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Sep 22 2017

September 22, 2017

VIA ELECTRONIC FILING

Ms. M. Lynn Jarvis, Chief Clerk
North Carolina Utilities Commission
Dobbs Building
430 North Salisbury Street
Raleigh, North Carolina 27603

Re: Docket No. E-100, Sub 150

Dear Ms. Jarvis:

On behalf of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, enclosed for filing in the above-referenced docket is their *Additional Reply Comments and Amended Proposed Rule to Implement N.C. Gen. Stat. § 62-110.8.*

Please do not hesitate to contact me if you have any questions. Thank you for your assistance in this matter.

Very truly yours,

/s/E. Brett Breitschwerdt

Enclosure

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 150

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	DUKE ENERGY CAROLINAS, LLC'S
Rulemaking Proceeding to Implement)	AND DUKE ENERGY PROGRESS, LLC'S
G.S. 62-110.8)	ADDITIONAL REPLY COMMENTS AND
)	AMENDED PROPOSED RULE TO
)	IMPLEMENT
)	N.C. GEN. STAT. § 62-110.8(h)

In accordance with the North Carolina Utilities Commission's ("Commission") September 13, 2017, *Order Allowing Additional Reply Comments and Modifying Procedural Schedule* ("Order Requesting Additional Comments"), Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (collectively, the "Companies") hereby respectfully submit these additional reply comments and proposed competitive procurement of renewable energy program ("CPRE Program") rule ("CPRE Program Rule" or the "Rule"), attached hereto as Attachment A, to the Commission to implement the requirements of N.C. Gen. Stat. § 62-110.8.

Since the Commission issued the *Order Requesting Additional Comments*, the Companies have engaged in discussions with the Public Staff - North Carolina Utilities Commission ("Public Staff"), the North Carolina Clean Energy Business Alliance ("NCCEBA") and the North Carolina Sustainable Energy Association ("NCSEA") regarding the prior draft CPRE Program rule filed with the Companies' September 8, 2017, reply comments ("Initial Reply Comments"). Through this process, the Companies have considered input from these parties and have amended the proposed CPRE Program Rule in light of the further consensus achieved between the parties on certain issues. The

Companies understand that NCCEBA/NCSEA have elected to separately file additional reply comments, while the Public Staff is filing a letter expressing general agreement with the CPRE Program Rule, as filed herein.

REPLY COMMENTS

Through the Companies' August 16, 2017, initial comments and Initial Reply Comments, DEC and DEP have explained and provided support for the proposed CPRE Program Rule design, addressing how the proposed Rule provides for effective Commission oversight of CPRE Program implementation and otherwise meets the objectives of N.C. Gen. Stat. § 62-110.8 and the Public Utilities Act. Accordingly, these Additional Reply Comments do not retread this general discussion. Instead, as requested in the *Order Requesting Additional Comments*, the Companies specifically address certain remaining controverted issues between the Companies' proposed CPRE Program Rule and the rule design supported by NCCEBA/NCSEA on behalf of their market participant members. The remaining issues addressed herein concern the role of the Independent Evaluator ("IE") in administering the CPRE Program and the process for waivers of regulatory conditions and Codes of Conduct requirements. While NCCEBA/NCSEA's initial reply comments also discussed the November 27, 2017, CPRE Program filing requirements and the expedited CPCN process, the Companies believe their positions on these topics were fully addressed in our Initial Reply Comments. With regard to the IE-related issues addressed herein, the Companies note that they have made good faith efforts to meet with NCCEBA and NCSEA during the course of this proceeding, including since the Initial Reply Comments were filed, and have incorporated a number of these parties'

suggestions and revisions to the CPRE Program Rule being filed with these Additional Reply Comments.

NCCEBA/NCSEA's primary area of disagreement with the Companies' proposed Rule relates to their view of how the requirements of subsection N.C. Gen. Stat. § 62-110.8(d) should be implemented. This section provides that a "third-party entity to be approved by the Commission" shall be retained to "independently administer" the CPRE Program and to "develop and publish the methodology used to evaluate responses received pursuant to a competitive procurement solicitation and to ensure that all responses are treated equitably." N.C. Gen. Stat. § 62-110.8(d). The proposed CPRE Program Rule comports with these statutory requirements and establishes a robust framework for Commission oversight of both the electric public utility responsible for procuring renewable energy capacity to meet the CPRE Program requirements as well as the IE selected to administer the CPRE Program request for proposal ("RFP") solicitation.

I. Ensuring "Fairness and Integrity" in CPRE Program Implementation

NCCEBA/NCSEA first question whether the Companies' proposed CPRE Program Rule effectively "outline[s] the role and ensure[s] the integrity of the [IE]" and "ensur[es] the fairness and integrity of the solicitation process."¹ As noted in the Companies' Reply Comments, DEC and DEP concur with NCCEBA/NCSEA that transparency, Commission oversight, and independent third-party evaluation were clearly contemplated by the General Assembly in enacting the CPRE Program requirements, and the Companies are committed to implementing the CPRE Program in a transparent and fair manner, as well

¹ NCCEBA/NCSEA Reply Comments at 2.

as allowing appropriate opportunities for stakeholder and market participant input.² Accordingly, the Companies strongly disagree with NCCEBA/NCSEA's suggestion that the proposed Rule does not comport with these objectives.

Specific to the role and integrity of the IE, subsection (d) of the Rule prescribes a detailed process for the Commission to solicit IE recommendations for review and approval by the Commission. In furtherance of providing transparency regarding any potential conflicts of interests involving the Companies or a prospective market participant, subsection (d)(2) requires any potential IE to disclose financial interests including substantive engagements by DEC, DEP or an affiliate during the past three years. Subsection (d)(5) then enumerates the duties of the IE, and subsection (d)(6) expressly states that the IE approved by the Commission shall develop and publish the "CPRE Program Methodology" used to evaluate all proposals offered in response to the CPRE RFP solicitation. During the CPRE Program Procurement Period, the IE's performance and the compensation paid under its contract will be subject to Commission review and oversight through the annual CPRE Compliance Report requirements enumerated in subsection (h)(2). Thus, the Companies submit that the proposed Rule clearly identifies the IE's role and provides a robust process to ensure the IE's integrity, once approved by the Commission.

Specific to NCCEBA/NCSEA's concerns about ensuring the fairness and integrity of the CPRE RFP solicitation process itself, the CPRE Program Rule includes a multitude of requirements that contribute to meeting this objective. Subsection (e) ensures separation between the Companies' "Evaluation Team(s)" and any affiliate or electric public utility-

² Companies' Reply Comments at 17-18.

sponsored “Bid Team,” including IE oversight, physical segregation, prescriptive limits on communications, as well as written acknowledgments to the IE that no improper communications or actions have occurred during the CPRE RFP solicitation process. Subsection (f) then provides a clear and detailed process pursuant through which the IE will facilitate fairness and transparency in its administration of the CPRE RFP solicitation process, and, ultimately, independently ensure that the resources selected by the soliciting electric public utility are reasonable and meet the requirements and objectives of the CPRE Program. Finally, pursuant to Subsection (d)(5)(ix), the IE must also certify that all bids were evaluated under the IE’s CPRE Program Methodology and treated equitably in the CPRE RFP Solicitation through the CPRE Compliance Report in order for DEC and/or DEP to obtain cost recovery. These sections of the CPRE Program Rule were designed – with significant input from the Public Staff – in furtherance of ensuring transparency and fairness in the bid evaluation process, and the Companies do not agree that the proposed CPRE Program Rule is in any way deficient to meet these objectives.

