearing.

2011 ANNUAL REPORTS

This Order addresses the 2011 updates to the 2010 biennial reports (2011 IRPs) filed by the following investor-owned utilities (IOUs): Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc. (Progress); Duke Energy Carolinas, LLC (Duke); Virginia Electric and Power Company, d/b/a Dominion North Carolina Power (NC Power); and the following electric membership corporations (EMCs): North Carolina Electric Membership Corporation (NCEMC),[1] Rutherford EMC (Rutherford), Piedmont EMC (Piedmont), Haywood EMC (Haywood), and EnergyUnited EMC (EnergyUnited).[2] In addition, this Order addresses the REPS compliance plans filed by the IOUs, GreenCo Solutions, Inc. (GreenCo),[3] Halifax EMC (Halifax), and EnergyUnited.

[1] NCEMC indicated that it provides wholesale power to 25 of the 26 EMCs in North Carolina and is the full requirements power supplier for 20 of the cooperatives. NCEMC's 2011 IRP is filed on behalf of these 20 members. NCEMC provides partial requirements capacity and energy entitlements to 5 EMCs: Blue Ridge EMC, Rutherford EMC, Piedmont EMC, Haywood EMC, and EnergyUnited EMC (collectively, the independent EMCs). The 26th EMC, French Broad EMC, is not a member of NCEMC and is not required to file an individual IRP, as it has entered into a full requirements contract with Progress.

[2] Blue Ridge EMC contracts with Duke as its full requirements and REPS compliance service provider. Blue Ridge EMC, therefore, is not required to file an IRP.

[3] GreenCo filed a consolidated 2011 REPS compliance plan on behalf of Albemarle EMC, Brunswick EMC, Cape Hatteras EMC, Carteret-Craven EMC, Central EMC, Edgecombe-Martin County EMC, Four County EMC, French Broad EMC, Haywood, Jones-Onslow EMC, Lumbee River EMC, Pee Dee EMC, Piedmont, Pitt & Greene EMC, Randolph EMC, Roanoke EMC, South River EMC, Surry-Yadkin EMC, Tideland EMC, Tri-County EMC, Union EMC, and Wake EMC.

In addition to the Public Staff, the following parties have intervened in this docket: Carolina Industrial Group for Fair Utility Rates I, II, and III (CIGFUR); North Carolina Sustainable Energy Association (NCSEA); Public Works Commission of the City of Fayetteville (Fayetteville); Nucor Steel-Hertford (Nucor); North Carolina Waste Awareness & Reduction Network (NC WARN); Southern Alliance for Clean Energy (SACE); and Carolina Utility Customers Association, Inc. (CUCA). The intervention of the Attorney General is recognized pursuant to G.S. 62-20.

On March 3, 2011, Blue Ridge EMC (Blue Ridge) filed comments indicating that it had a long-term power supply agreement with Duke, its load would be reported for filing purposes within Duke's IRP, its renewable energy requirements for REPS compliance would be provided by Duke, and its REPS requirements would be reflected in Duke's 2011 REPS compliance plan. On August 17, 2011, Rutherford filed a letter indicating that its load would be included in Duke's IRP filing for reporting purposes, and its REPS compliance would be reflected in Duke's REPS compliance plan. On August 24, 2011, NCEMC and GreenCo filed a joint motion to extend the filing date for submission of their 2011 IRP and 2011 REPS compliance plan to September 19, 2011. The Commission granted the requested extensions by Order dated August 31, 2011.

On August 30, 2011, EnergyUnited filed its 2011 IRP and 2011 REPS compliance plan and Haywood filed its 2011 IRP. On August 31, 2011, Rutherford filed its 2011 IRP. On September 1, 2011, Duke, Progress, and NC Power filed their 2011 IRPs and 2011 REPS compliance plans, Halifax filed its 2011 REPS compliance plan, and Piedmont filed its 2011 IRP. On September 19, 2011, NCEMC filed its 2011 IRP and GreenCo filed its 2011 REPS compliance plan.

On October 7, 2011, NC WARN submitted its comments on the 2011 IRPs.

On October 20, 2011, the Public Staff filed a motion requesting that the deadline for the filing of comments on the 2011 IRPs be extended to January 13, 2012, which the Commission granted by Order dated October 25, 2011. This order also extended the deadline for reply comments to January 27, 2012.

On January 13, 2012, comments were submitted by SACE, NCSEA, and the Public Staff. On January 27, 2012, reply comments were submitted by Progress, Duke, and NC Power. Also, on January 27, 2012, Rutherford submitted a response to a Public Staff comment regarding Rutherford's new smart meter program.

PUBLIC HEARING

Pursuant to G.S. 62-110.1(c), the Commission scheduled and held a public hearing in this docket on Tuesday, January 17, 2012, solely for the purpose of taking nonexpert public witness testimony regarding the filed 2011 IRPs and 2011 REPS compliance plans. Three public witnesses spoke at the hearing, including the North Carolina field organizer for Greenpeace. The witnesses discussed the impacts that coal

plants have on people's lives and the opportunity for increased usage of alternative resources, such as wind and solar energy and energy efficiency (EE), as well as the threat of climate change. One witness asked the Commission to consider different types of business models that might be used as coal plants are retired, including some that might encourage more use of solar energy and other cleaner types of technology.

INTERVENOR ISSUES

As the 2011 IRPs are in fact updates to the 2010 biennial IRPs, this Order will not repeat the basic analysis of the means and methods used by the utilities in developing their overall IRP processes which were approved in the most recent Order. This Order notes the issues raised by the parties, but does not reanalyze those issues that were previously decided by the Commission in this biennial proceeding.

NC WARN

In its comments, NC WARN brought up the following issues in regard to the 2011 IRPs submitted by Duke and Progress:

1) Both Duke and Progress have significantly overestimated the need for baseload power plants over the IRP planning horizon.

2) At the same time, reliance on new nuclear plants and large existing coal plants is environmentally harmful and ruining crucial climate protection efforts.

3) The 2011 IRPs of Duke and Progress do not reflect even the minimum EE and renewable energy requirements in the REPS.

These issues have been addressed by the Commission in this docket in its Order Approving the 2010 Biennial IRPs, issued on October 26, 2011, and need not be addressed again here. The Public Staff in its comments stated that, while NC WARN maintained that the growth projections by Duke and Progress are overly optimistic, the growth rates cited by NC WARN for Duke and Progress appear to relate only to the retail sales class and exclude any wholesale sales. Also, according to the Public Staff, the issues that relate to generation planning for a utility's retail native load customers and its historically served wholesale customers have been litigated and resolved in Docket Nos. E-100, Sub 85A[4] and E-7, Sub 858.[5] The growth rates for Duke and Progress are very similar to growth rates in recent IRPs approved by the Commission, and the Public Staff believes they are reasonable for planning in this proceeding.

