

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-2, SUB 1268
DOCKET NO. E-7, SUB 1245**

In the Matter of:)	
Protest Related to Informational Filing by)	JOINT REPLY TO THE
Duke Energy Carolinas, LLC, and Duke)	PUBLIC STAFF RESPONSE
Energy Progress, LLC)	OF THE SIERRA CLUB,
)	SOUTHERN ALLIANCE
)	FOR CLEAN ENERGY, AND
)	THE NORTH CAROLINA
)	SUSTAINABLE ENERGY
)	ASSOCIATION

NOW COME the Sierra Club, the Southern Alliance for Clean Energy (“SACE”), and the North Carolina Sustainable Energy Association (“NCSEA”) (the Sierra Club, SACE, and NCSEA, collectively, “Joint Protestants”), by and through counsel, and respectfully submit this reply to the Public Staff Response filed in the above-captioned dockets on January 6, 2021 in response to the Commission’s December 23, 2020 Order Scheduling Oral Argument and Requiring Response by Public Staff (“Commission Order”).

In Paragraph 11 of the Public Staff Response, the Public Staff “respectfully requests that the Commission cancel the oral argument scheduled for 2:00 p.m. on January 13, 2021.” The Joint Protestants respectfully oppose this request and ask that the Commission proceed with the oral argument as scheduled.

The Public Staff’s conclusion that an oral argument is unwarranted is wrong for several reasons. First, the Public Staff assumes without justification that the “issue of whether the Commission’s preapproval of the Platform Agreement is required pursuant to either N.C.G.S. § 62-153 or the Regulatory Conditions before the Platform Agreement is

filed with FERC[,]” Commission Order at 2, does not implicate Regulatory Conditions 3.9(b) and 3.9(d), the applicability of which the Public Staff acknowledges is “an open question.” Public Staff Response at 7. This conclusion presupposes that Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (“the Companies”) will not execute the Southeast Energy Exchange Market (“SEEM”) Platform Agreement (“Platform Agreement”) until after the Platform Agreement has been approved by the Federal Energy Regulatory Commission (“FERC”). Nowhere in the Duke Energy Carolinas, LLC and Duke Energy Progress, LLC’s Joint Informational Filing, filed on December 11, 2020, do the Companies say that this is the case.¹ Since the Public Staff’s assumption lacks support, its admission “that the issue of whether the Platform Agreement is an affiliate agreement or otherwise requires Commission approval *prior to execution thereof* remains an open question[.]” undercuts its assertion that oral arguments are unnecessary. Public Staff Response at 7 (emphasis added). In sum, there are still unaddressed, time-sensitive legal questions regarding whether the Commission’s preapproval of the Platform Agreement is required pursuant to either N.C.G.S. § 62-153 or the Regulatory Conditions before the Platform Agreement is entered into and filed with the FERC.

Second, the Public Staff fails to acknowledge that the Platform Agreement does not constitute the entirety of the Companies’ FERC filing and therefore cannot, on its own, satisfy statutory and regulatory advanced notice requirements. The Federal Power

¹ To the contrary, the Companies’ Joint Response in Opposition to Protest, filed on December 21, 2020, appeared to suggest that DEC and DEP planned to enter into the SEEM Agreement and file with FERC concurrently on or around December 28, 2020. Joint Response at 10 (“The Protestants have failed to cite any Commission precedent, general statute, or Reg. Con. that authorizes the Commission to grant their requested relief of prohibiting the Companies from entering into the Platform Agreement and filing it at the FERC on or about December 28, 2020.”).

Act requires the Companies to amend their Open Access Transmission Tariffs (“OATT”). This is acknowledged in the Platform Agreement, which states that the SEEM Commencement Date will not occur until after “the issuance by FERC of an order or orders accepting without notification or condition all of the Jurisdictional Member Participating Transmission Provider’s Tariff Filings[,]” Platform Agreement at 8.4.2, yet the Companies’ filing with the Commission does not include their amended OATTs. As a result, the filing is incomplete and cannot satisfy the Regulatory Conditions’ advanced notice requirements.

Based on the foregoing, it is clear that there are still unaddressed legal questions regarding whether the Commission’s preapproval of the Platform Agreement is required pursuant to either N.C.G.S. § 62-153 or the Regulatory Conditions before the Platform Agreement is filed with the FERC. As such, the Commission should reject the Public Staff’s request to cancel the oral argument scheduled for 2:00 p.m. on January 13, 2021.

Respectfully submitted, this the 8th day of January, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing filing by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission with the party's consent.

This the 8th day of January, 2021.

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