

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-2, SUB 1159
DOCKET NO. E-7, SUB 1156

In the Matter of:) NCSEA’S REPLY
Petition for Approval of Competitive) COMMENTS
Procurement of Renewable Energy)
Program to Implement N.C. Gen.)
Stat. § 62-110.8)

NCSEA’S REPLY COMMENTS

Pursuant to North Carolina Utilities Commission’s (“Commission”) June 2, 2021 *Order Requesting Update* (“Order”) issued in the above-captioned dockets, the North Carolina Sustainable Energy Association (“NCSEA”) offers the following reply comments regarding the issues prompted by the Commission and responded to in initial comments by the North Carolina-Public Staff (“Public Staff”), the Carolinas Clean Energy Business Association (“CCEBA”), Duke Energy Carolinas, LLC (“DEC”), and Duke Energy Progress, LLC (“DEP”) (DEC and DEP, collectively, “Duke”).

NCSEA recognizes that there are two major issues raised by the Order and the respective initial comments: (1) how much additional solar should be procured within the Competitive Procurement of Renewable Energy (“CPRE”) program and/or how should that program be modified to allow for further procurement; and (2) when must the procurement be completed, given that the CPRE’s initial 45-month term will be completed on November 21, 2021 based upon the date of Commission approval of the CPRE program.¹ As set forth below, NCSEA believes that the Commission should approve a transition from the CPRE’s initial 45-month term into a regular CPRE procurement schedule as set forth in the Duke

¹ See, *Order Modifying and Approving Joint CPRE Program* (February 21, 2018).

integrated resource plans that will allow the Duke utilities to follow the underlying rules and statutes.

I. PROCUREMENT

Duke and the Public Staff both argue that the outstanding amount of required procurement under N.C. Gen. Stat. § 62-110.8 is 112 megawatts (“MW”).² NCSEA does not necessarily dispute that calculation, but NCSEA is concerned that the calculation includes the assumption that 473 MW of “Potential Transition MW” will be procured by Duke.³ The Public Staff explains that the Potential Transition MW assumed by Duke is based “upon the status of projects within its interconnection queue and historical materialization rates.”⁴ The materialization rate is explained in the Public Staff Initial Comments footnote 2:

The materialization rate is the ratio of amount of capacity that is actually interconnected under the North Carolina Interconnection Procedures to the amount of capacity that enters the queue. It is an inverse measure of the amount of capacity that withdraws from the queue. For projects that have a Legally Enforceable Obligation but no Power Purchase Agreement or Interconnection Agreement, Duke estimates approximately 30% will meet the definition of Transition MW by November 2021.⁵

Duke confirms that the possible remaining procurement amount is between 112 MW, on the low end and assuming procurement of all of the Potential Transition MW, and 585 MW, which would mean that none of the Potential Transition MW materialized.⁶

NCSEA does not dispute the numbers presented by Duke and the Public Staff. Further, while NCSEA has not analyzed Duke’s historical materialization rates or the status

² *Initial Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC* (“Duke Initial Comments”), p. 4; *Initial Comments of the Public Staff* (“Public Staff Initial Comments”), p. 3.

³ Duke Initial Comments, p. 4; Public Staff Initial Comments, pp. 2-3.

⁴ Public Staff Initial Comments, p. 3.

⁵ Public Staff Initial Comments, note 2.

⁶ Duke Initial Comments, p. 4.

of projects within the interconnection queue, NCSEA has no reason to infer that these assumptions are inaccurate. However, NCSEA does question whether the reduction of procurement by assumed materialization rates is permissible under N.C. Gen. Stat. § 62-110.8. N.C. Gen. Stat. § 62-110.8(b)(1) states, in pertinent part:

If prior to the end of the initial 45-month competitive procurement period the public utilities subject to this section *have executed power purchase agreements and interconnection agreements* for renewable energy capacity within their balancing authority areas that are not subject to economic dispatch or curtailment and were not procured pursuant to G.S. 62-159.2 having an aggregate capacity in excess of 3,500 megawatts (MW), the Commission shall reduce the competitive procurement aggregate amount by the amount of such exceedance. If the aggregate capacity of such renewable energy facilities is less than 3,500 megawatts (MW) at the end of the initial 45-month competitive procurement period, the Commission shall require the electric public utilities to conduct an additional competitive procurement in the amount of such deficit.

(emphasis added).

Under this subsection, the statute requires that the transition MW offset of the CPRE requirement be under contract *prior* to the end of the 45-month period. However, Duke and the Public Staff's propose to reduce the statutorily-required 2,660 MW by the Potential Transition MW, which includes projects where Power Purchase Agreements ("PPA") or Interconnection Agreements ("IA") have not been executed.⁷ NCSEA believes that N.C. Gen. Stat. § 62-110.8(b)(1) requires that the Tranche 3 procurement include any procurement amounts for which PPAs and IAs have not yet been executed prior to November 21, 2021. This means that the Potential Transition MW projects cannot count against the CPRE Tranche 3 procurement until their PPAs and IAs have been executed.

NCSEA agrees with the Public Staff's alternative position that it is in the public interest to modify the CPRE Program Procurement Period pursuant to N.C. Gen. Stat. §

⁷ See, Public Staff Initial Comments, fn. 2.

110.8(h)(5) and Rule R8-71(i)(2) to provide Duke the flexibility necessary to meet the statutory procurement target.⁸ However, NCSEA does not believe the statute contemplates that the CPRE procurement be adjusted based on projects that have not executed power purchase agreements and interconnection agreements.