[4] Investigation of the Priority of Electric Service Provided to Off-System Loads Versus Native Retail Loads.

[5] Joint Petition with City of Orangeburg, SC for Declaratory Ruling with Respect to Rate Treatment of Wholesale Sales of Electric Power at Native Load Priority.

The Public Staff also noted that, in its comments, NC WARN contends that Duke's and Progress's IRPs use unrealistically low construction costs for planned nuclear plants. The Public Staff has reviewed the inputs and forecasts in the models used for planning by the utilities and believes that these inputs and forecasts are reasonable for planning purposes.

Regarding NC WARN's issues related to REPS requirements, the Public Staff observed that, in its comments, NC WARN expressed concern that certain graphs in the IRPs of Duke and Progress indicate that these utilities do not in fact plan to meet their general REPS requirements. The graphs, which appear on page 90 of Duke's IRP and page 28 of Progress's IRP, are in the form of pie charts, showing the percentages of generation that will come from various sources in 2012 for each utility, in 2031 for Duke, and in 2026 for Progress. NC WARN pointed out that Duke's graphs do not show the 3% of renewable generation or EE required by the general REPS obligation in 2012 or the 12.5% required in 2031, and Progress's graphs do not show any renewable generation or EE at all.

The Public Staff stated that it has discussed these graphs with Duke and Progress. Duke advised the Public Staff that the graphs represent its total generation, including wholesale and South Carolina retail sales; the 3% of North Carolina retail sales required by the general REPS obligation equates to well under 3% of Duke's total system sales. Moreover, many of the renewable energy certificates (RECs) that Duke will use for REPS compliance are unbundled from the underlying electrical energy and, thus, are not accounted for in the graphs. Finally, some of the RECs Duke will use for REPS compliance appear in the sections of the pie chart marked "DSM/EE" and "Hydro."

Progress indicated to the Public Staff that the renewable energy it intends to use for general REPS compliance in 2012 is purchased from third parties. Thus, it is shown in the section of the pie chart marked "Purchases," and the graph indicates that purchases are expected to make up 4.1% of Progress's generation mix for 2012. Moreover, even though EE can be used for compliance with the REPS requirements, it is not a type of generation and it is not included in the pie charts in Progress's IRP. Lastly, even though Progress fully expects to comply with the REPS requirements in 2026, it has entered into very few contracts that call for delivery of RECs or bundled renewable energy in that year; it intends to enter into such contracts closer to the time they will be needed. Since very few contracts for 2026 are currently in place, the "Purchases" section of the 2026 pie chart is quite small.

Based on these discussions with Duke and Progress, the Public Staff is satisfied that they do intend to comply with the general REPS requirements through 2026 (or in Duke's case 2031), and the pie charts in their IRPs should not be taken as an indication to the contrary.

SACE

As was the case with NC WARN, the issues raised by SACE in its comments cover only the IRPs submitted by Duke and Progress. Those issues are:

1) Duke's high demand-side management (DSM) portfolios would result in a lower revenue requirement, lower risk, and lower rates as compared to the preferred plan.

2) Duke and Progress failed to properly consider energy efficiency in their long-term resource planning.

3) Duke overstates its need for new capacity.

4) Duke and Progress should evaluate the prudency of continued operation of their scrubbed coal units.

5) Duke and Progress have unrealistic assumptions about nuclear generation.

The issues raised by SACE in its comments were raised in the biennial report portion of this proceeding and were discussed and ruled on by the Commission in the October 26, 2011 Order.

Public Staff

The Public Staff listed seven recommendations in its comments on the 2011 IRPs. They are as follows:

1) In the air quality permit issued by the North Carolina Department of Environment and Natural Resources, Division of Air Quality (DAQ) for Cliffside Unit 6, Duke agreed to retire the 800 MW of additional coal capacity without regard to achieving a commensurate level of MW savings from new EE and DSM programs. Duke filed a Greenhouse Gas Reduction Plan with DAQ, which can be revised with DAQ's approval if the Commission determines that the scheduled retirement of any unit will have a material impact on the reliability of Duke's system. Duke included, as Appendix J in its 2011 IRP, a Carbon Neutrality Plan that projects retirements that would exceed its Greenhouse Gas Reduction Plan by close to 50%.

In its Application filed on July 1, 2011, in Docket No. E-7, Sub 989, Duke sought to accelerate the depreciation of certain plants slated for early retirement. In the Stipulation filed by Duke, Time-Warner, and the Public Staff on December 2, 2011, the depreciation schedule for these plants was left unchanged. The Public Staff recommends that the actual timing of the retirements and the accounting treatment Duke proposes to follow with respect to the unrecovered cost of generating units projected to be retired be addressed in one or more separate dockets.

- According to Duke, the air quality permit specifies that any cost recovery related to Duke's execution of its proposed Qualifying Actions to comply with its Cliffside Carbon Neutrality Plan shall also be subject to Commission review and approval. Duke is not asking for any cost recovery of any kind through its 2011 IRP relating to any of the proposed Qualifying Actions set forth in the Cliffside Carbon Neutrality Plan. As such, the Company agrees with the Public Staff that any such applications for related cost recovery belong in a separate docket.

2) Duke also requests approval from the Commission of its proposed method of calculating the Emission Reduction Requirements and emissions offset values of certain Qualifying Actions as set out in Table J.3. The Public Staff proposes that this issue also be addressed in a separate docket.

- Duke submits that the Cliffside Carbon Neutrality Plan is appropriately before the Commission in this docket and should be approved as part of the 2011 IRP. As part of the Greenhouse Gas Reduction Plan included within the air quality permit issued by the DAQ for Cliffside Unit 6, Duke is required to file its plan to offset the carbon emissions of Cliffside Unit 6 with the Commission for approval. Pursuant to this requirement, Duke included the Cliffside Carbon Neutrality Plan in Appendix J of its 2011 IRP and requested the Commission's approval, as contemplated by the permit. As noted by the Public Staff in its comments, the carbon dioxide emissions avoided through the Qualifying Actions proposed within the Cliffside Carbon Neutrality Plan will exceed the projected emissions of Cliffside Unit 6 by approximately 50%. The Cliffside Carbon Neutrality Plan sets forth exactly what the permit requires and provides a reasonable path for Duke's compliance with the carbon emission reduction standards of the permit. Duke will certainly provide updates to the Commission through future IRPs as Qualifying Actions are implemented and Duke's compliance with the requirements of the permit is achieved, but Duke submits that its plan is ripe for approval at this time. No party has contested Duke's methods of calculating projected carbon dioxide emissions for Cliffside Unit 6 or emissions to be avoided through implementation of the proposed Qualifying Actions.

