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October 28, 2020

Ms. Kimberley A. Campbell, Chief Clerk  
North Carolina Utilities Commission  
430 N. Salisbury Street  
Raleigh, NC 27603

***RE: Investigation of Interconnection Issues Related to Electric  
Merchant Generating Facilities  
NCUC Docket No. E-100, Sub 170***

Dear Ms. Campbell:

On behalf of the North Carolina Clean Energy Business Alliance and the North Carolina Sustainable Energy Association, we submit the attached **Joint Reply Comments** in the above-referenced docket.

Should you have any questions concerning this filing, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Karen m. Kemerait'.

Karen Kemerait

KK:bs

cc: All parties of record  
Enclosure

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota Nevada  
New Jersey New York North Carolina Pennsylvania South Carolina Texas Virginia Washington

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

**DOCKET NO. E-100, SUB 170**

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION:

In the Matter of:  
Investigation of Interconnection Issues  
Related to Electric Merchant Generating  
Facilities

**JOINT REPLY COMMENTS BY  
NCCEBA AND NCSEA**

**NOW COME** the North Carolina Clean Energy Business Alliance (“NCCEBA”) and the North Carolina Sustainable Energy Association (“NCSEA”) in accordance with the North Carolina Utilities Commission’s (“Commission”) *Order Requiring Comments and Reply Comments Regarding Affected System Study Process and Cost Allocation* (“Order”) issued on September 16, 2020, and submit the following verified reply comments.

**I. PROCEDURAL BACKGROUND**

In the Commission’s Order, the Commission noted that there has been an increase in the number of merchant generating facility certificate of public convenience and necessity (“CPCN”) applications, including a number of facilities that will result in transmission network upgrades (“Network Upgrades”) on both the system to which the facility is directly interconnecting and an affected transmission system (“Affected System”). The Commission stated that there has been an increase in non-utility generation on the North Carolina transmission system, and that the Commission has a statutory duty to examine the long-range needs for the generation of electricity in North Carolina and a need to understand the total construction costs of proposed new generating facilities. The Commission therefore required the electric utilities to file comments about

Affected System studies and allowed interested parties to file comments in response to information provided by Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively, “Duke”). The Commission posed six questions to the electric utilities related to the Affected System study process and cost responsibility for the Affected System Network Upgrade costs.

On October 7, 2020, Duke filed comments responding to the Commission’s six questions in the Order.

## **II. NCCEBA’S AND NCSEA’S RESPONSE TO DUKE’S COMMENTS**

### **A. Affected System Information**

Affected System is defined in the North Carolina Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections (“NC Standard”) as: “A Utility other than the interconnecting Utility’s System that may be affected by the proposed interconnection. The owner of an Affected System might be a Party to the Interconnection Agreement or other study agreements needed to interconnect the Generating Facility.”<sup>1</sup> Similarly, Affected System is defined in Duke’s Open Access Transmission Tariff (“OATT”), approved by the Federal Energy Regulatory Commission (“FERC”), as “an electric system other than the Transmission Provider’s Transmission System that may be affected by a proposed interconnection or transmission service request.”<sup>2</sup>

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<sup>1</sup> The NC Interconnection Standard was approved in the Commission’s *Order Approving Revised Interconnection Standard and Reporting Requirements and Testimony* issued on June 14, 2019 in Docket No. E-100, Sub 101.

<sup>2</sup> See Duke’s OATT found at [http://www.ferc.duke-energy/Tariffs/Joint\\_OATT.pdf](http://www.ferc.duke-energy/Tariffs/Joint_OATT.pdf).

Section 6.9 of the NC Standard (entitled “Coordination with Affected Systems”) provides guidance for coordination between the electric utilities and the neighboring Affected Systems in the Affected System study process. The Affected System study process may identify potential impacts to neighboring systems due to the interconnection of new generators. Section 6.9 requires:

The Utility shall develop an Affected System communication protocol with potential Affected Systems, upon request by the Affected System, such that reciprocal notification of Interconnection Requests, as applicable per the specified communication protocol, between the Utility and the Affected System can be addressed and implemented.

The Utility shall coordinate the conduct of any studies required to determine the impact of the Interconnection Request on Affected Systems with Affected System operators and, if possible, include those results (if available) in its applicable studies within the time frame specified in these procedures. The Utility will include such Affected System operators in all meetings held with the Interconnection Customer as required by these procedures. The Interconnection Customer will cooperate with the Utility in all matters related to the conduct of studies and the determination of modifications to Affected Systems. A Utility which may be an Affected System shall cooperate with the Utility with whom interconnection has been requested in all matters related to the conduct of studies and the determination of modifications to Affected Systems.