Instead, NCSEA believes that a CPRE Tranche 3 window should open immediately, or as soon as possible, with the entirety of the remaining 585 MW subject to CPRE procurement. To the extent that the remaining Potential Transition MW is *also* procured, there is no risk to ratepayers and Duke still falls within the requirements of the law. Notably, there is no cap to the CPRE program⁹ and it is clearly contemplated that the competitive procurement process continue beyond the initial CPRE Program.¹⁰ In Duke's most recent approved integrated resource plan update, 4,142 MW of solar was listed as a needed resource across the two Duke territories in 2020 alone, and, for each year after that through 2034, Duke estimated an even higher yearly solar procurement capacity MW number.¹¹ Further, in Duke's 2020 integrated resource plans, Duke presented 6 scenarios each with *at least* 8,650 MW, and as much as 16,400 MW, as needed solar generation procurement across the Duke territories through 2035.¹² Therefore, both by the most recently approved integrated resource plans and the currently pending Duke integrated

⁸ Public Staff Initial Comments, pp. 4-5.

⁹ See generally N.C. Gen. Stat. § 110.8.

¹⁰ "In addition, at the termination of the initial competitive procurement period of 45 months, the offering of a new renewable energy resources competitive procurement and the amount to be procured shall be determined by the Commission, based on a showing of need evidenced by the electric public utility's most recent biennial integrated resource plan or annual update approved by the Commission pursuant to G.S. 62-110.1(c)." N.C. Gen. Stat. § 62-110.8(a).

¹¹ *Duke Energy Carolinas Integrated Resource Plan Update Report*, NCUC Docket No. E-100 Sub 157 (September 3, 2019), p.45; *Duke Energy Progress Resource Plan Update Report*, NCUC Docket No. E-100, Sub 157 (September 3, 2019), p. 49.

¹² *Duke Energy Carolinas, LLC 2020 Integrated Resource Plan*, NCUC Docket No. E-100 Sub 165 (September 1, 2020), p. 16: "DEC / DEP COMBINED SYSTEM PORTFOLIO RESULTS TABLE".

resource plans, Duke intends to procure solar beyond the requirements of the CPRE program and any such procurement amount that causes the Transition MW plus the CPRE total procurement required by statute will not negatively impact rate payers or otherwise change the calculus on Duke's generation planning and needs.

NCSEA agrees with the Public Staff's that Tranche 3 could combine the remaining CPRE-mandated solar and new solar based on Duke's IRPs. Specifically, the Public Staff states that while the language of the statute appears to contemplate a competitive procurement of renewable energy resources based on Duke's IRPs in addition to a tranche for the unawarded portion of the initial competitive procurement capacity target, nothing in the statute suggests that these tranches cannot be combined into the same procurement.¹³ NCSEA sees no reason that this next procurement tranche could not begin immediately.

II. TIMING

NCSEA does not necessarily disagree with the position of the Public Staff that a reasonable allocation has been achieved and, while Duke is required to procure the statutorily-required CPRE amount, an additional procurement outside the CPRE's initial 45-month program procurement period would satisfy that requirement.¹⁴ However, NCSEA also recognizes there are a number of competing interests that may affect the future of the CPRE and the next CPRE tranche: the pending Duke IRPs which are ongoing and with a pending request for an evidentiary hearing; the impact on North Carolina by the South Carolina Public Service Commission's recent rejection of Duke's IRPs¹⁵ and Duke's

¹³ Public Staff Initial Comments, p. 5.

¹⁴ Public Staff Initial Comments, p. 4.

¹⁵ See <https://www.utilitydive.com/news/south-carolina-regulators-reject-dukes-long-term-power-plant-construction/602105/>

requirement to file modified plans; and, finally, pending energy legislation at the North Carolina General Assembly.

While NCSEA does not take a position on the viability or future of these competing interests in this docket, it recognizes the value of certainty. While the Public Staff's position that the CPRE requirements can be modified as necessary under N.C. Gen Stat. § 62-110.8(h)(5) allows some leeway, NCSEA does not believe that the General Assembly intended that the CPRE program be modified to materially alter the transition and CPRE procurement requirements and, therefore, NCSEA believes that Duke is *required* to have the transition solar projects under contract via PPA and IA prior to November 21, 2021. This may yet happen, but given the slow-moving nature of the CPRE tranche process, NCSEA believes it would be best practice to begin CPRE Tranche 3 as soon as possible and for the total amount of unprocured capacity as of the date of the Commission's order on this matter, inclusive of any Transition MW not yet under contract. Thereafter, pursuant to N.C. Gen. Stat. § 62-110.8(a)'s requirement that future tranches be "based on a showing of need evidenced by the electric public utility's most recent biennial integrated resource plan or annual update approved by the Commission[,]" NCSEA would support an annual tranche based upon needs shown by Duke's most recently approved IRPs.

Alternatively, NCSEA supports the proposal from CCEBA where the Commission begin a new tranche of procurement immediately and roll the outstanding 112 MW into a new procurement amount with the total between the two amounts being between 600-700 MW. This would allow Duke to begin to meet its integrated resource plan needs along with fulfilling the CPRE requirements under N.C. Gen Stat. 110.8.

Respectfully submitted this the 30th day of June, 2021.

/s/ Benjamin W. Smith
Benjamin W. Smith
N.C. State Bar No. 48344
4800 Six Forks Road, Suite 300
Raleigh, NC 27609
(919) 832-7601 Ext. 111
ben@energync.org

/s/ Peter H. Ledford
Peter H. Ledford
N.C. State Bar No. 42999
4800 Six Forks Road, Suite 300
Raleigh, NC 27609
919-832-7601 Ext. 107
peter@energync.org

Counsel for NCSEA

CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing document 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 30th day of June, 2021.

/s/ Benjamin W. Smith
Benjamin W. Smith
N.C. State Bar No. 48344
4800 Six Forks Road, Suite 300
Raleigh, NC 27609
(919) 832-7601 Ext. 111
ben@energync.org