The Commission agrees with Duke that the Cliffside Carbon Neutrality Plan is appropriately before the Commission for approval as part of Duke's IRP. As noted above, Duke agrees with the Public Staff that any related cost recovery applications do belong in a separate docket. At this time, the Commission is only approving the Plan itself as a reasonable path for Duke's compliance with the carbon emission reduction standards of the air quality permit and is not approving any individual specific activities nor expenditures for any activities shown in the plan. Also, as noted by Duke in its Plan,

it shall also be submitted to the Division of Air Quality, which will evaluate the effect of the plans on carbon, and provide its conclusions to this Commission.

3) The Public Staff further recommends that the Commission require Duke to continue to provide updates in future IRPs regarding its obligations related to the Cliffside Unit 6 air quality permit to: (a) retire 800 MW of coal capacity in North Carolina in accordance with the schedule set forth in Duke's Table J.1, (b) accommodate to the extent practicable the installation and operations of future carbon control technology at Cliffside 6, and (c) take additional actions to make Cliffside 6 carbon neutral by 2018.

- Duke agreed with this request.

4) The Public Staff also recommends that Duke and NC Power include in their reply comments the information required by Rule R8-60(i)(3) regarding reserve margins that differ in a given year by plus or minus three percent from target margins in regard to their 2011 IRP and comply with this requirement in future IRPs.

- Both Duke and NC Power complied with this request in their reply comments.

5) The Public Staff recommends that the Commission require the utilities to include a discussion of significant variances in projected EE savings in future IRPs. The Public Staff proposes that a variance of 10% in projected EE savings from one IRP report to the next trigger the requirement that the utility address the reason for the variance.

- Duke did not address this issue in its reply comments.

- Progress does not object to this proposal.

- NC Power does not oppose this recommendation.

The Commission agrees with the Public Staff's position on this issue and directs that each IOU shall include a discussion of a variance of 10% or more in projected EE savings from one IRP report to the next.

6) The Public Staff recommends that the Commission require the utilities to include a discussion of the status of market potential studies or provide updates in their 2012 IRPs.

- Duke did not address this issue in its reply comments.

- Progress does not object to this proposal.

- NC Power does not oppose the Public Staff's recommendation to require a discussion of its use of market potential studies or updates in

the next IRP, to the extent they decide to use market potential studies. NC Power notes that it currently requests data from its outside consultant to annually identify and propose new cost-effective DSM/EE programs based on its consultant's assessment of market potential in their North Carolina and Virginia service territories.

The Commission finds that the Public Staff position is reasonable and directs that each IOU shall include a discussion of the status of market potential studies or updates in their 2012 and future IRPs.

7) The Public Staff recommends that the Commission require the IOUs to evaluate no-carbon alternative plans or scenarios in their 2012 IRPs and future IRPs.

- Duke believes that, over the long-term planning horizon, the federal government will, through legislation or regulation, create specific limitations and restrictions on allowable emissions of carbon dioxide from electric generating facilities and establish some form of a market for carbon emission allowances. Duke stated that it has, since 2006, incorporated certain assumptions relating to carbon pricing into its IRPs and has continually emphasized that it needs to plan resources over the long-term for a carbon-constrained future. Duke continues to evaluate and adjust its assumptions around carbon and has significantly reduced its allowance pricing projections in light of the uncertainty referenced by the Public Staff. However, Duke disagrees with the Public Staff regarding the relative plausibility of future carbon legislation, and does not believe it would be reasonable or prudent to plan as if carbon emissions will not be regulated.

  Additionally, eliminating considerations of CO_2 constraints and clean energy legislation would have far reaching impacts on the economics of Duke's resource selection and costs. Without constraints, new coal resources may well be selected as components in the proposed resource mix. Gas and coal prices, energy efficiency economics, energy usage, and renewable resources economics would all be affected. Further, providing a load, capacity, and reserves table that excludes the impacts of CO_2 would require the development of a load forecast without CO_2 considerations. All of Duke's load forecasts available at this time have CO_2 considerations embedded in them. Simply removing the CO_2 allowance impacts as sensitivity cases applied to portfolios developed in the IRP only provides a limited indication of the present value revenue requirements impacts of CO_2. Such runs remove this cost from unit dispatch and the resultant operating costs. A full analysis of this impact would require repeating the IRP process with new assumptions. To do as the Public Staff requests, Duke explained that it would effectively have to generate two separate IRPs, one with carbon, one without carbon. This outcome

would be wasteful of time and resources, and as the Commission concluded in its Order Approving Integrated Resource Plans and REPS Compliance Plans issued in this docket on the 2010 IRPs, "the current scenarios relating to carbon emissions, as provided in the IRPs, are responsive and appropriate for the purposes of this proceeding." Duke submits that the additional no-carbon scenario planning recommended by the Public Staff is unnecessary at this time and should not be required for future IRPs.

- Progress does not object to this recommendation.

- NC Power does not oppose the Public Staff's recommendation. Should the Commission adopt the Public Staff's recommendation, however, NC Power urges the Commission to maintain the flexibility set forth in the recommendation that the IOU can evaluate the no-carbon view either through alternative plans or scenarios. This flexibility would allow each IOU to present the no-carbon results in the manner that most accurately shows the effect, in its opinion, of such a no-carbon view.

The Commission stands by its earlier finding of fact in this docket that "the current scenarios relating to carbon emissions, as provided in the [2010] IRPs, are responsive and appropriate for purposes of this proceeding." Since the filing of comments and reply comments, the federal Environmental Protection Agency (EPA) has proposed a Carbon Pollution Standard for New Power Plants. This proposed standard was issued by the EPA on March 27, 2012, and would limit carbon dioxide emissions from new fossil fuel-fired power plants to 1,000 pounds per megawatt-hour.

NCSEA

NCSEA raised two questions in its comments: (1) whether the levelized busbar information provided by the IOUs is sufficient for IRP reporting purposes, and (2) whether the REPS information designated as confidential by the IOUs should be made public. NCSEA asserts that additional candor by the IOUs will provide "citizens, businesses and governments confidence that we are, in fact, on a path to an affordable electricity future."

