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March 22, 2019

**VIA ELECTRONIC FILING**

Ms. M. Lynn Jarvis  
Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699-4300

**RE: Duke Energy Progress, LLC's and Duke Energy Carolinas, LLC's  
Comments  
Docket Nos. E-2, Sub 1159 and E-7, Sub 1156**

Dear Ms. Jarvis:

Enclosed for filing with the North Carolina Utilities Commission please find Duke Energy Progress, LLC's and Duke Energy Carolinas, LLC's Comments in the above referenced dockets.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jack E. Jirak', written over a horizontal line.

Jack E. Jirak

Enclosure

cc: Parties of Record

OFFICIAL COPY

Mar 22 2019

## BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1159

DOCKET NO. E-7, SUB 1156

|                               |   |                         |
|-------------------------------|---|-------------------------|
| In the Matter of              | ) |                         |
| Joint Petition of Duke Energy | ) |                         |
| Carolinas, LLC, and Duke      | ) | COMMENTS OF DUKE ENERGY |
| Energy Progress, LLC, for     | ) | PROGRESS, LLC AND DUKE  |
| Approval of Competitive       | ) | ENERGY CAROLINAS, LLC   |
| Procurement of Renewable      | ) |                         |
| Energy Program                | ) |                         |

**I. INTRODUCTION**

Pursuant to North Carolina Utilities Commission (“NCUC” or “Commission”) Rule R8-71(g), Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP” and together with DEC, the “Companies” or “Duke”) jointly filed their Competitive Procurement of Renewable Energy (“CPRE”) Program Plan (collectively the “CPRE Program Plan”) on September 5, 2018 as part of the Companies’ 2018 Biennial Integrated Resource Plan filings in Docket No. E-100, Sub 157. The Commission’s December 17, 2018 *Order Requiring Interim CPRE Program Reports, Allowing Interim Implementation of CPRE Program Plans and Establishing Schedule for Filing of Comments*<sup>1</sup> (“Order Requesting Comments”) established a process for parties to file comments on the Companies’ CPRE Program Plans (as modified by the February 1, 2019 Order Granting Extension of Time in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156). The Companies hereby jointly file these comments (“Comments”) in response to the Order Requesting Comments.

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<sup>1</sup> *Order Requiring Interim CPRE Program Reports, Allowing Interim Implementation of CPRE Program Plans and Establishing Schedule for Filing of Comments*, Docket Nos. E-100, Sub 157, E-2, Sub 1159, and E-7, Sub 1156 (December 17, 2018)

As the Commission is well aware, the Companies' CPRE Tranche 1 request for proposal ("RFP") solicitation was initiated in July 2018 by the Independent Administrator of the CPRE Program, Accion Group, LLC ("IA"). The Tranche 1 RFP is currently in Step Two of the CPRE evaluation and selection process established by Commission Rule R8-71(f)(3). Consistent with the Commission's direction in the Order Requesting Comments, the IA has filed two of the four interim reports with the Commission regarding its progress in administering the Tranche 1 RFP. Final results of the Tranche 1 RFP are anticipated to be released on or about April 1, 2019. After conclusion of the contracting period for Tranche 1, Duke and the IA will also be filing a report with the Commission regarding the Tranche 1 RFP as directed by the Commission in its June 25, 2018 *Order Denying Joint Motion, Approving Pro Forma PPA and Providing Other Relief* ("Order Approving PPA").<sup>2</sup>

The IA also recently hosted two meetings with the Companies, the Public Staff-North Carolina Utilities Commission ("Public Staff") and interested market participant stakeholders ("Stakeholder Meetings") and received feedback on various CPRE issues. On March 15, 2019, the IA filed a report with the Commission providing an overview of the Stakeholder Meetings ("Stakeholder Meeting Report").

Unless otherwise ordered by the Commission, the Companies plan to continue to implement the CPRE Program Plan and, as part of that process, the Companies and the IA are targeting to initiate the CPRE pre-solicitation comment period late second quarter 2019.