II. Process for “Selecting” the IE

NCCEBA/NCSEA raise concerns that the IE should be “selected by the Commission” versus by the Companies, but “[i]n the event the Commission determines it is not appropriate for [the Commission] to make the selection, then the selection should be made through a stakeholder process that includes notice and an opportunity for comment from all interested parties.³ N.C. Gen. Stat. § 62-110.8(d) expressly provides that the IE shall be “approved by the Commission,” and Subsection (d)(3) of the proposed rule provides that “[a]t least seventy-five (75) days prior to the electric public utilities’ initial

³ NCCEBA/NCSEA Reply Comments at 3.

CPRE RFP Solicitation(s), the Commission shall select and approve the third-party entity to serve as Independent Evaluator to administer the CPRE RFP Solicitation(s) under the CPRE Program.” As recognized by NCCEBA/NCSEA, however, the statute generally leaves the details of the process for selecting the IE to the Commission’s discretion.

The approach presented in subsection (d)(1) of the CPRE Program Rule to select the IE meets the statutory requirement related to Commission approval and should also satisfy NCCEBA/NCSEA’s desire for input into the selection process. The Companies, who are responsible for developing the CPRE Programs and complying with the CPRE Program requirements, have a significant interest in the entity selected to administer the CPRE RFP solicitations. Accordingly, DEC and DEP intend to present the Commission with an IE recommendation pursuant to this process. However, subsection (d)(1) also provides the Public Staff and market participants an opportunity to submit comments and recommendations for the Commission’s consideration prior to the Commission making a decision regarding the IE. Based on all of these factors, the IE selection process as proposed in the CPRE Program Rule is reasonable and fully consistent with the General Assembly’s directives that the IE be approved by the Commission.

III. Evaluation and Selection of Bids During CPRE RFP Solicitation

NCCEBA/NCSEA also raise concerns regarding the CPRE RFP solicitation bid evaluation and selection process set forth in subsections (f)(3)-(4) of the Rule. The crux of their disagreement is over the Companies’ role in evaluating bids submitted in a CPRE RFP solicitation on a parallel track to the IE’s evaluation of those bids, and the process through which the Companies select winning projects for a power purchase agreement (“PPA”) or to be owned and operated by DEC or DEP. NCSEA/NCCEBA argue that the

Companies should not have any role in the CPRE RFP solicitation evaluation and selection process, and suggest that the IE alone should develop the final short list of bids and should make the determination of the winning bidders.⁴

Contrary to NCSEA/NCCEBA's views, the CPRE RFP solicitation evaluation and selection process is reasonably and appropriately designed to meet the CPRE Program's objective for the Companies to procure additional reliable and cost-effective renewable energy resource capacity through one (or, more likely, a combination) of the three options provided for in N.C. Gen. Stat. § 62-110.8(b): (i) acquiring renewable energy facilities bid into the CPRE RFP solicitation by third parties for ownership by the Companies ("EPC bids"); (ii) self-developed projects bid in by the Companies ("self-developed bids"); or (iii) third-party PPAs for renewable energy facilities to be dispatched, operated and controlled in the same manner as the Companies' own generating resources ("PPA bids"). A detailed review of subsection (f)(3) shows how the "two track" bid review and evaluation process transparently provides equitable consideration for all bids offered into a CPRE RFP solicitation.^{5,6} The Companies' Evaluation Team and the IE independently evaluate all bids based upon the CPRE Program Methodology published by the IE prior to the CPRE RFP solicitation process. CPRE Program Rule (d)(6); (f)(3)(i)-(ii). As bids are reviewed, the IE is integrally involved in any follow-up communications between the Companies' Evaluation Team and any bidder. CPRE Program Rule (f)(3)(iii). Further, to ensure fair

⁴ NCCEBA/NCSEA Reply Comments at 3.

⁵ The CPRE Program Rule's bid evaluation process is notably similar to the two track evaluation process set forth in the Georgia Public Service Commission's regulation governing competitive procurements. Ga. Comp. R. & Regs. 515-3-.04(3)(e)(3).

⁶ The Companies have also incorporated certain language requested by NCCEBA/NCSEA into subsections (d)(5)(iv) and (f)(3)(i) to expressly state that the IE's and the Companies' respective evaluation will provide for equitable review between any Self-developed Proposals and bids offered by third-party market participants.

and equitable review of all bids, the IE “shall [also] be allowed to actively and contemporaneously monitor all aspects of the [Companies’ Evaluation Team’s] evaluation process.” CPRE Program Rule (f)(3)(iv). Communication is also prohibited between the Evaluation team and any “Self-developed Proposal” Bid Team or affiliate Bid Team during the evaluation process. CPRE Program Rule (e)(5). At the conclusion of the evaluation period identified in the CPRE RFP solicitation schedule, the Companies and the IE each develop a competitive tier of bids that represent the best competitive options. To the extent differences exist between the “Utility Competitive Tier” and the “IE Competitive Tier,” the Companies, the IE, and the Public Staff would meet to resolve the differences and establish a single “Combined Competitive Tier” that would then be ranked and receive a “refresh” opportunity to “better their bids as final best offers.” CPRE Program Rule (f)(3)(viii)-(x). The Companies would then select projects from that Combined Competitive Tier, subject to the IE’s review and determination of whether the resources selected are the most reasonable and acceptable options given the results of the IE’s independent evaluation. The Rule provides a clear and transparent review and selection process to be followed in each CPRE RFP solicitation.⁷

Further, as a matter of policy and practicality, it is very important for the Companies, through the Evaluation Team, to be involved in the bid evaluation process. As noted above, N.C. Gen. Stat. § 62-110.8(b) allows three types of bids to be offered into the CPRE Program and to be procured by the Companies to meet the CPRE Program requirements: EPC bids, self-build bids, and PPA bids. Two of these three bid types

⁷ The CPRE Program Rule’s bid selection process is also notably similar to the selection process set forth in the Georgia Public Service Commission’s regulation governing competitive procurements. Ga. Comp. R. & Regs. 515-3-.04(3)(e)(4).

contemplate the Companies owning and operating generating facilities, and the EPC bid type contemplates the Companies acquiring generating facilities initially developed and offered into the CPRE RFP solicitation by third party market participants. The CPRE RFP solicitation evaluation process is the Companies' opportunity to complete due diligence on each of these bid types and to assess which option(s) provide the most reliable and cost-effective renewable energy resource capacity to serve customers over the next twenty years. Most significantly, the Companies will need to evaluate the project location, design, and equipment offered for any EPC bid to determine whether acquiring the project will be more cost-effective than a self-developed bid option (if proposed) or PPA bid. As another example, the Companies will also need to evaluate PPA bids to ensure that the proposed renewable energy facility will be designed and constructed in accordance with the Companies' design and construction quality standards and be capable of being dispatched, operated and controlled in the same manner as the Companies' own generating resources. For all three bid types, the Companies will also need to evaluate potential transmission system congestion impacts, as well as the potential for impacts to utility system dispatch operations. Finally, the Companies may also be in receipt of confidential information regarding a potential economic development industrial customer target within the State whose load on a given transmission line may not be compatible with (or, at minimum, require greater system upgrades to accommodate) a project bid proposal. As described in subsection (f)(3), the IE will also evaluate all bids pursuant to the published CPRE Program Methodology as well as audit the Evaluation Team's assessment to ensure equitable treatment of all bids. However, the provision for IE evaluation and oversight in no way

means that the Companies do not or should not have a critical role in the bid evaluation process to ensure the options procured are the most reliable and cost effective.

