

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION  
DOCKET NO. E-2, SUB 1283  
DOCKET NO. E-7, SUB 1259

In the Matter of: )  
Joint Petition of Duke Energy Carolinas, )  
LLC and Duke Energy Progress, LLC to )  
Request the Commission to Hold a Joint  
Hearing with the Public Service  
Commission of South Carolina to Develop  
Carbon Plan

NCSEA’S REPLY  
COMMENTS

NCSEA’S REPLY COMMENTS

The North Carolina Sustainable Energy Association (“NCSEA”), an intervenor in the above-captioned proceedings, files these reply comments on the *Joint Petition to Request the Commission to Hold a Joint Hearing with the Public Service Commission of South Carolina to Develop Carbon Plan* (“Petition”) filed by Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (DEC and DEP, collectively, “Duke”) pursuant to the *Order Requesting Comments on Petition for Joint Proceeding* issued by the North Carolina Utilities Commission (“Commission”) on November 23, 2021.

**I. RESPONSE TO INITIAL COMMENTS**

For the reasons set forth below, NCSEA respectfully disagrees with the Clean Power Suppliers Association (“CPSA”) that “A formalized bi-state planning approach could provide an opportunity for greater coordination between this Commission and the SC PSC on matters related to H.B. 951, to the benefit of all stakeholders.”<sup>1</sup> However, NCSEA does agree with the Carolinas Clean Energy Business Association and CPSA that

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<sup>1</sup> Comments of the Clean Power Suppliers Association at 1-2.

the Commission should move forward with the procurement of solar resources in 2022 that was authorized by House Bill 589 independent of any joint-state Carbon Plan proceeding.<sup>2</sup>

A. SOUTH CAROLINA SUPREME COURT DECISION

While not explicitly acknowledged by Duke, NCSEA agrees with the Carolina Utility Customers Association, Inc. (“CUCA”) and the Tech Customers that Duke’s Petition was prompted by the Supreme Court of South Carolina’s recent decision upholding the PSCSC’s disallowance of coal ash remediation costs required by North Carolina’s Coal Ash Management Act.<sup>3</sup> However, CUCA correctly notes that “Such risk is inherent in Duke’s dual-state operations, [as] Both North Carolina and South Carolina courts have held that multi-state utilities—and not ratepayers—bear the risk of the utility operating in multiple jurisdictions.”<sup>4</sup>

However, it has not yet been shown that the Carbon Plan will result in increased costs. While CUCA correctly notes that “Duke apparently envisions a spending spree resulting from the Carbon Plan’s investment potential[,]”<sup>5</sup> NCSEA agrees with the Southern Alliance for Clean Energy, the Natural Resources Defense Council, and the Sierra Club (collectively, “SACE et al.”) that “as demonstrated by the Synapse Report filed in Docket No. E-100, Sub 165, a resource portfolio that meets the very same carbon-reduction goals in Session Law 2021-165 can be the least-cost portfolio for ratepayers.”<sup>6</sup> To the extent that compliance with the Carbon Plan will lead to increased costs, NCSEA reiterates

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<sup>2</sup> See, *id.* at 2, Comments of Carolinas Clean Energy Business Association at 2.

<sup>3</sup> CUCA’s Initial Comments at 4-5; Initial Comments of Tech Customers at 3; NCSEA’s Initial Comments at 8-9.

<sup>4</sup> CUCA’s Initial Comments at 4-5.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> Comments of Southern Alliance for Clean Energy, Sierra Club, and Natural Resources Defense Council at 3 (“SACE et al. Initial Comments”). See also, NCSEA’s Initial Comments at 9-10.

its position that this is due to Duke’s ownership of the generation assets and not due to the fact that the generation assets are carbon-free.<sup>7</sup> Assuming, *arguendo*, that compliance with the Carbon Plan does lead to increased costs, NCSEA agrees with the Carolina Industrial Group for Fair Utility Rates II (“CIGFUR II”) and Carolina Industrial Group for Fair Utility Rates III (“CIGFUR III”) (CIGFUR II and CIGFUR III, collectively, “CIGFUR”) and CUCA that bi-state allocation of those costs is appropriate.<sup>8</sup> NCSEA agrees with CUCA that bi-state cost allocation “was likely assumed by the North Carolina General Assembly in scoring the impacts of HB 951.”<sup>9</sup>

However, regardless of whether compliance with the Carbon Plan will increase costs or not, NCSEA agrees with CUCA that “Any discomfort Duke is experiencing from its envisioned Carbon Plan spending has been caused solely by Duke.”<sup>10</sup> NCSEA agrees with CIGFUR that Duke’s management decided to lobby in support of the Carbon Plan policy in only one state, North Carolina.<sup>11</sup> As such, NCSEA agrees with the Tech Customers that “It is Duke’s obligation to work within the state processes that are available, including working with the South Carolina General Assembly to the extent that may be

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<sup>7</sup> See, NCSEA’s Initial Comments at 9-11.