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<sup>2</sup> *Order Denying Joint Motion, Approving Pro Forma PPA and Providing Other Relief*, Docket Nos. E-2, Sub 1159, and E-7, Sub 1156 (June 25, 2018)

## II. COMMENTS

### a. CPRE Program Plan

The Companies continue to support the CPRE Program Plan as filed in Docket No. E-100, Sub 157, and believe that it sets forth a reasonable plan for implementing the CPRE Program procurement process in accordance with N.C. Gen. Stat. § 62-110.8 and Commission Rule R8-71. The timeframes and allocation of CPRE Program procurement, as identified in the CPRE Program Plan, are reasonable and should be accepted by the Commission.

The CPRE Tranche 1 results, which are expected to be announced on or about April 1, 2019, will provide a strong indication regarding whether the CPRE procurement process is achieving the statutory objectives. If Tranche 1 satisfies the procurement targets, then such results would provide strong evidence that the CPRE Program is being reasonably implemented. The Companies and the IA will provide their Tranche 1 final report promptly after the completion of the Tranche 1 contracting period and the Companies will provide further updates in their September 2019 CPRE Program Plan filing after the issuance of Tranche 2.

Importantly, the Companies note that because Tranche 1 has not concluded and in light of the communication restrictions contained in Commission Rule R8-71, it is not possible for the Companies or the Commission to fully assess certain potential changes to Tranche 2. Specifically, only the IA and the Companies' T&D Sub-Team have been involved in the Step 2 evaluation process, and therefore details regarding the implementation of the allocation of grid upgrade costs (if applicable) are not available at this time. Simply stated, the Companies are not in a position to determine whether the Tranche 1 grid upgrade allocation approach was effective until the IA and the T&D Sub-Team are able to provide insight into their actual experience. Therefore, the

Companies believe that a final assessment of the efficacy of the grid upgrade allocation process, along with several other issues, is premature at this time.

The Companies note that the majority of the discussion during the Stakeholder Meetings focused on particular aspects of the Tranche II RFP and not specifically on the CPRE Program Plan. The Companies, along with the IA, have reviewed these comments, and will take them into consideration in developing the Tranche 2 RFP Guidelines, CPRE power purchase agreement (“PPA”), and other commercial documents. In these Comments, the Companies are specifically responding to the Commission’s request for comments regarding the CPRE Program Plan but have also included some high-level responses to certain of the issues raised in the Stakeholder Meetings.

As noted above, the Tranche 2 RFP pre-solicitation process prescribed by Commission Rule R8-71(f)(1) is currently scheduled to commence in the second quarter of 2019. This pre-solicitation process will provide yet another forum for market participants to review the CPRE RFP Guidelines, including the RFP procedures, evaluation factors, credit and security obligations, the pro forma PPA, and the administratively established avoided cost against which proposals will be evaluated. As is required by the R8-71(f)(1) and as occurred in Tranche 1, the IA will oversee this pre-solicitation comment period and provide a report concerning any recommended changes based on the feedback from the Market Participants.

Therefore, the Companies do not believe that this comment period is the appropriate forum for in-depth consideration of issues beyond the CPRE Program Plan and those expressly identified by the Commission. However, to the extent deemed necessary by the Commission, the Companies would be willing to provide responses to any particular Tranche 2 recommendations raised by other parties in this comment process.

**b. Responses to Commission Questions Regarding CPRE Bid Structuring to Exclude Grid Upgrade Costs**

The Commission's October 5, 2018 *Order Approving Interim Modifications to North Carolina Interconnection Procedures for Tranche 1* ("Interim NCIP Modifications Order") approved the Companies' requested modifications to the North Carolina Interconnection Procedures ("NC Procedures") to facilitate a grouping study for purposes of implementing the Tranche 1 RFP evaluation process.<sup>3</sup> The grouping study evaluation process and assessment of grid upgrade costs approved in the *Interim NCIP Modifications Order* aligned with the Tranche 1 RFP guidelines, providing that market participants should bid their projects into the RFP without consideration of distribution and transmission upgrades beyond the point of interconnection ("Grid Upgrades"). However, the Commission expressed interest in further considering the issue of cost allocation of Grid Upgrades for future tranches of CPRE and directed the Companies and other parties to provide comments regarding whether the Commission should:

- 1) Change the CPRE program plan to remove the ability of Duke to recover grid upgrade costs in base rates;
- 2) Change the CPRE program plan to require the initial bid to contain all of the Interconnection Customer's costs;
- 3) Revise the CPRE process to allow competitive bidders to refresh their bids based upon the assessment of grid upgrades identified in Step Two of the CPRE RFP bid evaluation process; and
- 4) Explore options for Duke to more specifically direct generators to locations on the system that will not involve major network upgrades.<sup>4</sup>

As discussed above, it is not possible to fully assess the first three questions due to the fact that Tranche 1 has not been completed and only the T&D Sub-Team and the IA have been involved in the Step 2 evaluation. Duke continues to believe that the structure under which Grid Upgrade

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<sup>3</sup> *Order Approving Interim Modifications to North Carolina Interconnection Procedures for Tranche 1*, Docket Nos. E-100, Sub 101, E-2, Sub 1159 and E-7, Sub 1156 (Oct. 5, 2019).

<sup>4</sup> *Interim NCIP Modifications Order*, at 12-13.

costs would be recovered in base rates rather than through the CPRE rider (as a part of the PPA payment) is a reasonable approach but also believes that a differing approach may be appropriate based on the actual experience of implementing the Step 2 evaluation in Tranche 1.

As an initial matter, the question to be answered is not whether customers will bear the cost of Grid Upgrades. Instead, the question is whether customers will pay those costs indirectly through recovery of PPA payments or directly through rate base recovery. Under either scenario customers will ultimately pay for the Grid Upgrades and in either scenario the total cost must meet the avoided cost cap specified in N.C. Gen. Stat. § 62-110.8(b)(2). If the CPRE bidders are required to incorporate Grid Upgrade costs into their PPA bids, then the PPA rates will be proportionately higher as a result to allow the PPA provider to recover those costs. If Duke is permitted to recover Grid Upgrade cost through rate base cost treatment, then it is the Companies' expectation that PPA cost will be proportionally lower as a result and, instead, the cost of the Grid Upgrades will be included in the Companies' rate base.

With respect to the Commission's third issue above, if the Commission were to conclude that the Tranche 1 RFP structure for segregating Grid Upgrades for recovery by DEC or DEP is not appropriate for future tranches, then it would be necessary to allow CPRE bidders to update bid prices during the evaluation process once the IA and Companies' T&D Sub-Team determine the cost of Grid Upgrades for the most cost-effective projects. The Companies' assessment of the Grid Upgrades for CPRE participating projects will not be made until completion of the grouping study and therefore, it is impossible for CPRE bidders to incorporate such costs into their bids until such study is completed. In other words, it is not possible for a CPRE bidder to include the Grid Upgrade costs in its initial bid because those costs will not be assessed until after bid submission. And a CPRE bidder does not have the ability to even make a projection regarding a potential cost

for Grid Upgrades, particularly given that such costs can range from zero (where no Grid Upgrades are necessary) to millions of dollars (where substantial Grid Upgrades are required).

In the event that the Commission elects to adopt a structure in which Grid Upgrade costs are recovered through the PPA payment, Duke recommends that only competitive tier projects that have been assigned Grid Upgrades be permitted to update bid prices. Allowing all CPRE bidders to update pricing during the Step 2 evaluation process would introduce a significant degree of complexity, in that projects that are outside of the competitive tier could be moved back into the competitive tier if re-priced, which would then require Duke to re-perform the Step 2 evaluation and could result in completely different results, resulting in the need to provide additional re-pricing opportunities. This iterative process could substantially extend the length of time needed to complete Step 2 of the evaluation process.

Finally, with respect to the fourth and final issue identified by the Commission, Duke will update and enhance its grid locational guidance like that provided in Tranche 1, but does not believe it is appropriate to more specifically direct generators to specific locations on the grid as this would deny some projects the opportunity to participate and potentially eliminate attractive proposals from consideration in the RFP.

**c. Other Issues Raised by Market Participant During Stakeholder Meeting**

In addition to the four issues identified by the Commission, the Companies are providing limited additional comments concerning issues raised by market participants during the recent Stakeholder Meetings. The Companies found these IA-led discussions to generally be helpful although in some cases, market participants were simply advocating for positions already considered and resolved in Tranche 1.