A. Sufficiency of Levelized Busbar Information.

With regard to levelized busbar information, NCSEA seeks two additional types of information in the IRPs of Duke, Progress and NC Power:

(i) The levelized cost of energy – in a standardized metric, cents per kilowatt-hour – for each resource option for each year in the planning period and the delivered fuel costs for each resource option for each year in the planning period; and

(ii) The quantitative data used in creating the levelized busbar cost curves present in the IRPs, including (i) projected delivered fuel costs during the planning period, (ii) the utility's fixed charge rates, (iii) technology specific unit capacity factors, and (iv) data for the remaining variables needed to create a levelized busbar cost curve.

NCSEA states that Commission Rule R8-60(i)(9), which directs the IOUs to "provide information on levelized busbar costs for various generation technologies," was intended to enable the Commission to compare projected costs, on an apples-to-apples basis, across technologies and across IRPs. NCSEA acknowledges that each IOU has provided some information on levelized busbar costs, but contends that the information is presented in a conclusory fashion and is not standardized for comparison among the IOUs, citing Duke's IRP Report at 138-142 in comparison with Progress' IRP Report at 12-16. NCSEA submits that if the IOUs provided the information identified in (i) and (ii) above in a standardized format, it would enable the Commission, the Public Staff and other parties to perform cost comparisons across technologies and IOUs.

NCSEA offers as an example Duke's statement that there has been a "downward trend in solar equipment costs over the past several years" (Duke's IRP Report at 15), asserting that it is unclear if this trend has been fully factored into Duke's levelized busbar cost curve for solar. NCSEA says that this trend could have major implications for energy delivery within this proceeding's analytical timeframe. For example, a high-solar scenario brought on by rapidly declining solar PV costs could result in reduced on-peak energy needs, which could in turn dramatically reduce the need for new gas-fired peaking generation investments and the corresponding capital and fuel costs. NCSEA says this does not appear to be accounted for in any scenario presented in any of the IOUs' IRPs.

With regard to quantitative data under (ii) above, NCSEA cites Commission Rule R8-60(g), which states in pertinent part:

> [e]ach utility shall consider and compare a comprehensive set of potential resource options, including both demand-side and supply-side options, to determine an integrated resource plan that offers the least cost combination (on a long-term basis) of reliable resource options for meeting the anticipated needs of its system … taking into account the sensitivity of its analysis to variations in … significant assumptions, including … the risks associated with … fuel costs[.]

NCSEA states that such sensitivity analyses enable the Commission to gauge the robustness of the IOUs' planned handling of likely variations in fuel costs and that each IOU has provided some measure of sensitivity analysis. However, according to NCSEA the analyses are presented in a conclusory fashion and not in a standardized manner among the IOUs. It submits that if the IOUs were to provide the delivered fuel costs underlying their various projections and plans, then the Commission, the Public

Staff and other parties could evaluate the IRPs' least cost representations. Absent this standardized information, NCSEA contends that interested parties will remain skeptical of the IRPs' usefulness as a foundation for affordable long-range planning, particularly in light of what NCSEA sees as divergent future scenarios being espoused by the IOUs in various dockets.

As an example, NCSEA states that Duke's IRP includes two sensitivity analyses of coal, one in which a 25% coal cost increase is modeled and another in which a 40% coal cost decrease is modeled (Duke's IRP Report at 100). According to NCSEA, this choice of alternate scenarios appears inconsistent with Duke's testimony in Docket No. E-7, Sub 989, where Duke states that the cost of Central Appalachian (CAPP) coal, with which most of Duke's plants are currently fired, increased 39% for Duke and 15% for Progress between 2007 and 2010 (Duke's Late-Filed Exhibit No. 1, December 12, 2011). Further, Duke projects the cost of coal to rise an additional 20%-50% by 2012 (Duke's IRP Report at 51). NCSEA states that even if Duke's sensitivity modeling choices reflect the possibility of switching from CAPP coal to an alternative type of coal, that appears to be an inadequate explanation in light of testimony in Duke's general rate case. Duke indicated that it will work to diversify its coal purchases to include supplies procured from other areas, but a Duke witness suggested that further diversification as a result of the upward trend in CAPP coal costs would be a "difficult" process that could require North Carolina coal plant operators to undertake costly retrofits of and "test burn" studies at units currently optimized to consume CAPP coal (Docket No. E-7, Sub 989, T, Vol. 2, at 190-91, Dhiaa Jamil testimony on November 29, 2011). This same witness also noted that transporting coal over longer distances exposes plant operators to greater coal transportation costs (Id. at 192).

NCSEA notes that long-term delivered coal and natural gas cost projections were provided by NC Power in its 2010 IRP Report and 2011 update. It contends that without such long-term delivered coal and natural gas cost projections from Duke and Progress it is difficult for NCSEA and other interested parties to give credence to these IOUs' assertions that the more or less "business as usual" plans selected by them are in fact reliably least-cost. NCSEA believes a higher, more standardized degree of openness and transparency on the part of the IOUs will foster collaboration between the IOUs and those evaluating their IRPs and increase the quality of information in the IRPs.

Progress responded that, generally speaking, more information may be better that less information. However, the question is how much relevant information should be included in the IRP filing, above and beyond that required by Commission Rules, and what information should be left for discovery. NCSEA, or any other party to the IRP proceedings, is free to conduct discovery to obtain data from the utilities supporting the filed IRPs. Progress notes, however, that many of NCSEA's members are commercial businesses selling renewable energy products and energy efficiency services. Thus, Progress states that it must be mindful when providing confidential information to NCSEA that some of the information should not be provided to NCSEA's members.

Progress states that the basis for NCSEA's comments appears to be the assumption that the filing of certain IRP information confidentially harms persons and companies who have chosen not to intervene in the IRP proceeding because they do not have access to this information. Progress submits that NCSEA's assumption is wrong and its request should be denied for several reasons. First, a person or company that has chosen not to intervene in an IRP proceeding is not foreclosed from contacting a utility and asking to review the information in question pursuant to a confidentiality agreement. Second, all persons or companies can petition to intervene in the Commission's IRP proceeding, sign a confidentiality agreement and conduct discovery. Third, NCSEA has not challenged the confidentiality of the information in question. Before information which has previously been filed by a utility as confidential and accepted by the Commission as confidential is publicly disclosed, there must be a showing that the information in question is not confidential or the utility's consent must be obtained. For example, in Docket No. E-7, Sub 819, by order issued June 6, 2008, the Commission ruled that Duke was not required to disclose cost estimates for the proposed Lee nuclear unit. The parties supporting disclosure had argued that a "public interest component" must be considered along with the trade secret analysis. Citing State ex rel. Utilities Comm'n v. MCI Telecommunications Corp., 132 N.C. App. 625, 635, 514 S.E. 2d 276, 283 (1999), the Commission rejected that argument, holding that:

> … the "confidential information" provision of the Public Records Act cannot be construed differently in the context of a regulated industry. See MCI, 132 N.C. App. at 635. The Commission concludes that there is no "public interest" exception to the "confidential information" provisions of G.S. 132-1.2(1). If the cost estimates qualify as a "trade secret" under G.S. 66-152(3), and if they also meet the other conditions of G.S. 132-1.2(1) (which, in this case, is not disputed), then the Commission is not authorized to order that they be publicly disclosed, even if it were otherwise inclined to do so based upon the "public interest" argument.