**B. Needed Transparency for the Affected System Study Process and Assignment of Upgrade Costs**

While the NC Standard includes requirements about Affected System communication protocol for state-jurisdictional generating facilities, there is little transparency regarding Duke’s Affected System studies and assignment of Affected System Upgrade costs. In fact, it is NCCEBA’s and NCSEA’s understanding that Duke has not published procedures, timelines, or methodologies for conducting Affected System studies that might trigger Affected System Upgrade costs. NCCEBA and NCSEA believe that there needs to be clear criteria for the allocation of Affected System Upgrade costs

stemming from neighboring systems – for the benefit of both the neighboring utilities and Interconnection Customers that might be assigned Affected System Upgrade costs (that in some cases could be substantial costs that would render the project financially infeasible).

In Duke’s comments, Duke provides information about the process for assigning Affected System Upgrade costs to Interconnection Customers. Duke states that Affected System Upgrade costs are directly assigned to a single generating facility based on serial queue order. According to Duke’s information, this “first to trigger” customer is required to pay for 100% of the Network Upgrade costs, even though later-queued projects might benefit from the Upgrades.<sup>3</sup> Such “first to trigger” assignment of Upgrade costs is contrary to Duke’s plans to transition its state-jurisdictional and FERC-jurisdictional queues to a grouping study process. Duke’s position that the “first to trigger” customer is solely responsible for Upgrade costs is difficult to reconcile with PJM’s process that utilizes a cluster study approach. PJM’s process does not make Affected System Upgrade costs the sole responsibility of the “first to trigger” customer, but instead shares the cost responsibility among the projects in the cluster that contribute to the need for the Upgrades. As the Commission is aware, the Commission approved Duke’s queue reform proposal on October 15, 2020 in Docket No. E-100, Sub 101.<sup>4</sup> Now that queue reform has been approved in North Carolina, Duke will request approval from FERC to amend its Large Generator Interconnection Procedures to allow FERC-jurisdictional

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<sup>3</sup> As Duke has noted, in many cases, assignment of significant Upgrade costs can make new generation projects infeasible, requiring the project to either pursue options to delay committing to fund the Upgrades—thereby disadvantaging other Interconnection Customers—or withdraw from the queue at the Interconnection Agreement stage. *See* Duke’s Queue Reform Proposal, p. 14 (filed on May 15, 2020 in Docket No. E-100, Sub 101).

<sup>4</sup> *See Order Approving Queue Reform* issued on October 15, 2020 in Docket No. E-100, Sub 101.

projects to be studied on a clustered basis. Under both the state and FERC-jurisdictional grouping study processes, Network Upgrade costs needed to accommodate multiple new generators would be allocated on a clustered basis rather than serially.

However, Duke has failed to address whether Affected System Upgrade costs will continue to be assigned serially and solely to the first generator that triggers the need for the Upgrades, or whether the cost responsibility will be allocated either among the generators that contribute to the need for the Upgrades or among the generators that benefit from the Upgrades and are serially behind the “first to trigger” generator. If costs are assigned to the “first to trigger” generator, NCCEBA and NCSEA request that Duke clarify whether the “first to trigger” customer will be denied the ability to recover Upgrade costs through proportional cost allocation to later-queued projects that benefit from the Upgrades. If the Affected System Upgrade costs are instead allocated on a clustered basis, NCCEBA and NCSEA request that Duke address the mechanism by which all contributing generators will be billed for the Upgrade costs or how the money will be refunded to the customer that paid for the Upgrades.

**C. Duke’s Policy Change to Deny Reimbursement for FERC-Jurisdictional Network Upgrade Costs**

This lack of certainty about whether Affected System Upgrades will be allocated serially or on a clustered basis is particularly concerning in light of the sweeping policy change that Duke announced in its comments. In its comments, Duke explains how it has until very recently recovered the costs for any Affected System Upgrades on its system. Duke states that “[h]istorically, interconnection customers that were assigned affected system network upgrades in DEP/DEC/DEF were reimbursed after the applicable

projects achieved commercial operation pursuant to the terms of the affected system operating agreement.” With no prior notice to NCCEBA and NCSEA members, Duke revealed in its comments that it has implemented a significant change to its standard Affected System Operating Agreement. Effective October 1, 2020, Duke began requiring FERC-jurisdictional interconnection customers to be solely responsible for Affected System Upgrade costs and eliminated any ability for reimbursement of Upgrade costs at commercial operation.<sup>5</sup>