*i. Grouping Study*

In its Interim NCIP Modifications Order, the Commission approved modifications to the NC Procedures that provided for a CPRE-specific grouping study. As discussed above, Tranche 1 is still underway and more information will be available once the final Tranche 1 results are available and the final report is issued. Nevertheless, the Companies believe that a CPRE-grouping study process approved in the Interim NCIP Modifications Order should be utilized for Tranche 2. The Companies have committed to pursuing more comprehensive queue reform that would allow for queue-wide grouping studies. However, such reforms, if ultimately adopted, will not be in place in time to be used for Tranche 2 due to the complexity of the approval process for such a change. Finally, for the avoidance of doubt, the “Late-Stage” concept will not be applicable to future Tranches.<sup>5</sup>

*ii. Energy Storage*

In Tranche 1, the Companies accepted solar and co-located storage proposals, subject to certain technical requirements. In addition, the pro forma PPA approved by the Commission included energy storage protocols designed to ensure that the batteries were not operated in a manner that would be detrimental to the Companies’ capabilities to plan and dispatch their systems.

Duke fully supports allowing solar and co-located energy storage resources in Tranche 2. As was required in Tranche 1, storage equipment will be required to be located on the DC side of

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<sup>5</sup> The Companies’ CPRE Program Plan was imprecise on this point and could be interpreted to contemplate Late-Stage proposals in Tranches 2 and 3. However, the Companies’ earlier filings in Docket E-100, Sub 101 make clear that the Late-Stage concept was only applicable in Tranche 1 and the Commission’s Interim NCIP Modifications Order also makes clear Late Stage concept would be applicable to Tranche 1 only. *See* Interim NCIP Modifications Order, at 8 (“Further, Duke’s proposal to allow late-stage proposals to bid into Tranche 1 and have the option of retaining their queue position and paying their own system upgrade costs or joining the utility-sponsored queue number and to potentially share in an imputed allocation of system upgrade costs is reasonable. The Commission allows for this temporary one-time modification to the NCIP via this order....”)

the inverter and charged exclusively by the co-located renewable facility and under the operational control of the seller. Duke is continuing to assess the storage protocols included in Tranche 1, especially with respect to ramping limitations and scheduling. Given the potential for changes in pricing periods that may better align with the operational needs of Duke, it may be possible to reduce some of the operational constraints and limitations that were included in Tranche 1. The Company anticipates including any such modifications in its proposed Tranche 2 PPA to be issued in as part of the pre-solicitation process.

During the Stakeholder Meeting, there was general discussion regarding the other services that could potentially be provided by energy storage devices. Duke does not believe that payment for services other than energy and capacity are appropriate at this time in CPRE for the following primary reasons. First, HB 589 only contemplates the procurement of energy and capacity.<sup>6</sup> Second, even if the statute was read to allow for the procurement of other services, it is not clear how Duke would be able to assess the value of such services within the context of its obligation to procure only resources below the administratively-established avoided costs.<sup>7</sup> Third, many of the other services that energy storage can offer are incompatible with the provision of energy and capacity. Fourth, procurement of additional services would require a wholly new contractual arrangement, which would, in turn, require an extensive and lengthy development and comment process.

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<sup>6</sup> N.C. Gen. Stat. § 62-110.8 (“Each electric public utility shall file for Commission approval a program for the competitive procurement of energy and capacity from renewable energy facilities...”).

<sup>7</sup> N.C. Gen. Stat. § 62-110.8(b)(2) (“To ensure the cost-effectiveness of procured new renewable energy resources, each public utility's procurement obligation shall be capped by the public utility's current forecast of its avoided cost calculated over the term of the power purchase agreement.”)

### *iii. PPA-Pre-COD Performance Assurance*

Duke received feedback during the Stakeholder Meetings that the required Pre-COD Performance Assurance for the CPRE PPA and the associated timing should match what has historically been required in the context of negotiated qualifying facility (“QF”) PPAs. An important consideration in establishing the credit security required to provide adequate assurance of performance is the potential financial harm associated with a particular transaction. The amount of required performance assurance should correlate to the harm that would be suffered in the event of non-performance. Because the magnitude of potential financial harm to customers resulting from non-performance in CPRE is more substantial than in the context of a negotiated QF PPA, it is appropriate that the performance assurance requirements be more substantial.