NCCEBA/NCSEA also fail to recognize that the IE's administration of the CPRE RFP Solicitation and oversight of the Evaluation Team through the CPRE Program Rule represents a significant step – consistent with the General Assembly's direction – in terms of RFP administration, transparency, and third-party auditing and oversight from current practice in other competitive procurement contexts. As noted by the Public Staff's initial comments, the Companies have gained extensive experience with utility-administered RFP solicitations to meet Renewable Energy and Energy Efficiency Portfolio Standard ("REPS") requirements.⁸ To date, the Companies have internally administered these REPS RFPs and no third party entity has been used to manage the bidding process or to provide market participants with assurances regarding transparency and equitable treatment of bids. In contrast, under the CPRE Program, the IE has extensive independent administration and oversight roles and responsibilities, which have been memorialized in the CPRE Program Rule and are provided below.

IE's Administration Role:

- Prior to the CPRE RFP Solicitation, the IE must establish an independent website to administer the CPRE RFP Solicitation process ("IE Website"). CPRE Program Rule (d)(7).
- The IE is responsible for developing the list of potential bidders and publishing notice that the draft CPRE RFP Solicitation documents are available on the IE Website. CPRE Program Rule (f)(1)(i).

⁸ Public Staff Initial Comments at 5.

- The IE is responsible for managing the pre-issuance bidders conference process to publicly discuss the draft CPRE RFP Solicitation documents, including publicly posting questions and answers to the questions and recommendations on the IE Website. CPRE Program Rule (f)(1)(iv).
- The IE is responsible for aggregating market participant comments and recommendations and submitting a pre-issuance report to the electric public utility issuing the CPRE RFP Solicitation. CPRE Program Rule (f)(1)(v).
- The IE is responsible for publishing the final RFP Solicitation documents through the IE Website and managing all initial bidder responses submitted through the IE Website. CPRE Program Rule (f)(2)(i)-(iii).
- The IE is responsible for receiving, responding to, and posting any questions received to the IE Website once the final CPRE RFP Solicitation has been issued. CPRE Program Rule (f)(2)(i).
- After the Combined Competitive Tier is determined, the IE will post the rank of all short-listed bidders and communicate the opportunity for short-listed bidders to better their bids as final best offers. CPRE Program Rule (f)(3)(x).
- The IE shall provide its final rankings, including any refreshed bids, to the Companies for consideration in making the final determination of PPA bids, EPC bids, and Self-developed bids to be selected. CPRE Program Rule (f)(4)(ii).

IE's Independent Oversight and Auditing Role:

- The IE oversees the separation and affiliate communication acknowledgement compliance requirements between the electric public utility's Evaluation Team and any Bid Team. CPRE Program Rule (e)(3), (e)(4).

- The IE will review and provide its independent input into the draft CPRE RFP Solicitation developed by DEC and/or DEP. CPRE Program Rule (f)(1)(v).
- The IE will oversee compliance with the CPRE RFP Solicitation schedule and any deviation from the published schedule must be agreed to by the IE or approved by the Commission. CPRE Program Rule (f)(1)(vii).
- The IE must develop and publish the CPRE Program Methodology that will be followed to independently and equitably evaluate all bids submitted into the CPRE RFP Solicitation. CPRE Program Rule (f)(3)(ii), (vii).
- The IE will oversee and supervise all communications between the Evaluation Team and any bidder during the bid review process, including participation in any conference calls to solicit additional bid information. CPRE Program Rule (f)(3)(iii).
- If differences exist between the Utility Competitive Tier and the IE Competitive Tier, the IE, with involvement from the Public Staff, will oversee the development of the Combined Competitive Tier, which establishes the short list of competitive bids. The Companies may not unilaterally place a project on the Combined Competitive Tier. CPRE Program Rule (f)(3)(ix).
- The IE oversees the Companies' final evaluation of the Combined Competitive Tier and may provide input as to the reasonableness of the bids to be selected by the Companies based upon the IE's independent evaluation. CPRE Program Rule (f)(4)(ii).
- The IE then certifies through the CPRE Compliance Report that all electric public utility and third party bid responses were evaluated under the published CPRE

Program methodology and that all bids were treated equitably through the CPRE RFP Solicitation(s) during the reporting year. CPRE Program Rule (h)(2)(ix).

These extensive administration and oversight/audit responsibilities assigned to the IE under the CPRE Program Rule are consistent with the General Assembly's direction that the competitive procurement "shall be independently administered by a third-party entity to be approved by the Commission."

The Companies also disagree with NCCEBA/NCSEA's assertion that it is "impossible for the [IE] to ensure that all proposals are treated equitably if the proposals are being reviewed by another entity, especially if that entity is also participating in the competitive procurement process."⁹ As shown above, extensive procedures and robust safeguards exist in the planned CPRE Program process to ensure transparency and independent IE oversight, as contemplated by the General Assembly.

Finally, the Companies fundamentally disagree with NCCEBA's/NCSEA's premise that N.C. Gen. Stat. § 62-110.8(d) evinces the General Assembly's intent that the Companies should not have any role in evaluating and selecting the renewable energy capacity options to meet its CPRE Program procurement requirements.¹⁰ While the language of N.C. Gen. Stat. § 62-110.8(d) clearly provides for "independent administration" of the CPRE RFP solicitation, NCCEBA/NCSEA are taking a significant and unsupported leap in logic from the language used by the General Assembly in arguing that "administration of the process includes selecting which proposals are accepted and which are rejected."¹¹ Requiring the Companies to relinquish their management business

⁹ NCCEBA/NCSEA Reply Comments at 4.

¹⁰ NCCEBA/NCSEA Reply Comments at 3-4.

¹¹ NCCEBA/NCSEA Reply Comments at 4.

judgment and decision-making regarding whether to request a CPCN to build an asset, versus procuring an EPC bid or entering into a PPA, would represent an unprecedented and fundamental deviation from the traditional concepts of public utility regulation in North Carolina. While the General Assembly has conferred on the Commission authority to, *inter alia*, regulate public utilities' services and rates, it remains within the province of the public utility "to manage its property and business as it sees fit."¹² This "regulatory compact" has long been recognized in North Carolina,¹³ and the Companies do not believe that in enacting N.C. Gen. Stat. § 62-110.8, the General Assembly intended to compromise that compact by requiring that the IE dictate this decision to the Companies. Put another way, the Public Utilities Act provides the Commission authority to regulate electric public utilities, but the utilities' management retains the authority to make reasonable and prudent investment decisions to provide public utility service and to then seek recovery of these investments. The CPRE Program simply adds an additional regulatory mandate within this existing broader framework of the Public Utilities Act, and the CPRE Program Rule must maintain the Companies' ability to make informed business decisions, subject to the administration of the CPRE Program process by the IE and, ultimately, oversight by the Commission. The CPRE Program Rule proposed by the Companies is reasonably designed

¹² *State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast*, 281 N.C. 318, 337, 189 S.E.2d 705, 717–18 (1972) ("*General Tel.*") (citing *State ex rel. Utilities Comm'n v. Piedmont Natural Gas Co.*, 254 N.C. 536, 119 S.E.2d 469 (1961)).