Finally, Progress asserts that NCSEA does not have standing to make this request as it has not demonstrated that it is authorized to represent unnamed non-parties or that it has suffered a direct harm as a result of information being filed confidentially. Thus, NCSEA's request to publicly disclose the confidential information in question should be denied.

Duke states that NCSEA's proposal should be rejected because it would require the public disclosure of market and commercially sensitive information that would impair the IOU's bargaining positions in various aspects of their core business. Duke states that in prior dockets NCSEA's position has been rejected by the Commission. See, e.g., Order Approving REPS and REPS EMF Riders and 2010 REPS Compliance, Docket No. E-7, Sub 984 (August 23, 2011); Order Approving Decision to Incur Project Development Costs, Docket No. E-7, Sub 819 (June 11, 2008) ("2008 Project Development Order").

Duke is also concerned about various market participants gaining the value and advantage of commercially sensitive information to the detriment of Duke's customers. Duke and other IOUs operate under a least cost mandate for resource planning and operation of system resources. Market information directly impacts pricing and negotiating position. Detailed market information related to a utility's capital cost estimates and projected expenditures for fuel and REPS compliance can significantly impact pricing on major expenditures that are ultimately paid by an IOU's customers. Thus, disclosing specific information that may impair the IOU's ability to negotiate and transact at favorable prices is not in the best interest of customers. Indeed, NCSEA specifically states that its proposal is not intended to benefit customers, but rather to provide non-intervening business persons with "access to information critical to their investment decisions" (NCSEA Comments at 9). Duke asserts that NCSEA's proposal seeks to benefit investors at the expense of the customers of North Carolina's IOUs.

Duke states, as referenced above, that the Commission has held that commercial information regarding the cost estimate of new generation resources constitutes a trade secret under G. S. 66-153, and thus warrants confidential treatment under G.S. 132-1.2. In its 2008 Project Development Order, the Commission determined that the North Carolina Public Records Act, through its "confidential information" exception, G.S. 132-1.2(1), prohibits disclosure of confidential commercial information, such as the information Duke redacts from its IRP reports and REPS compliance plans. Information that (a) meets the definition of a "trade secret" found in G.S. 66-152(3), (b) is the property of a "private person," (c) was disclosed to the Commission in compliance with law, and (d) was designated as "confidential" when disclosed is not a public record and is entitled to confidential treatment by the Commission.

Duke states that the IRP information that NCSEA seeks to have publicly disclosed concerning the IOU's delivered fuel costs, capital cost estimates and other underlying data supporting busbar projections is clearly a "compilation of information … that [has] … actual or potential commercial value …." See G.S. 66-153. Moreover, as the Commission acknowledged in the 2008 Project Development Order, "the 'confidential information' provision of the Public Records Act cannot be construed differently in the context of a regulated industry." Id. at 6 (citing State ex rel. Utilities Comm'n v. MCI Telecommunications. Corp., 132 N.C. App. 625, 635, 514 S.E. 2d 276, 283 (1999)). The Commission concluded that there is no public interest exception to the confidential information provision of G.S. 132-1.2(1). Id. In addition, Duke asserts that the only portions of its 2011 IRP that were redacted relate to the specific $/kW estimates for generating resources and undesignated wholesale load projections, which continued to be the subject of commercial negotiations at the time of the IRP filing.

Finally, Duke notes that the Public Staff, NCSEA, SACE, NC WARN, and many other interveners have routinely been granted access to the IOUs' confidential information and data supporting the IOUs' IRP reports and REPS planning documents, including all of the information NCSEA seeks to have publicly disclosed through its recommendations, subject to the execution of reasonable and appropriate

non-disclosure agreements. Thus, intervenors have been able to fully participate in the IRP review process, as contemplated by Commission Rule R8-60, and have been able to conduct their own review and analysis of the IOUs' methodology and data in biennial proceedings.

NC Power asserts that the existing IRP requirements provide sufficiently detailed information to allow the Commission, the Public Staff, and other interested parties to evaluate the IRPs. Further, the additional disclosures proposed by NCSEA are not suitable for providing detailed comparisons of projected costs. According to NC Power, a screening curve (also known as a Levelized Busbar Cost curve or LBC curve) is a plot of annualized cost of electricity generation as a function of unit utilization level (capacity factor). NC Power's LBC curves are shown in Figures 5.2.1 and 5.2.2 of its 2011 IRP Report. According to NC Power, screening curves are useful aids for narrowing the range of possible new supply-side and demand-side alternatives to be considered in more detailed analysis that occurs later in the IRP process. They are primarily used for screening out options with obvious high economic cost, distinguishing possible dispatch order in modeling, and testing the validity of the model outputs at certain stages of expansion.

NC Power contends, however, that screening curve analysis is not an adequate substitute for detailed production cost or expansion planning analysis because it provides rough approximations and is not appropriate for evaluations requiring a greater degree of accuracy. Important factors such as forced outages, maintenance requirements, unit sizes, unequal asset lives and system reliability are not addressed by screening curves. As such, the specific costs underlying the screening curves would not be appropriate for conducting an “apples-to-apples” comparison across technologies and across IOUs, as NCSEA suggests. For these reasons, NC Power opposes NCSEA's request that the Commission require IOUs to provide additional information with regard to screening curves.

Pursuant to the North Carolina Public Records Act, G.S. 132-1.2(1), a person has the right to file information under seal when the information constitutes a trade secret. A “person” is defined in G.S. 66-152(2) to include a corporation or other commercial entity. A “trade secret” is defined in G.S. 66-152(3) to include:

> [B]usiness or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:
>
> a. Derives independent actual or potential commercial value from not being generally known or readily accessible through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use.
>
> b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

As the Commission concluded in its Order Approving Decision to Incur Project Development Costs, Docket No. E-7, Sub 819 (June 11, 2008), "the 'confidential information' provision of the Public Records Act cannot be construed differently in the context of a regulated industry." Order at 6 (citing State ex rel. Utilities Comm'n v. MCI Telecommunications. Corp., 132 N.C. App. 625, 635, 514 S.E. 2d 276, 283 (1999). Further, the Commission concluded that there is no public interest exception to the confidential information provision of G.S. 132-1.2(1). Id.