More specifically, in establishing the Pre-COD Performance Assurance for the CPRE PPA, Duke took into consideration the unique risk of harm to customers that would result from a CPRE winning project failing to achieve commercial operation. CPRE is a competitive procurement process that is anticipated to deliver prices well below the administratively-established avoided cost rates. In contrast to a negotiated QF contract, in which the price offered is at the avoided cost rate, a CPRE proposal must be below avoided cost and a replacement facility would not necessarily be able to be procured at the same price in subsequent rounds of the CPRE Program. In addition, the CPRE Program is limited to a 45-month duration, making it imperative that the proposals that are selected in each Tranche of CPRE be assured of reaching commercial operation in order to meet the overall CPRE program targets. Finally, Duke believes that the period of time with the highest risk of default is during the project development and construction period. As a result, Duke established 4% of total projected revenue as the Pre-COD Performance Assurance amount. Duke believes this is a commercially reasonable requirement, taking into account the strong incentive

this provides for completion and the risk of financial harm in the event of non-performance, as well as observed practices in similar procurement initiatives conducted by other utilities and general market requirements for long term commodity transactions.

Duke has also heard concerns regarding the amount of time allowed from the Effective Date (*i.e.*, the date the PPA is executed) to post the Pre-COD Performance Assurance. In the case of the CPRE Program, winning proposals will already have established a Proposal Security as required in the RFP, and the pre-COD security, once posted, will replace the Proposal Security. For the reasons stated above regarding the need for substantial and timely Pre-COD Performance Assurance, Duke believes that it is appropriate to require transition from the Proposal Security to the Pre-COD Performance Assurance as soon as the PPA is executed. It should also be noted that the winning proposals will have up to 60 days to finalize and execute the PPA, which provides sufficient time for a winning bidder to arrange for the required security. Nevertheless, recognizing that Duke and the winning bidder may need additional time once the PPA is executed to confirm that the security meets the requirements of the PPA, Duke is willing to extend the current 5 business day requirement in section 5.1 of the RPPA to 10 business days.

#### *iv. Curtailment*

Duke also received feedback regarding the curtailment provisions in the Tranche 1 PPA. As background, the CPRE Program is designed to procure energy and capacity from renewable resources that the Companies are able to dispatch, operate, and control in the same manner as the utility's own generating resources.<sup>8</sup> This right is critical in light of increasing levels of solar

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<sup>8</sup> See N.C. Gen. Stat. 62-110.8(b) ("...procurement of renewable energy capacity to be supplied by renewable energy facilities through...the purchase of renewable energy, capacity, and environmental and renewable attributes from renewable energy facilities owned and operated by third parties that commit to allow 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.").

penetration across the Companies' system that may produce power during times at which no energy is needed. To effectuate the statutory directive, the Tranche 1 PPA provided for broad curtailment rights but limited the extent of such curtailment rights. Specifically, Section 8.9 of the pro forma PPA used in the Tranche 1 solicitation specifies that DEC is permitted to economically curtail CPRE PPA facilities in DEC up to 5% of the facility's expected annual output, while DEP is permitted to economically curtail the facility's expected annual output up to 10%. Duke is in the process of assessing the appropriate PPA structure and curtailment limits to apply in Tranche 2. This information will be included in the updated pro forma CPRE PPA and will be made available for comments during the pre-solicitation process.

Duke does not support paying for curtailed energy as part of the ongoing contractual relationship under the PPA. If there is a price associated with curtailment, then Duke will not necessarily be able to control these units in the same manner as the Companies' own generating units due to such price signal. In the interest of moving expeditiously into the next Tranche of CPRE, Duke believes that the approach to providing DEC and DEP with clear contractual rights to economic dispatch and curtailment employed in Tranche 1 in which no payment is made for curtailed energy up to the allowed dispatch control entitlement should again be utilized in Tranche 2.