¹³ *See id.*, 281 N.C. at 335, 189 S.E.2d at 716.

to achieve the stated objectives of N.C. Gen. Stat. § 62-110.8(d) within the broader framework of the Public Utilities Act.

IV. Timely Waiver of Regulatory Conditions and Code of Conduct Requirements after Commission Review and before CPRE RFP Solicitation is Appropriate

Consistent with the intent of N.C. Gen. Stat. § 62-110.8(h)(2), the Companies' proposed CPRE Program Rule provides an open, transparent, and timely process for the waiver of those regulatory conditions and Code of Conduct provisions that would unreasonably restrict their affiliates from participating in the CPRE program. NCCEBA/NCSEA's proposals, however, for waiving the regulatory conditions and Code of Conduct provisions, do not comport with the intent of N.C. Gen. Stat. § 62-110.8(h)(2) in either timing or scope.

Subsection (c)(2) of the Companies' Rule provides a reasonable process by which DEC and DEP would identify through their initial November CPRE Program Filing those regulatory conditions and Code of Conduct requirements that would unreasonably restrict their affiliates from participating in the CPRE Program. This filing will provide market participants, including the Companies' affiliates, with contemporaneous and timely notice of the Companies' proposed terms and conditions and process for participating in the CPRE Program, as well as the basis for waiving these regulatory conditions and Code of Conduct requirements. Presumably the Commission will then allow for comments to be filed followed by a determination of whether the scope of requested waiver is appropriate. The Commission's determination will occur well after a reasonable opportunity for the Public Staff and other parties to comment on the requested waiver, but, importantly, also well before the initial CPRE RFP solicitation is issued. In this way, the Commission can make

an informed decision about the requested waiver, while the Companies' affiliates are placed on essentially equal footing with other, non-affiliated third party market participants in the CPRE RFP solicitation process.

In contrast, NCCEBA/NCSEA's proposal to have the Companies identify those regulatory conditions and provisions of the Code of Conduct of which they will *later* seek a waiver would unreasonably restrict the Companies' affiliates from participating the CPRE Program. For example, if an affiliate did not know at the outset of the CPRE RFP solicitation process whether the pricing restrictions pertaining to sales between affiliates in the Code of Conduct or regulatory conditions were waived, it would likely not take on the risk and uncertainty of participating in the CPRE Program. Thus, an open and timely waiver of the regulatory conditions and Code of Conduct provision in advance of commencement of the CPRE Program is critical so that the affiliate is not unreasonably restricted from participating.

NCCEBA/NCSEA have also proposed a lengthy procedure in their reply comments for waiving regulatory conditions and provisions of the Code of Conduct that is beyond the scope of N.C. Gen. Stat. § 62-110.8(h)(2). Included in this procedure is the requirement that the Companies file a waiver application "subject to the Federal Energy Regulatory Commission ("FERC") rules and guidance." NCCEBA/NCSEA do not explain why such a waiver application process is necessary and why FERC affiliate rules should additionally apply to a Commission matter, when the statute itself sets out the Commission's scope of review of a waiver. Therefore, NCCEBA/NCSEA's proposed lengthy process would unduly and unreasonably restrict the Companies' affiliates from participation in the CPRE Program contrary to the intent of the statute. In sum, the Companies' proposed subsection

(c)(2) addressing waiver of regulatory conditions and Code of Conduct provisions is reasonable, consistent with the intent of N.C. Gen. Stat. § 62-110.8(h)(2) to allow waiver while holding customers harmless, and should be approved.

WHEREFORE, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC respectfully submit these Additional Reply Comments and the modified proposed CPRE Program Rule set forth in Attachment A for the Commission's consideration.

Respectfully submitted, this the 22nd day of September, 2017.

/s/E. Brett Breitschwerdt

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R8-XX COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY

- (a) Purpose. The purpose of this rule is to implement the provisions of G.S. 62-110.8, and to provide for Commission oversight of the CPRE Program(s) designed by the electric public utilities subject to G.S. 62-110.8 for the competitive procurement and development of renewable energy facilities in a manner that ensures continued reliable and cost-effective electric service to customers in North Carolina.

- (b) Definitions. Unless listed below, the definitions of all terms used in this rule shall be as set forth in G.S. 62-110.8. The following terms shall be defined as:
 - (1) “Affiliate” – is defined as provided in G.S. 62-126.3(1).
 - (2) “Bid Team” – Representatives of the electric public utility if it elects to submit a competitive Self-developed Proposal as addressed in subsection (f)(2)(iv) or an electric public utility’s affiliate if it elects to submit a bid in response to a CPRE RFP Solicitation, as well as any other persons directly supporting the electric public utility’s Self-developed Proposal or the affiliate’s development and submission of its competitive bid.
 - (3) “Avoided cost rates” – means an electric public utility’s calculation of its long-term, levelized avoided 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. For each CPRE RFP Solicitation, the electric public utility’s avoided costs shall be calculated over the time period of the utility’s pro forma contract(s) approved by the Commission. For example, where an electric public utility solicits a pro forma CPRE Program contract offering a term of 20 years, the avoided cost rate applicable to that contract would be a 20-year, levelized long-term rate calculated based upon the Commission’s approved avoided cost methodology in effect at the time the solicitation is held.
 - (4) “Competitive Procurement of Renewable Energy (CPRE) Program” – 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.
 - (5) “CPRE Program Methodology” – The methodology used to evaluate all bids received in a given CPRE RFP Solicitation.
 - (6) “CPRE Program Procurement Period” – 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.
 - (7) “CPRE RFP Solicitation” – 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.