<sup>8</sup> Initial Comments of CIGFUR II and III at 4 (“CIGFUR Initial Comments”); CUCA’s Initial Comments at 3.

<sup>9</sup> CUCA’s Initial Comments at 3.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> CIGFUR Initial Comments at 4-5.

necessary.”<sup>12</sup> NCSEA agrees with CIGFUR,<sup>13</sup> CUCA,<sup>14</sup> and the Tech Customers<sup>15</sup> that it is Duke and its shareholders, not ratepayers or the Commission, that should bear the consequences and costs of this decision.

#### B. DIFFERENT STATE REQUIREMENTS

NCSEA agrees with the argument made by CUCA regarding differing legal standards in South Carolina and North Carolina and that the scope and purpose of the Carbon Plan was North Carolina specific. “The purpose of the Carbon Plan proceeding is to implement clean energy goals established by the North Carolina General Assembly.”<sup>16</sup> CUCA went further to correctly state that “North Carolina’s standards are set by North Carolina law; they are not up for debate based on South Carolina’s needs, concerns, or policy.”<sup>17</sup> Enacting a statute that implements requirements over multiple states, as is implied with Duke’s Petition, would require federal action. North Carolina cannot execute jurisdiction over South Carolina.

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<sup>12</sup> Initial Comments of Tech Customers at 8-9.

<sup>13</sup> CIGFUR Initial Comments at 4 (“In the event any portion of such costs is disallowed by either jurisdiction in the future, Duke should not expect to recover the difference from ratepayers in the other jurisdiction.”); *id.* at 4-5 (“That Duke chose instead to vigorously lobby in support of such policies in only one state – North Carolina – was a management decision, the consequences of which should be borne solely by Duke’s shareholders, not its ratepayers.”); *id.* at 6 (“That Duke failed to account for the jurisdictional cost of service impacts that could result from pushing the enactment of a Carbon Plan policy in one state, but not the other, was a management decision for which Duke’s shareholders, not its ratepayers, should bear the consequences.”).

<sup>14</sup> CUCA’s Initial Comments at 5 (“Like a host of similar regulatory issues, Duke’s decision to conduct bi-state operations is accompanied by the risk of inconsistent regulatory treatment between states—a risk borne by Duke’s shareholders, not the ratepayers of a particular state.”); *id.* at 6 (“That Duke apparently did not foresee the cost allocation risks from pushing carbon legislation in only one of the two states in which it operates is a risk to be borne by Duke’s shareholders, not its ratepayers.”).

<sup>15</sup> Initial Comments of Tech Customers at 8-9 (“It is Duke’s obligation to work within the state processes that are available, including working with the South Carolina General Assembly to the extent that may be necessary. If Duke has failed to do so—or if it has tried to do so but has failed to carry the day in the policy discussion—that is a risk assumed by Duke in operating a unified system crossing state boundaries.”).

<sup>16</sup> CUCA’s Initial Comments at 9.

<sup>17</sup> *Id.*

Duke would likely counter this point to say that they are not seeking to implement North Carolina jurisdiction over South Carolina, and, instead, want to streamline efforts to allow for clean energy deployment across the Carolinas. NCSEA applauds such ambition. However, NCSEA cannot ignore the legal implications. As noted by SACE et al., Duke fails to acknowledge that the states have different legal standards and while the overriding “least cost” paradigm in North Carolina would likely be construed as similar to the “most reasonable and prudent” standard in South Carolina, they are *not* the same and each has evolved over years and years of state-specific precedent.<sup>18</sup>

Cost allocation across the Duke territories is, of course, a significant issue, but has always been handled within the confines of each respective state’s utility commission and there is no reason to stop now. As noted by CUCA, the approach requested by Duke raises “fundamental state sovereignty concerns.”<sup>19</sup> As noted by the Tech Customers it “is one thing for two states to exchange information . . . it is quite another for North Carolina to require South Carolina to accept, as a given, its state-mandated goals as the starting point for planning purposes or to engage in joint cost allocation discussions for costs not yet approved or incurred.”<sup>20</sup>

In its initial comments, Duke admits the request for a two-state proceeding is “unprecedented”.<sup>21</sup> Duke further states “coordination and cooperation between the States at this time of significant transition provides the most efficient process to facilitate a clear

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<sup>18</sup> “Duke fails to acknowledge that the Commission and the PSCSC operate under different legal standards—although it is entirely possible that the Carbon Plan and IRPs incorporating it would meet both the “least cost” requirement of North Carolina law and the “most reasonable and prudent” standard of South Carolina law, it is by no means a foregone conclusion.” SACE et al. Initial Comments at 2.

<sup>19</sup> CUCA’s Initial Comments at 3.

<sup>20</sup> Initial Comments of Tech Customers at 8.