#### *v. Avoided Cost Docket*

Another issue discussed during the Stakeholder Meeting is how the timing of the current biennial avoided cost docket in E-100 Sub 158 will align with initiation of Tranche 2 RFP solicitation. This issue is of importance to the Companies, the Public Staff and market participants because the CPRE Program statute provides that the cost-effectiveness cap on bids is to be based

upon the “public utility's current forecast of its avoided cost [and] shall be consistent with the Commission-approved avoided cost methodology.”<sup>9</sup>

The IA proposed a potential approach in which the Tranche 2 pre-solicitation documents would be released with all details finalized, except for the final avoided cost pricing periods and rates. This would allow for the pre-solicitation period to proceed in accordance with Commission Rule R8-71 (f)(1)(ii) without delay and would allow Duke and the IA to obtain stakeholder input regarding the CPRE guidelines, evaluation requirements and CPRE pro forma PPA, during the pre-solicitation process and to finalize all aspects of the Tranche 2 RFP with the exception of the 20-year avoided cost threshold to be used for assessing cost effectiveness against the utility's avoided cost. This approach would also allow market participants to begin development of proposals immediately. Upon the Commission's issuance of a final order in Docket No. E-100 Sub 158, Duke and the IA would then evaluate whether any changes to the Companies' 20-year forecasted of its avoided cost to be used for evaluating cost effectiveness within the CPRE Program are required based upon the Commission's Order and would then proceed with finalizing the RFP document, issue the final RFP and formally open the bidding window.<sup>10</sup>

Market participants generally commented that proceeding as expeditiously as practical toward Tranche 2 was preferred. Duke agrees with market participants that proceeding as expeditiously as practical with Tranche 2 is the preferred approach. In this case, it may be preferred to establish a “drop dead” date for the issuance of a final order in E-100 Sub 158. If the order has been issued prior to that date, the RFP will proceed using the avoided cost inputs and

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<sup>9</sup> See N.C. Gen. Stat. 62-156(b)(2).

<sup>10</sup> The Companies have also proposed an Integration Services Charge in Docket No. E-100, Sub 158 that is independent of the Companies' avoided capacity and energy cost calculations and would be applied to new generators coming on to the system (including resources procured through CPRE). If approved by the Commission, application of this charge to winning CPRE proposals would be separate and apart from the Companies' cost-effectiveness calculation of forecasted avoided costs based upon the avoided cost methodology most recently approved by the Commission.

methodology approved by the Commission in Sub 158 for establishing the cap on cost-effectiveness.<sup>11</sup> If not, the Companies will determine the cap using the same inputs and methodology that the Companies relied upon for Tranche 1, as approved by the Commission in E-100, Sub 148. Duke also plans to further discuss these timing issues with the Public Staff and may seek further guidance from the Commission prior to issuing the Tranche 2 RFP.

In addition to the timing challenge presented by the ongoing proceeding to review the Companies' avoided cost rate inputs and methodology, the resolution of the treatment of Grid Upgrades and associated impacts on the RFP design and evaluation process also has the potential to delay the release of the Tranche 2 RFP. Duke believes that it is imperative to proceed with Tranche 2 on a schedule that enables proposals to be submitted in 2019.

***vi. Approval of Asset Acquisition Documents***

During the Stakeholder Meetings, a number of parties reiterated the desire for the Commission to approve the various asset acquisition contracts. The Commission's Order Approving PPA was unmistakably clear on this issue, stating as follows:

Fourth, with regard to the Self-developed and Asset Acquisition Contracts, the Commission agrees with Duke and the Public Staff that these contracts are beyond the express scope of G.S. 62-110.8(b)(3). For the same reasons that Duke and the Public Staff articulated in their filings, the Commission concludes that, for the purposes of G.S. 62-110.8(b)(3), the "pro forma contract" that Duke is required to submit for Commission approval and make publicly available at least 30 days prior to each competitive procurement solicitation is the contract for the sale of the electric output from a renewable energy facility that is the subject of a proposal submitted in a CPRE RFP Solicitation, i.e., the pro forma CPRE PPA that Duke filed as Attachment A to its June 8 filing. The Commission also agrees with Duke's argument that the pre-solicitation information sharing process administered by the Independent Administrator provides a reasonable opportunity to review and provide feedback on the Self-developed and Asset Acquisition Contracts, and that market participants that find the Self-developed and Asset Acquisition Contracts unworkable retain the option of submitting a proposal under the PPA option.