- (8) "Evaluation Team" - Representatives of the electric public utility that will be evaluating bids submitted in response to the CPRE RFP Solicitation, as well as any other persons acting for or on behalf of the electric public utility regarding any aspect of the CPRE RFP Solicitation evaluation or selection process.
 - (9) "IE Website" – The website established and maintained by the Independent Evaluator as required by subsection (d)(7) of this Rule.
 - (10) "Independent Evaluator" – Third-party entity to be approved by the Commission to administer the CPRE Program, to ensure the transparency of the CPRE Program process established by this Rule, and to ensure that all responses are treated equitably.
 - (11) "Market price" – The market-derived price at which an electric public utility elects to procure renewable energy, capacity, and environmental and renewable attributes through a CPRE RFP Solicitation administered under this Rule. The market price may be used to derive authorized revenues to be recovered by the electric public utility for any utility-owned assets procured in the same CPRE RFP Solicitation where the product offered and procured by the electric public utility is the same as the product procured from the third parties, and the CPRE RFP Solicitation is determined to be based on an arm's length transaction between a buyer and a seller having a reasonable knowledge of the relevant facts. The market price shall not exceed the electric public utility's avoided cost rates established for the same CPRE RFP Solicitation.
 - (12) "Renewable energy certificates" – defined as provided in G.S. 62-133.8(a)(6).
 - (13) "Renewable energy facilities" – defined in G.S. 62-133.8(a)(7), but as used in this Rule and the CPRE Program, shall be limited to renewable energy facilities with a nameplate capacity rating of 80 MW or less that have obtained Qualified Facility status, if required, under 18 C.F.R. 292.207, and that are placed in service after the date of the electric public utility's initial CPRE RFP Solicitation.
 - (14) "Renewable energy resources" – are as defined in G.S. 62-133.8(a)(8).
- (c) Initial CPRE Program Filings and Program Guidelines
- (1) An electric public utility shall develop and seek Commission approval of guidelines for the implementation of its CPRE Program and to inform market participants regarding the terms and conditions of, and process for participating in, the CPRE Program. The electric public utility shall 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 bidder requirements for participation in the electric public utility’s initial CPRE RFP Solicitation(s); and
 - (iv) Proposed criteria for the evaluation of bids for product(s) solicited to be procured under initial CPRE RFP Solicitation(s).
- (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 as provided for in G.S. § 62-110.8(h)(2).
- (d) Selection and Role of Independent Evaluator.
- (1) At least thirty (30) days prior to the electric public utilities’ initial CPRE Program filings required by subsection (c) of this Rule, the Commission shall invite and consider comments and recommendations from the electric public utilities, the Public Staff, and potential market participants regarding the selection of the independent third-party entity to serve as the Independent Evaluator. In addition to meeting the requirements set forth in this Rule, the Commission may establish additional minimum qualifications and requirements for an Independent Evaluator responsible for administering the electric public utilities’ planned CPRE RFP Solicitation(s) for renewable energy resource capacity under the CPRE Program.
 - (2) Any independent third party entity requesting to be considered by the Commission for the Independent Evaluator role shall be required to disclose any financial interest involving the electric public utilities implementing CPRE Programs or any potential market participant reasonably anticipated to participate in the CPRE Program, including but not limited to all substantive assignments for the electric public utilities, any electric public utility affiliate, or any other potential bidder during the preceding three (3) years.
 - (3) At least seventy-five (75) days prior to the electric public utilities’ initial CPRE RFP Solicitation(s), the Commission shall select and approve the third-party entity to serve as Independent Evaluator to administer the CPRE RFP Solicitation(s) under the CPRE Program. From the date the Independent Evaluator is selected, no bidder or potential market participant shall have any communication with the Independent Evaluator 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 or as are made publicly through the IE Website.
 - (4) The Independent Evaluator 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 electric public utilities' initial CPRE RFP solicitation(s) and shall remain subject to ongoing Commission oversight as part of the Commission's review of the electric public utilities' annual CPRE Program Compliance Reports.
- (5) The Independent Evaluator's duties shall include:
- (i) Monitor compliance with CPRE Program requirements.
 - (ii) Review and comment on draft CPRE Program guidelines, 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 bids offered by third-party market participants.
 - (v) Receive and transmit bids.
 - (vi) Independently evaluate the bids.
 - (vii) Monitor post-bid negotiations between the electric public utilities' Evaluation Team and successful bidders.
 - (viii) Evaluate the electric public utility's Self-developed Proposals for the Commission.
 - (ix) Provide an independent certification to the Commission in the CPRE Compliance Report that all public utility and third party bids were evaluated under the published CPRE Program methodology and that all bids were treated equitably through the CPRE RFP Solicitation(s).
- (6) At least 30 days prior to the initial CPRE RFP Solicitation, the third party Independent Evaluator entity shall develop and publish the CPRE Program Methodology to be used to independently evaluate all proposals offered in response to the CPRE RFP Solicitation. Prior to developing and publishing the CPRE Program Methodology to be used to independently evaluate all bidder proposals, the Independent Evaluator shall meet with the electric public utility Evaluation Team to share evaluation techniques and practices. The Independent Evaluator shall also meet with the electric public utility Evaluation Team 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 Methodology may be appropriate based upon the product to be solicited by the electric public utility in the next CPRE RFP Solicitation.
- (7) The Independent Evaluator shall maintain the IE Website to support administration and implementation of the CPRE Program and shall post the CPRE RFP Solicitation documents, the CPRE Program Methodology, bidder FAQs and any other pertinent documents on the IE Website.
- (8) The Independent Evaluator shall be supervised by and report to the Commission. In carrying out its duties, the Independent Evaluator shall work in coordination with the electric public utilities' Evaluation Team(s) with

respect to CPRE Program implementation and the CPRE RFP Solicitation bid evaluation process.

- (9) If the Independent Evaluator becomes aware of a violation of any CPRE Program requirements, the Independent Evaluator shall immediately report that violation, together with any recommended remedy, to the Commission.
 - (10) The Independent Evaluator's fees shall be funded through reasonable bid fees collected by the electric public utility. The electric public utility shall be authorized to collect bid fees up to \$10,000 per bid to defray its costs of evaluating the bids and, in addition, may charge each bid an amount which shall be equal to the estimated total cost of the Independent Evaluator divided by the reasonably anticipated number of bids. To the extent that insufficient funds are collected through this method to pay all of the Independent Evaluator's fees, the electric public utility shall pay the outstanding cost, which shall subsequently be recovered from the winning bidders in the CPRE RFP Solicitation.
- (e) Communications Between CPRE Market Participants.
- (1) On or before the date an electric public utility announces the CPRE RFP Solicitation, the Bid 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 complete titles of each member of the Bid Team and the Evaluation Team shall be reduced to writing and submitted to the Independent Evaluator.
 - (2) There shall be no communications, either directly or indirectly, between the Bid 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 Evaluator; and (ii) negotiations between the Bid Team and the Evaluation Team for a final power purchase agreement in the event and then only after the Bid Team has been selected by the electric public utility as a winning bid. The Evaluation Team will have no direct or indirect contact or communications with the Bid Team or any other bidder, except through the Independent Evaluator as described further herein, until such time as a winning bid or bids are selected by the electric public utility and negotiations for a final power purchase agreement(s) have begun.
 - (3) At no time shall any information regarding the CPRE RFP Solicitation process be shared with any bidder, including the Bid Team, unless the information is shared with all competing bidders contemporaneously and in the same manner.
 - (4) Within fifteen (15) days of the date an electric public utility announces a planned CPRE RFP Solicitation, each member of the Bid Team shall execute an acknowledgement that he or she agrees to abide by the restrictions and conditions contained in subsections (e)(3)-(4) of this Rule for the duration of the CPRE RFP Solicitation. If the Bid Team's bid is selected by the electric public utility after completion of the CPRE RFP Solicitation, each member of

the Bid Team shall then also execute an acknowledgement that he or she has met the restrictions and conditions contained in subsections (e)(3)-(4). The electric public utility shall provide these acknowledgements to the Independent Evaluator and shall file the acknowledgements with the Commission in support of its annual CPRE Compliance Report.