Thus, the confidential information exception to the Act allows a public utility to file information with the Commission under seal when the information (a) meets the definition of a "trade secret" found in G.S. 66-152(3), (b) is the property of a "person," (c) was disclosed to the Commission in compliance with law, and (d) was designated as "confidential" when disclosed. The Commission concludes that information regarding an IOU's projected expenditures for fuel and estimated capital costs is within the ambit of business or technical information covered by the trade secret exception to the Act. Further, the public disclosure of such information could negatively impact the bargaining position of an IOU that is attempting to negotiate a contract to obtain the lowest cost fuel or capital addition. In the end, it is the IOU's ratepayers that would be harmed by such an impact on the utility's bargaining position.

Balancing, on the one hand, the sensitive nature of projected fuel and capital costs, the need for the IOUs to negotiate effectively for lowest costs and the ability of any party in an IRP docket to obtain this information by signing a confidentiality agreement, against, on the other hand, a blanket requirement of public disclosure of this information, the Commission concludes that it should decline to require a blanket public disclosure of the information identified by NCSEA because such a blanket public disclosure is not in the public interest.

Further, the Commission is not persuaded that it should adopt NCSEA's suggestion that the IOU's be required to file their busbar analyses in one standardized format. The IOU's have developed their particular systems for analysis over many years of planning, selecting the format and computer software that meets the needs of each IOU and training their staffs to use those formats and the corresponding software. The expense and inefficiency of requiring changes in the IOUs' analytic approaches would not be justified by any ease of comparison that might be achieved by ordering the IOUs to standardize their analytical formats and processes.

B. Designation of REPS Information as Confidential.

With regard to NCSEA's request that the REPS information designated as confidential by the IOUs be made public, NCSEA maintains that improving the results of the IRP process requires that people other than the parties have access to the information to be scrutinized. However, the IOUs frustrate this purpose by confidentially filing key portions of their IRPs so that they are not accessible by the general public.

NCSEA challenged this practice in Duke's 2010 REPS Compliance Report, with Duke providing the following response:

> Duke Energy Carolinas will comprehensively review and revisit the necessity to maintain the confidentiality of all of the redacted information contained within its REPS compliance filings. To the extent the Company believes that its customers will not be harmed by the disclosure of certain information relating to REPS, we commit to make any appropriate adjustments in our next REPS compliance plan filing, to be made on September 1, 2011.

Docket No. E-7, Sub 984, T, Vol. 1, at 62-63 (Emily O. Felt testimony on June 8, 2011).

NCSEA states that it is unclear whether the comprehensive review took place and, if it did, whether it yielded any changes in Duke's practices.

NCSEA states that it understands the need for a certain level of guardedness on the part of the IOUs. However, "At the same time, NCSEA believes non-intervening business-persons are being deprived of access to information critical to their investment decisions, and in this way the REPS law's private business development purpose, *see* N.C. Gen. Stat. 62-2(a)(10), is being thwarted by the nondisclosure (NCSEA Comments, at 9).

NCSEA notes that in Docket No. E-7, Sub 819, the Commission entered an Order on June 11, 2008 in which it stated that "the Commission believes that it is in the public interest for [future cost] estimates to be disclosed at the earliest possible time that disclosure will no longer prejudice Duke's negotiations." (Order Approving Decision to Incur Project Development Costs, at 6). It believes that the same considerations of public interest apply in the IRP proceedings and should be supported by directing the IOUs to review all, or some older portions, of their REPS confidential filings and show cause why they should not be made public at this time. In the alternative, NCSEA requests the Commission's specific guidance as to whether an IRP docket is an appropriate setting in which to file a motion for public disclosure.

In addition to Progress's comments discussed in Section A above, Progress states that it is not the purpose of the IRP proceedings to convey price signals or other information to third parties to facilitate their business decisions for their own gains.

Duke states that in response to its commitments made in Docket No. E-7, Sub 984 last year, it revisited the portions of its 2010 REPS Compliance Plan that were marked confidential and significantly reduced the redacted sections of the updated 2011 REPS plan. Duke's 2011 plan had only one attachment including any redactions, a table showing specific pricing and projected REC volume acquisition.

Duke maintains that the information sought by NCSEA is clearly protected from public disclosure as a trade secret under North Carolina law, and the risk of potential negative impact on utility customers is not outweighed by the benefits to NCSEA's allegedly disadvantaged investors.

NC Power submits that its REPS compliance plans contain competitive, market sensitive information which if disclosed to third party developers, bidders and other REC market participants could harm NC Power and its customers. Specifically, the REPS filings contain information related to terms, conditions and pricing of competitively negotiated and secured REC contracts, forecasted REPS compliance expenditures and projected energy savings from energy efficiency programs. If known by third parties engaged in the REC market, this information would give them market intelligence that they could use to their competitive advantage to the detriment of NC Power and its customers, including giving them an advantage over other vendors or developers.

NC Power also maintains that the passage of time does not negate the need for confidential treatment of REPS information. In particular, the REPS filings contain sensitive forecasted information which should remain confidential into the future. Therefore, NC Power opposes NCSEA's recommendation that the Commission require past REPS filings to be unsealed.

In Duke's 2010 REPS proceeding, Docket No. E-7, Sub 984, NCSEA witness Urlaub commented on a need for more transparency in the filings made at the Commission. He stated that a meaningful analysis of Duke's approach to compliance would be impossible based solely on the non-confidential information filed by Duke and that the public would have a difficult time determining if the public interest is served based on such non-confidential information. In response, Duke witness Felt stated that Duke would comprehensively review the necessity to maintain the confidentiality of all of the redacted information contained in its REPS compliance filing and, to the extent the Company believed that its customers would not be harmed by the disclosure of certain information, make appropriate adjustments to the Company's next REPS compliance plan filing in September 2011. The Commission's Order, in Finding of Fact No. 11, stated that Duke had appropriately made information available about the research and administrative costs it was seeking to recover through the REPS rider and had not acted improperly in filing some information under seal.

In Duke's 2010 REPS Compliance Plan, Duke included several items that it designated as confidential. These included "Table 4: FLS Hot Water Installations," "Table 5: Solar Set-Aside Compliance Projections," and "Exhibit B: Duke's Renewable Resource Procurement from 3rd Parties (signed contracts)." In its 2011 REPS Compliance Plan, Duke omitted Table 4 and Table 5, but included the list of third-party contracts designated as confidential. However, other information, including projected energy efficiency savings, was filed as public information (Duke IRP Report, at 33-35).