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<sup>11</sup> The Companies interpret the term "methodology" as used in N.C. Gen. Stat. 62-156(b)(2) to generally align with the meaning of the term as used in the Commission's March 6, 2016 *Order on Clarification* issued in Docket No. E-100, Sub 140.

Based on the clarity of the Commission's conclusion and for all of the reasons previously articulated the Companies' various filings on the matter, the Companies see no value in litigating this issue for a third time.<sup>12</sup>

During the stakeholder meetings, particular parties argued that the fact that the Asset Acquisition Contracts are subject to further negotiation after announcement of winning bids creates an "unlevel playing field." This view, however, was based on a fundamental misunderstanding of the RFP process for Asset Acquisition projects. As described in the Tranche 1 RFP, the DEC/DEP Proposal Team was required to convert any Asset Acquisition Proposal that it desired to sponsor into a fixed, levelized \$/MWh price, and it was that \$/MWh price that was evaluated and ranked by the IA in Step 1. The DEC/DEP Proposal Team was therefore obligated to that price and would not have any subsequent right to adjust the \$/MWh price pending the outcome of the asset acquisition in the event that such project was selected as a winning bidder in the RFP.

***vii. Post-Term Revenue Assumptions***

Similar to the Asset Acquisition issue, one stakeholder raised another issue that has previously been settled by the Commission. Specifically, such stakeholder restated their belief that the Companies should be required to disclose their specific post-term revenue assumptions made by the Companies in connection with any proposals. The Commission has previously denied this request, finding that the Companies' proposed approach was reasonable and the Companies once again see no value in re-litigating the issues.<sup>13</sup>

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<sup>12</sup> Order Approving CPRE PPA, at 6-7. The Commission also previously declined to adopt this recommendation in its *Order Modifying and Approving Joint CPRE Program*, Docket Nos. E-2, Sub 1159, and E-7, Sub 1156 (February 21, 2018) ("Order Approving CPRE Program").

<sup>13</sup> See Order Approving CPRE Program, at 19.

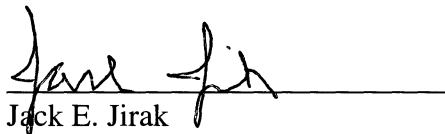


The Companies also observe that Commission Rule R8-71(l) states that “[i]f the electric public utility’s *initial proposal includes assumptions about pricing after the initial term*, such information shall be made available to the Independent Administrator and all participants.” (emphasis added). To be clear, the CPRE proposal submitted to the IA for evaluation does not contain or include any assumptions about pricing after the initial term, and the IA’s conclusions are not impacted in any way by assumptions about pricing beyond the initial term. Instead, the IA evaluates solely the value of each proposal over the 20 year term of the procurement. Simply stated, the Companies’ proposals do not include any assumptions about pricing after the initial term and therefore there is no relevant information to be provided. Notably, no market participants support requiring all proposal sponsors, both utility and third parties, to include post-term assumptions in their proposals.

### III. CONCLUSION

In conclusion, the Company believes that the Commission should accept the Companies’ CPRE Program Plan and allow the pre-solicitation process to proceed as contemplated by Commission Rule R8-71(f)(1), which is the appropriate forum for consideration of RFP-specific issues. Furthermore, the final Tranche 1 results will be available at that time and will thus provide more guidance regarding the overall RFP structure, including the treatment of Grid Upgrade costs. To the extent that the Commission elects to consider any RFP-specific modifications, the Companies request the opportunity to respond to any recommendations made by market participants in this comment period.

Respectfully submitted this 22<sup>nd</sup> day of March, 2019.



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*ATTORNEYS FOR DUKE ENERGY  
CAROLINAS, LLC AND DUKE ENERGY,  
PROGRESS, LLC*

**CERTIFICATE OF SERVICE**

I certify that a copy of Duke Energy Progress, LLC's and Duke Energy Carolinas, LLC's Comments, in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid to parties of record.

This the 22<sup>nd</sup> day of March, 2019.

  
\_\_\_\_\_  
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