- (5) Should any bidder, including an affiliate or electric public utility's Bid Team, attempt to contact a member of the Evaluation Team directly, such bidder shall be directed to the Independent Evaluator for all information and such communication shall be reported to the Independent Evaluator by the Evaluation Team member. Within ten (10) days of the date that the Independent Evaluator 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)(3)-(5) for the duration of the CPRE RFP Solicitation. If the Bid Team's bid 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 Evaluator 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 Bidders and Design of CPRE RFP Solicitation.
 - (i) Prior to the initial CPRE RFP Solicitation, the electric public utility shall provide the Independent Evaluator 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 Evaluator shall be responsible for publishing notice of the draft CPRE RFP Solicitation on the IE Website, as well as preparation of the final list of potential bidders to whom notice of the upcoming CPRE RFP Solicitation will be sent.
 - (ii) The electric public utility will be responsible for preparing an initial draft of the CPRE RFP Solicitation guidelines and documents, including RFP procedures, evaluation factors, credit and security obligations, a pro forma power purchase agreement, the Avoided Cost Rate against which the RFP bids will be evaluated, and a planned schedule for completing the CPRE RFP Solicitation and selecting winning bids. No later than sixty (60) days prior to the planned issue date of the CPRE RFP Solicitation, the electric public utility will supply the draft of the CPRE RFP Solicitation documents to the Independent Evaluator for posting on the IE Website.
 - (iii) The CPRE RFP Solicitation guidelines shall identify all factors to be considered by the electric public utility in its evaluation of bids. In addition to the guidelines, 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 Evaluator and shall be filed with the Commission at least thirty (30) days prior to the planned CPRE RFP solicitation issuance date.

- (iv) The Independent Evaluator, in coordination with the electric public utility, may conduct a pre-issuance bidders conference to publicly discuss the draft CPRE RFP Solicitation documents with interested parties, including but not limited to potential bidders. Potential bidders may submit written questions or recommendations to the Independent Evaluator regarding the draft CPRE RFP Solicitation documents in advance of the bidders' conference. All such questions and recommendations shall be posted on the IE Website. The Independent Evaluator shall have no private communication with any potential bidders regarding any aspect of the draft CPRE RFP Solicitation documents.
 - (v) Based on the input received from potential bidders, and based on their own review of the draft CPRE RFP Solicitation documents, the Independent Evaluator will submit a report to the electric public utility at least twenty (20) days prior to the planned CPRE RFP Solicitation issuance date detailing market participant comments and any suggested recommendations from the Independent Evaluator for changes to the CPRE RFP Solicitation documents. This report shall also be posted on the IE Website for review by potential bidders.
 - (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 Evaluator to be posted on the IE Website.
 - (vii) At any time after the CPRE RFP Solicitation is issued, through the time winning bids are selected by the electric public utility, the schedule for the solicitation may be modified upon mutual agreement of the electric public utility and the Independent Evaluator, with equal notice provided to all market participant bidders, or upon approval by the Commission. Any modification to the CPRE RFP Solicitation schedule will be posted to the IE Website.
- (2) Issuance of CPRE RFP Solicitation and Bidder Communications.
- (i) The Independent Evaluator will transmit the final CPRE RFP Solicitation to the bidder list via the IE Website. Upon issuance of the final CPRE RFP Solicitation, the only bidder communications permitted prior to submission of bids shall be conducted through the Independent Evaluator. Bidder questions and Independent Evaluator responses shall be posted on the IE Website. To the extent such questions and responses contain competitively sensitive information that a particular bidder deems to be a trade secret, this information may be redacted by the bidder.

- (ii) The electric public utility may not communicate with any bidder regarding the RFP Process, the content of the CPRE RFP Solicitation documents, or the substance of any potential response by a bidder to the RFP; provided, however, the electric public utility shall provide timely, accurate responses to an Independent Evaluator request for information regarding any aspect of the CPRE RFP Solicitation documents or the CPRE RFP Solicitation process.
 - (iii) Bidders shall submit bids pursuant to the solicitation schedule contained in the CPRE RFP Solicitation documents, as determined by the electric public utility and the Independent Evaluator and posted to the IE Website. The electric public utility and the Independent Evaluator shall have access to all bids and all supporting documentation submitted by bidders 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 an electric public utility self-developed option 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 Evaluator at the time all other bids are due. Once submitted, the Self-developed Proposal may not be modified by the soliciting electric public utility, except pursuant to the process provided for in subsection (f)(3)(x) to present a final best offer. Provided, however, that in the event that electric public utility demonstrates to the satisfaction of the Independent Evaluator that the Self-developed Proposal contains an error and that correction of the error will not be harmful to the RFP Process, the soliciting entity 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 Bid Team in any way may not be a member of the affiliate’s Bid Team, nor communicate with the affiliate Bid Team during the RFP Process about any aspect of the RFP Process. The soliciting entity's Self-developed Proposal must include a total revenue requirement comparable to bids submitted by third-party market participants.
- (3) Evaluation of Responses to CPRE RFP Solicitation.
- (i) The evaluation stage of the CPRE RFP Solicitation process will proceed on two tracks. On one track, the electric public utility will evaluate all bids based upon the CPRE Program Methodology and criteria set forth in the CPRE RFP Solicitation documents. The electric public utility will conduct this track in an appropriate manner designed to ensure equitable review between any Self-developed Proposals and bids offered by third-party market participants, consistent with the principles and procedures contained in this Rule.
 - (ii) A second track will be conducted by the Independent Evaluator. The Independent Evaluator shall have discretion to utilize whatever approach they consider the optimum combination of auditing the

- electric public utility track and conducting its own independent evaluation based upon the CPRE Program Methodology in order to equitably evaluate all renewable energy resource options submitted to the electric public utility in response to the CPRE RFP Solicitation.
- (iii) The electric public utility or the Independent Evaluator may request further information from any bidder regarding its bid. Any communications between the electric public utility and a bidder in this regard shall be conducted through the Independent Evaluator. The electric public utility shall be informed of the content of any communications between the Independent Evaluator and a bidder. Should it be determined necessary by the Independent Evaluator, the electric public utility and the bidder, conference calls between the electric public utility and a bidder may be conducted for the sole purpose of clarification and understanding of a particular bid. All conference calls must be initiated by the Independent Evaluator and the Independent Evaluator will be present on each call for its duration. Communications will be conducted on a confidential basis between the Independent Evaluator and the bidder, and may include one face-to-face meeting between the Independent Evaluator, the electric public utility, and each bidder to discuss the bidder's proposal.
 - (iv) In order to conduct both its independent evaluation function and its auditing function, the Independent Evaluator shall have access to all information and resources utilized by the electric public utility in conducting its analysis. The electric public utility shall provide complete and open access to all documents and information utilized by the electric public utility, and the Independent Evaluator shall be allowed to actively and contemporaneously monitor all aspects of the electric public utility evaluation process. The electric public utility shall facilitate this access so that the electric public utility evaluation process is transparent to the Independent Evaluator. To the extent the Independent Evaluator determines that the evaluation processes of the two tracks are yielding different results, the Independent Evaluator shall notify the electric public utility and attempt to identify the reasons for the differences as early as practicable. Where practicable, the electric public utility and the Independent Evaluator shall attempt to reconcile such differences.
 - (v) The Independent Evaluator may make reasonable requests for the electric public utility's Evaluation Team to conduct analyses concerning bids received to support the CPRE Program Methodology. Analyses provided to the Independent Evaluator shall be equivalent in quality and content as that developed by the electric public utility for purposes of its own evaluation.
 - (vi) No bidder, including any bidder that is an affiliate of the electric public utility, shall communicate with the electric public utilities' Evaluation

Team during the course of the CPRE RFP Solicitation process regarding any aspect of the RFP.