Duke recognizes that FERC has exclusive jurisdiction over both the Affected System Study Agreement and the Affected System Operating Agreement.<sup>6</sup> Nonetheless, Duke has unilaterally amended the Affected System Operating Agreement to eliminate the reimbursement provision without seeking FERC approval. While Duke summarily asserts that it is not required to obtain FERC approval for this change to its Affected System Operating Agreement, it is far from clear that Duke may do so without FERC approval.<sup>7</sup> What is clear is that Duke chose not to seek FERC approval to eliminate the reimbursement provision and that Duke’s unilateral change is contrary to FERC policy. This federal issue is properly before FERC, rather than the Commission.

**WHEREFORE,** NCCEBA and NCSEA respectfully request that the Commission direct Duke to provide greater transparency for its Affected System Studies and assignment of Affected System Upgrade costs on either a serial or clustered basis, and provide

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<sup>5</sup> See Duke’s Comments, pp. 2-4.

<sup>6</sup> It is NCCEBA’s and NCSEA’s position that the Commission does not have the authority to deny a merchant plant CPCN application based upon the cost allocation of FERC-jurisdictional Affected System Network Upgrades.

<sup>7</sup> Duke provides no legal justification for this major policy change, and instead simply notes its belief that it does not need to seek FERC approval.

information about the mechanism for sharing of Affected System Upgrade costs among benefiting generators.

Respectfully submitted this 28th day of October, 2020.

FOX ROTHSCHILD LLP  
*/s/ Karen M. Kemerait*  
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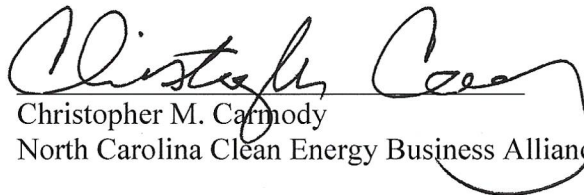
STATE OF NORTH CAROLINA

DURHAM COUNTY

VERIFICATION

I, Christopher M. Carmody, being first duly sworn, depose and say that I am the Executive Director for the North Carolina Clean Energy Business Alliance, and do hereby declare that I am duly authorized to act on behalf of the North Carolina Clean Energy Business Alliance, that I have read the foregoing Reply Comments and that they are true and accurate to my personal knowledge and belief.

This 28<sup>th</sup> day of October, 2020.

  
Christopher M. Carmody  
North Carolina Clean Energy Business Alliance

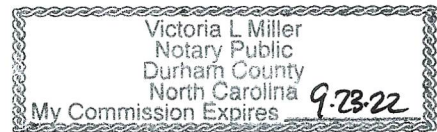
Sworn to and subscribed before me  
this 28<sup>th</sup> day of October, 2020.

Victoria J Miller  
Notary Public (signature)

Victoria L Miller  
Notary Public (printed)

My Commission expires: 9.23.2022

[Notary Seal]




STATE OF NORTH CAROLINA

WAKE COUNTY

VERIFICATION

I, Peter H. Ledford, being first duly sworn, depose and say that I am the General Counsel and Director of Policy for the North Carolina Sustainable Energy Association, and I hereby declare that I am duly authorized to act on behalf of the North Carolina Sustainable Energy Association, that I have read the foregoing Reply Comments and that they are true and accurate to my personal knowledge and belief.

This 28<sup>th</sup> day of October, 2020.

  
\_\_\_\_\_  
Peter H. Ledford  
North Carolina Sustainable Energy Association

Sworn to and subscribed before me  
this 28<sup>th</sup> day of October, 2020.

**Daniel G Brookshire, Notary Public  
Orange County, North Carolina  
My Commission Expires 7/2/2022**

Daniel G. Brookshire  
\_\_\_\_\_  
Notary Public (signature)

[Notary Seal]

Daniel G. Brookshire  
\_\_\_\_\_  
Notary Public (printed)

My Commission expires: 7-2-2022

## CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Reply Comments have been duly served upon counsel of record for all parties to this docket by either depositing a true and exact copy of same in a depository of the United States Postal Service, first-class postage prepaid, and/or by electronic delivery as follows:

This the 28<sup>th</sup> day of October, 2020.

*/s/ Karen M. Kemerait*  
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