Progress's 2011 REPS Compliance Plan also includes a confidential list of third-party contracts (Progress IRP Report, Appendix D, Exhibit 1). All other information was filed as public information.

NC Power's 2011 REPS Compliance Plan includes several tables in which portions of the information for 2011, 2012 and 2013 is designated as confidential, including:

- Figure 1.2.1 Company's REPS Compliance Plan Summary
- Figure 1.3.2 Company's Solar REC Compliance by Year
- Figure 1.3.4 Company's Swine REC Compliance by Year
- Figure 1.4.1 North Carolina Energy Efficiency Programs Energy Savings
- Figure 1.7.1 Company's Compliance Cost Summary
- Figure 1.8.1 Company's Comparison of Annual Caps

The information designated as confidential includes projections of the energy efficiency savings to be achieved by specific programs; total energy efficiency savings to be achieved; number of general, solar, swine and poultry RECs purchased and number needed; number of retail customers by customer class, annual cost cap per customer class, total annual cost cap per customer class; cost of REPS compliance and projected administrative costs.

Similar tables are provided for the Town of Windsor, with much of the information designated as confidential (Figure 1.2.2, Figure 1.5.3, Figure 1.5.4, Figure 1.7.2 and Figure 1.8.2).

As the Commission has previously concluded, there is merit in the IOUs' concerns about third-party developers and bidders obtaining access to market-sensitive REPS information, such as a utility's need for additional solar RECs or a utility's willingness to pay for a particular resource to meet the poultry or swine set-aside. Third parties could use such information to bid up prices of renewable resources and RECs to the detriment of a utility's customers. Further, the Commission is not persuaded that the intent of the policy statement in G.S. 62-2(a)(10)(c), to "[E]ncourage private investment in renewable energy and energy efficiency," is to provide private investors with commercially valuable information that is developed by IOUs, the cost of which is paid by ratepayers.

The IOUs have an obligation under Senate Bill 3 to meet their REPS requirements in the most reasonable and prudent manner under the circumstances. In order to assist the IOUs in satisfying this obligation, the Commission must regulate them in a manner that maximizes their ability to secure resources at favorable prices and terms and, at the same time, recognizes and supports the right of the public to scrutinize their activities. On balance, the Commission concludes that the disclosure of specific information concerning REPS contract prices, REC quantities and prices, and other terms would impair the IOUs' ability to negotiate and transact business on

favorable terms. Therefore, it is not in the public interest to adopt a blanket requirement to disclose this information.

Under G.S. 132-1.2, a utility has the right to file information under seal when the information constitutes a trade secret. State ex. rel. Utilities Commission v. MCI Telecommunications Corp., 132 N.C. App. 625, 514, S.E. 2d 276 (1999). The Commission has previously recognized that disclosure of certain information could affect a public utility's ability to negotiate with providers of renewable energy products, and, therefore, supported the continued maintenance of the proprietary nature of some of this information. The Commission has also recognized the value of making more of this information public so as to improve customer confidence in the expenditures that are being made, as well as to potentially prompt future innovations and reductions in the cost of REPS compliance. Therefore, the Commission concludes that the IOUs should continue to review and appropriately reduce the confidential portions of their future REPS filings.

In addition, portions of the REPS information designated as confidential by NC Power appear not to be trade secret or sensitive commercial information within the meaning of G.S. 132-1.2. Further, in some respects it is information that is already public, being included in other sections of NC Power's IRP Report, or being information that could be derived from that which is included as public information. For example, Figure 4.2.2.1 Peak Load Forecast & Reserve Requirements (IRP Report at 47); Appendix 2C – North Carolina Sales by Customer Class (IRP Report at AP-4); Appendix 2F – North Carolina Customer Count (IRP Report at AP-7); Figure 4.3.2.1 North Carolina REPS Requirements, showing projected annual GWh requirements to meet the general REPS targets from 2012 through 2021 (IRP Report at 49); Figures 4.3.2.2, 4.3.2.3. and 4.3.2.4 North Carolina Solar, Swine Waste and Poultry Waste REPS Requirements, showing the projected annual GWh requirements to meet the solar, swine waste, and poultry waste set-aside REPS targets from 2012 through 2021 (IRP Report at 50-51); Appendices 3O and 3P, showing approved energy efficiency programs, projected system energy savings from each program and projected number of system participants in each program (IRP Report at AP-37 and 38); and Appendices 3S and 3T, showing proposed energy efficiency programs, projected system energy savings from each program and projected number of system participants in each program (IRP Report at AP- 41 and 42)

The Commission concludes that there is a question as to whether some of the information designated as confidential by NC Power is trade secret information under G.S. 132-1.2. Therefore, the Commission will require NC Power to review the information discussed above and file an explanation as to why this information should be maintained under seal.

Finally, the Commission notes that NCSEA and other parties can by appropriate motion in any Commission proceeding identify and request public disclosure of specific information that they believe was inappropriately filed under seal or should no longer be maintained under seal.

2011 REPS COMPLIANCE PLANS

Commission Rule R8-67(b) requires each electric power supplier to annually file a REPS compliance plan. The plan is to cover the current calendar year, as well as the subsequent two calendar years, and it is to demonstrate the electric power supplier's plan for complying with REPS. The plans are to be included with the IRP filing for those electric power suppliers that are required to file IRPs.

The Commission appreciates the REPS compliance plan comments provided by the Public Staff. At this time, the Commission finds that the Public Staff's comments raise a significant issue that needs to be addressed. Specifically, the REPS compliance plans filed in 2011 in this docket as well as in E-100, Sub 131 call into question whether North Carolina's electric power suppliers will meet their 2012 and 2013 REPS obligations relative to the swine waste and poultry waste set-asides established in G.S. 62-133.8(e) and (f). Quoting from the Public Staff's comments filed on January 13, 2012:

> Duke, PEC [Progress], DNCP [NC Power], GreenCo, North Carolina Eastern Municipal Power Agency (NCEMPA), North Carolina Municipal Power Agency No. 1 (NCMPA1), and the Public Works Commission of the City of Fayetteville (Fayetteville) have formed a group (collectively, the Swine Group) to jointly request proposals for energy or RECs derived from swine waste to meet the requirements of the swine waste set-aside in G.S. 62-133.8(e). This statute requires that the State's electric power suppliers must collectively procure energy or RECs from swine waste resources to meet 0.07% of sales in 2012 and 2013. Duke has taken a leadership role for the Swine Group and executed four long-term purchase agreements with swine waste REC suppliers on behalf of the group. These four contracts will result in as many as 25 swine waste-to-energy facilities in North Carolina. Despite these contracts, the Swine Group does not believe it can obtain enough swine waste resources to meet the 2012 requirements for the group. However, the group believes that it can meet the requirements for 2013 and beyond. Uncertainties remain in procuring swine RECs, such as the following: (1) providers of swine waste RECs are few, (2) the production of energy from swine waste at a commercial scale is unproven, and (3) swine waste-to-energy facilities are small and highly distributed compared to traditional generation and the set-aside requirement.