- (vii) The electric public utility shall perform its evaluation of the bids and shall develop a competitive tier that narrows the bids to a manageable number that the electric public utility believes are the best competitive options (“Utility Competitive Tier”). The Independent Evaluator shall independently evaluate the bids and develop its own competitive tier that narrows the bids to a manageable number that the Independent Evaluator believes are the best competitive options (“IE Competitive Tier”).
 - (viii) The electric public utility shall provide the Utility Competitive Tier to the Independent Evaluator. Simultaneously, the Independent Evaluator shall provide the IE Competitive Tier to the electric public utility.
 - (ix) If the Utility Competitive Tier and the IE Competitive Tier are identical, the Independent Evaluator shall create a single Competitive Tier (“the Combined Competitive Tier”). If there are differences between the Utility Competitive Tier and the IE Competitive Tier, the electric public utility, the Independent Evaluator, and the Public Staff shall meet to resolve such differences in order to agree on a Combined Competitive Tier.
 - (x) The Independent Evaluator shall post the Combined Competitive Tier list on the IE Website showing each bidder’s relative rank and the total evaluated cost of each bid. Each bidder on this list will be identified blindly so each bidder knows the identity of the bidder for only its bid but sees its rank compared to those of all other anonymous bidders who made the Competitive Tier. The Independent Evaluator shall notify all bidders on the Combined Competitive Tier lists that they have the opportunity to better their bids as final best offers.
 - (xi) Any refreshed bids received by the electric public utility and Independent Evaluator shall then be evaluated independently by the electric public utility and the Independent Evaluator, consistent with the process outlined above for initial bids.
- (4) Selection of CPRE Program Resource(s).
- (i) After it has completed its final evaluation of bids from the Combined Competitive Tier, and pursuant to the CPRE RFP Solicitation schedule, the electric public utility shall notify the Independent Evaluator of which resource(s) the electric public utility has selected from the Combined Competitive Tier to meet the renewable energy resource capacity requested in the CPRE RFP Solicitation. If the selection(s) by the electric public utility deviates from the relative ranking of the Combined Competitive Tier, the electric public utility shall provide a written justification for the deviation to the Independent Evaluator and the Public Staff. If the Independent Evaluator does not find the selected resources reasonable and acceptable, it shall meet with the electric

public utility and the Public Staff to discuss its alternative recommendation(s) based upon its independent evaluation.

- (ii) The Independent Evaluator shall then notify the electric public utility whether it believes the resources selected by the electric public utility are reasonable and acceptable given the results of its independent evaluation and, upon receiving written notice of the electric public utility's final selection(s), shall post the final selection(s) on the IE Website.
- (iii) The electric public utility is responsible for determining which resource(s) it will select through the CPRE RFP Solicitation to either be submitted to the Commission for certification pursuant to Subsection (k) of this Rule or to enter into a power purchase agreement from the Combined Competitive Tier. The electric public utility shall consider the Independent Evaluator's ranking and evaluation in making its decision, but the electric public utility remains ultimately responsible for the selection of renewable energy resource capacity to meet its obligations under the CPRE Program.

(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 annually. The electric public utility may file its CPRE Program plan as part of its future biennial integrated resource plan filings, 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 filing.
- (2) Each year, beginning in 2018, each electric public utility subject to this rule 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 also 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 cost recovery request under subsection (j) of this rule, which shall also be the filing date for the information required by Rule R8-55. The Commission shall consider each electric public utility's CPRE Program compliance report at the hearing provided for in subsection (j) of this rule and shall determine whether the electric public utility is in compliance with the CPRE Program requirements of G.S. 62-110.8. Public notice and deadlines for intervention and filing of additional direct and rebuttal testimony and exhibits shall be as provided for in subsection (j) of this rule.
 - (2) Each year, beginning in 2019, each electric public utility subject to this rule shall file with the Commission a report describing the electric public utility's competitive procurement of renewable energy resources under its CPRE Program and ongoing actions to comply with the requirements of G.S. 62-110.8 during the previous calendar year, which shall be the "reporting year." The report shall include the following information, including supporting documentation:
 - (i) a description of CPRE RFP Solicitation(s) undertaken by the electric public utility during the reporting year;
 - (ii) a description of the sources, amounts, and costs of third-party power purchase agreements and proposed authorized revenues for utility-owned assets for renewable energy resources procured through CPRE RFP Solicitation(s) during the reporting year, including the dates of all CPRE Program contracts or utility commitments to procure renewable energy resources during the reporting year;

- (iii) the forecasted nameplate capacity and megawatt-hours of renewable energy and the number of renewable energy certificates obtained through the CPRE Program during the reporting year;
 - (iv) identification of all proposed renewable energy facilities under development by the electric public utility that were bid into a CPRE RFP Solicitation during the reporting year, including whether any non-publicly available transmission or distribution system operations information was used in preparing the proposal, and, if so, an explanation of how such information was made available to third parties that notified the utility of their intention to submit a proposal in the same CPRE RFP Solicitation;
 - (v) the electric public utility's avoided cost rates applicable to the CPRE RFP Solicitation(s) undertaken during the reporting year and confirmation that all renewable energy resources procured through a CPRE RFP Solicitation are priced at or below the electric public utility's avoided cost based upon the methodology approved by the Commission;
 - (vi) the actual total costs and authorized revenues incurred by the electric public utility during the calendar year to comply with G.S. 62-110.8;
 - (vii) the status of the electric public utility's compliance with the aggregate CPRE Program procurement requirements set forth in G.S. 62-110.8(a);
 - (viii) a copy of the contract then in effect between the electric public utility and third-party entity hired to administer the CPRE RFP Solicitations, supporting information regarding the administrative fees collected from market participants in the CPRE RFP Solicitation during the reporting year, as well as any cost incurred by the electric public utility during the reporting year to implement the CPRE RFP Solicitation; and
 - (ix) certification by the Independent Evaluator that all public utility and third-party bid responses were evaluated under the published CPRE Program Methodology and that all bids were treated equitably through the CPRE RFP Solicitation(s) during the reporting year.
- (i) Compliance with CPRE Program Requirements.
- (1) An electric public utility shall be in compliance with the CPRE Program requirements during a given year where the Commission finds and determines that the electric public utility's CPRE Program plan is reasonably designed to meet the requirements of G.S. 62-110.8 and determines based on the utility's most recently filed CPRE Program compliance report that the electric public utility is reasonably and prudently implementing the CPRE Program requirements.
 - (2) An electric public utility or other interested party may petition the Commission to modify or delay the provisions of G.S. 62-110.8 in whole or in part. The Commission may grant such petition upon finding that it is in the public interest to do so.

- (3) Renewable energy certificates claimed 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) Any facility selected through a CPRE RFP Solicitation shall register with the Commission as a renewable energy facility under Rule R8-66 no later than 60 calendar days of written notification that it was selected and shall assure that renewable energy certificates contracted for under the CPRE Program shall be issued by, or imported into, the North Carolina Renewable Energy Tracking System.
- (j) Cost or authorized revenue recovery.
- (1) Beginning in 2018, for each electric public utility subject to this Rule, the Commission shall schedule an annual public hearing pursuant to G.S. 62-110.8(g) to review the costs incurred or authorized revenue justified 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 costs and authorized revenues prudently-incurred to implement its CPRE Program and to comply with G.S. 62-110.8. For utility-owned assets selected under the CPRE Program, the utility may propose a revenue requirement using the market price established in the same CPRE RFP Solicitation to calculate forecasted authorized revenues over the equivalent term as the power purchase agreement solicited in the CPRE RFP Solicitation. Notwithstanding an electric public utility's proposal that the authorized revenue for utility-owned assets be determined using the market price, the Commission may approve authorized revenues determined as otherwise provided for in G.S. 62-110.8(g), if the Commission finds that using the market price is not 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 reasonable 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 reasonable and prudently-incurred costs or authorized revenue and related revenues realized under rates in effect.
 - (9) The annual increase in CPRE Program-related amounts to be recovered by an electric public utility in any recovery period from its North Carolina retail customers to comply with G.S. 62-110.8 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.
 - (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 other 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 (“CPCN”) for generating facilities procured under the CPRE Program to be owned by an electric public utility.
- (1) Where a renewable energy facility is selected through a CPRE RFP Solicitation and is either (i) proposed to be constructed, owned, and operated by an electric public utility requiring a CPCN; or (ii) planned to be acquired from a third party to be owned and operated by the electric public utility requiring transfer of an existing CPCN, the electric public utility shall file a petition for the expedited review and approval or transfer of CPCN(s) to construct, own, and operate the generating facilities.
- (2) Petitions for CPCN(s) filed and approved pursuant to this section shall satisfy the requirements of G.S. 62-110.1(a) and G.S. 62-82, and the electric public utility shall not otherwise be required to follow the procedures for obtaining a CPCN under Rule R8-61.
- (3) An application to obtain a new CPCN for a renewable energy facility planned to be constructed by the electric public utility under this section shall be comprised of the following Exhibits:
- (i) Exhibit 1 shall include:
- (a) A color map or aerial photo showing the location of the generating facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks, with the proposed location of major equipment indicated on the map or photo, including: the generator, fuel handling equipment, plant distribution system, startup equipment, site boundary, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities. A U.S. Geological Survey map or an aerial photo map prepared via the State’s geographic information system is preferred;
- (b) The E911 street address, county in which the proposed facility would be located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree; and
- (c) 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.
- (ii) Exhibit 2 shall include:
- (a) The nature of the renewable energy facility, including the type and source of its power or fuel;

- (b) A description of the buildings, structures and equipment comprising the renewable energy facility and the manner of its operation;
 - (c) The gross and net projected maximum dependable capacity of the renewable energy facility as well as the renewable energy facility's nameplate capacity, expressed as megawatts (alternating current);
 - (d) The projected date on which the renewable energy facility will come on line;
 - (e) The service life of the project;
 - (f) 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
 - (g) The projected annual production of renewable energy certificates that is eligible for compliance with the State's renewable energy and energy efficiency portfolio standard.
- (iii) Exhibit 3 shall include:
- (a) A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the renewable energy facility and a statement of whether each has been obtained or applied for; and
 - (b) A copy of those that have been obtained should be filed with the application; a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained.
- (iv) Exhibit 4 shall contain the expected cost to construct, operate and maintain the proposed facility.
- (4) Procedure for Expedited Review of New CPCN. — Upon the filing of an application appearing to meet the requirements set forth above, the Commission will process it as follows:
- (i) The Commission will issue an order requiring the applicant to publish notice of the application once a week for four successive weeks in a newspaper of general circulation in the county where the renewable energy facility is proposed to be constructed. The applicant shall be responsible for filing with the Commission an affidavit of publication after the final publication of the notice.
 - (ii) The Chief Clerk will deliver 2 copies of the application and the notice to the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration for distribution by the Coordinator to State agencies having an interest in the application. The Chief Clerk will request comments from state agencies within 20 days of delivering notice to the Clearinghouse Coordinator.
 - (iii) If a written complaint is filed with the Commission within 10 days after the last date of the publication of the notice, the Commission will

schedule a public hearing to determine whether a certificate should be awarded and will give reasonable notice of the time and place of the hearing to the applicant electric public utility and to each complaining party and will require the applicant to publish notice of the hearing in the newspaper in which the notice of the application was published. If no complaint is received within the time specified, the Commission may, upon its own initiative, order and schedule a hearing to determine whether a certificate should be awarded and, if the Commission orders a hearing upon its own initiative, it will require notice of the hearing to be published by the applicant in the newspaper in which the notice of the application was published.

- (iv) If no complaint is received within the time specified and the Commission does not order a hearing upon its own initiative, the Commission will enter an order awarding the CPCN requested in the application.
- (5) Procedure for Expedited Transfer of CPCN. — Where an electric public utility procures a renewable energy facility through a CPRE RFP Solicitation that will be owned and operated by the electric public utility and the renewable energy facility has been previously granted a CPCN by the Commission, the electric public utility shall apply to the Commission to assign or transfer the CPCN. The Commission shall issue an Order within 30 days of the electric public utility’s filing of the application, either approving the transfer of the CPCN or directing further review of the CPCN transfer application if circumstances so require.
 - (i) In support of its application to transfer the CPCN, the electric public utility shall:
 1. Describe the terms and conditions of the electric public utility’s procurement of the renewable energy facility under the CPRE Program; and
 2. Identify any significant changes to the information previously filed by the third party CPCN applicant that was reviewed and approved the Commission in granting the CPCN to be assigned or transferred.
 - (ii) All applications to transfer an existing CPCN shall be signed and verified by the electric public utility applicant. An application to transfer an existing CPCN shall also be verified by the entity which was initially granted the CPCN that it intends to transfer the CPCN to the electric public utility.
- (6) Procedure for Acquiring Project Development Assets. — Where an electric public utility purchases assets from a third party developer that has previously obtained a CPCN with the intent of further developing the project and submitting the renewable energy facility in to a future CPRE RFP Solicitation, the electric public utility shall provide notice to the Commission in the docket where the CPCN was granted that the electric public utility has acquired ownership of the project development assets, but shall not be required to submit an application for transfer of the CPCN unless and until

the project is selected through the CPRE process or the utility otherwise elects to proceed with construction of the renewable energy facility. An electric public utility proceeding under this section shall file an application and obtain Commission approval to transfer the CPCN prior to commencing the construction or operation of any renewable energy facility. No rights under the CPCN shall transfer to the electric public utility unless and until the Commission approves transfer of the CPCN.

- (1) CPRE Program Power Purchase Agreement Requirements
 - (1) At least 30 days prior to holding a CPRE RFP Solicitation, the Independent Evaluator shall post the pro forma contract to be utilized during the CPRE RFP Solicitation on the IE 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 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 redefine 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, and may also elect to solicit multiple products based upon differing rights to dispatch, operate, and control solicited renewable energy facilities through developing multiple pro forma contracts within a single CPRE RFP Solicitation.
 - (3) No later than 30 days after an electric public utility executes a power purchase agreement that is competitively procured pursuant to a CPRE RFP Solicitation, the electric public utility shall file the power purchase agreement with the Commission. 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 contract term of a power purchase agreement procured pursuant to this Rule, a generating 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 set pursuant to G.S. 62-156.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Additional Reply Comments and Amended Proposed Rule to Implement N.C. Gen. Stat. § 62-110.8, as filed in Docket No. E-100, Sub 150, was served electronically or via U.S. mail, first-class, postage prepaid, upon all parties of record.

This, the 22nd day of September, 2017.

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