Again, citing from the Public Staff's comments filed on January 13, 2012:

> Progress, NC Power, GreenCo, EU [Energy United], Halifax, NCEMPA, NCMPA1, and Fayetteville (but not Duke) formed a group (collectively, the Poultry Group) to jointly pursue energy or RECs derived from poultry waste to meet the requirements of G.S. 62-133.8(f). This statute requires that the State's electric power suppliers must collectively procure energy

from poultry waste resources in the amount of 170,000 MWH or equivalent in 2012 and 700,000 MWH or equivalent in 2013. Progress has taken a leadership role for the Poultry Group. Meeting the poultry waste set-aside has presented challenges to the Poultry Group; some are similar to those of meeting the swine waste set-aside. However, several actions by the General Assembly and the Commission in 2010 and 2011 have made compliance with the poultry waste set aside easier to achieve than the Public Staff anticipated before 2010.

Duke indicated that the poultry waste-to-energy market is still new and indicated that it is optimistic but uncertain about compliance. Progress is more confident that it can meet the poultry waste requirement. In April 2011, Progress signed a contract to purchase energy and RECs from a 36-MW poultry waste-to-energy facility that should be able to deliver 200,000 poultry waste RECs per year. GreenCo also plans to obtain poultry waste RECs from this facility. However, the owners of the facility have not filed an application for a certificate of public convenience and necessity. NCEMPA has not secured enough poultry waste RECs to meet the 2012 requirement but is continuing to pursue them. NCMPA1 has secured enough poultry waste RECs to meet the 2012 requirement but is still pursuing resources to meet the requirement for 2013. The Public Staff also noted that no electric power supplier has filed with the Commission to modify or delay the swine waste or poultry waste set-asides under the "off-ramp" provision of Senate Bill 3.[6] The Commission determines that the issue of whether electric power suppliers will comply with the REPS poultry waste and swine waste set-asides implicates all of the State's electric power suppliers, not only those that file IRPs. Therefore, the Commission on May 16, 2012, issued an order in the generic Docket No. E-100, Sub 113 and required that all electric power suppliers submit to the Commission within 30 days an update of their plans for complying with the swine waste and poultry waste set-asides in 2012 and 2013.

IT IS, THEREFORE, ORDERED as follows:

1. That this Order shall be adopted as a part of the Commission's current analysis and plan for the expansion of facilities to meet future requirements for electricity for North Carolina pursuant to G.S. 62-110.1(c).

2. That the 2011 update IRP reports filed in this proceeding by the IOUs, NCEMC, Piedmont, Rutherford, EnergyUnited, and Haywood are hereby approved.

[6] Senate Bill 3 authorizes the Commission to modify or delay its provisions if it is in the public interest to do so. Commission Rule R8-67(c)(5) states: "In any year, an electric power supplier or other interested party may petition the Commission to modify or delay the provisions of G.S. 62-133.8(b), (c), (d), (e) and (f), in whole or in part. The Commission may grant such petition upon a finding that it is in the public interest to do so. If an electric power supplier is the petitioner, it shall demonstrate that it has made a reasonable effort to meet the requirements of such provisions. Retroactive modification or delay of the provisions … shall not be permitted. The Commission shall allow a modification or delay only with respect to the electric power supplier or group of electric power suppliers for which a need for a modification or delay has been demonstrated."

3. That the 2011 REPS compliance plans filed in this proceeding by the IOUs, GreenCo, Halifax, and EnergyUnited are hereby approved.

4. That future IRP filings by all utilities shall continue to include a detailed explanation of the basis and justification for the appropriateness of the level of the respective utility's projected reserve margins.

5. That future IRP filings by all utilities shall continue to include a copy of the most recently completed FERC Form 715, including all attachments and exhibits.

6. That future IRP filings by all utilities shall continue to: (1) provide the amount of load and projected load growth for each wholesale customer under contract on a year-by-year basis through the terms of the current contract, segregate actual and projected growth rates of retail and wholesale loads, and explain any difference in actual and projected growth rates between retail and wholesale loads, and (2) for any amount of undesignated load, detail each potential customer's current supply arrangements and explain the basis for the utility's reasonable expectation for serving each such customer.

7. That Duke's Cliffside Carbon Neutrality Plan, as contained in Appendix J of its 2011 IRP, is appropriately before the Commission for approval as part of Duke's IRP. As such, the Commission is approving only the Plan itself as a reasonable path for Duke's compliance with the carbon emission reduction standards of the air quality permit and is not approving any individual specific activities nor expenditures for any activities shown in the Plan. As noted by Duke, this Plan shall also be submitted to the Division of Air Quality, which will evaluate the effect of the plans on carbon, and provide its conclusions to this Commission.

8. That each IOU shall include a discussion of a variance of 10% or more in projected EE savings from one IRP report to the next.

9. That each IOU shall include a discussion of the status of market potential studies or updates in their 2012 and future IRPs.

10. That Duke, Progress and NC Power shall continue to review and appropriately reduce the confidential portions of their future REPS filings.

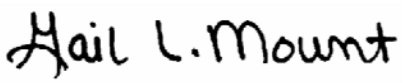
11. That within 30 days of the date of this Order, NC Power shall review the following information designated as confidential in its 2011 REPS Compliance Plan and provide an explanation as to why it considers this information to be confidential under G.S. 132-1.2: (a) projections of the energy efficiency savings to be achieved by specific programs; (b) total energy efficiency savings to be achieved; (c) number of general, solar, swine and poultry RECs purchased and number needed; (d) number of retail customers by customer class; (e) annual cost cap per customer class; (f) total annual cost cap per customer class; (g) cost of REPS compliance; and (h) projected administrative costs.

12. That all ordering paragraphs listed in the Order Approving 2010 Biennial Integrated Resource Plans and 2010 REPS Compliance Plans, issued in this same docket, on October 26, 2011, remain in effect.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of May, 2012.

NORTH CAROLINA UTILITIES COMMISSION



Gail L. Mount, Chief Clerk

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