<sup>21</sup> Initial Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC in Support of Joint Proceeding at 2 (“Duke Initial Comments”).

and consistent resource planning pathway to serve customers across state lines.”<sup>22</sup> This statement ignores decades of each state transitioning through various generation resource portfolios. Over the last 100-plus years, North Carolina has deftly transitioned to, adapted, and incorporated new generation technologies into its investor-owned utilities’ resource portfolios. North Carolina has the tools to implement the Carbon Plan efficiently and in a least cost manner within the state’s borders and without the risk incorporated by attempting an unprecedented multistate proceeding. The efficiencies that Duke seeks in its multistate proceeding scenario would be diminished while attempting to jump through the proverbial legal hoops necessary to implement the multistate plan. While NCSEA supports clean energy across the Carolinas, it recognizes the pitfalls in Duke’s preferred method.

### C. LOGISTICAL BURDEN

NCSEA agrees with the Attorney General’s Office, CUCA, and SACE et al. that Duke’s proposal would create procedural and logistical burdens with little to no benefit.<sup>23</sup> SACE et al. raise the issue of the time and cost associated with admission to practice pro hac vice in South Carolina, as was also raised by NCSEA in its initial comments.<sup>24</sup> SACE et al. further note the problems associated with Duke’s proposed “hybrid” approach whereby the Commission would hear the proceeding in-person while the PSCSC would participate remotely.<sup>25</sup> NCSEA agrees that the proposed “hybrid” approach would create practical and logistical issues for the participating parties and the Commission.

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<sup>22</sup> *Id.* at 2.

<sup>23</sup> *See*, Attorney General’s Office Initial Comments on Duke’s Petition for Joint Proceeding at 1 (“Trying to consolidate the proceedings formally with the South Carolina Commission will add procedural burdens and uncertainties.”); CUCA’s Initial Comments at 10 (“Third, it does not appear the joint proceeding would produce meaningful efficiencies.”); SACE et al. Initial Comments at 3 (“Duke has failed to acknowledge that rather than promoting efficiency, its proposal is quite likely to create additional work.”).

<sup>24</sup> SACE et al. Initial Comments at 4. *See also*, NCSEA’s Initial Comments at 13-14.

<sup>25</sup> SACE et al. Initial Comments at 3.

As noted in NCSEA’s Initial Comments,<sup>26</sup> Duke’s request for a multistate proceeding has considerable risk regarding ex parte communications. Duke has not directly addressed how to avoid such concerns in either their Petition<sup>27</sup> or their Initial Comments.<sup>28</sup> NCSEA cannot ignore the risk related to ex parte communications and does not think the Commission should, either.

## **II. DUKE MISREPRESENTS NCSEA’S POSITION**

In its initial comments, Duke implies that organizations that have intervened in its companion request to the PSCSC are somehow supportive of its proposal, stating that:

In addition to presenting overlapping resource planning issues between the States, it is also notable that interested stakeholders have intervened in both the above-captioned proceedings as well as the PSCSC companion docket (2021-349-E). This multi-jurisdictional participation by North Carolina Sustainable Energy Association (“NCSEA”), the Carolinas Clean Energy Business Association (“CCEBA”), and the Carolina Industrial Group for Fair Utility Rates (“CIGFUR”), amongst others, reflects their interest in the Companies’ least cost energy transition to a cleaner energy portfolio across both States and the recognition that both Commissions have important roles in overseeing Duke Energy’s system-wide operations. As addressed in the Companies’ Petition, a joint proceeding would create regulatory efficiencies for these parties, as well as allow the South Carolina ORS and other South Carolina stakeholders to have an active voice in a North Carolina-South Carolina proceeding to assess the Companies’ long-term least cost Carbon Plan that will necessarily inform future system-wide IRPs.<sup>29</sup>

NCSEA takes issue with Duke’s characterization that NCSEA is supportive of Duke’s request for a joint-state proceeding. Duke has misrepresented the intention behind NCSEA’s action as being driven by a belief in the importance of joint-state

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<sup>26</sup> “This request is fraught with legal risk not normally within the purview of Commission staff work, including compliance with S.C. Code Ann. § 58-3-260, the ex parte prohibition that applies to PSCSC commissioners and staff.” NCSEA’s Initial Comments at 15.

<sup>27</sup> *See generally*, Petition.

<sup>28</sup> *See generally*, Duke Initial Comments.

<sup>29</sup> *Id.* at 5.

implementation. NCSEA has never implied to Duke that it supported Duke's joint-state proceeding proposal - quite the opposite.

Requiring parties to participate in two proceedings and to retain South Carolina-licensed counsel is unduly burdensome for interested parties. By creating these additional hurdles that limit stakeholder participation, Duke's actions contradict its assertion that "stakeholders should have a seat at the table" regarding resource planning.<sup>30</sup> NCSEA is incurring additional costs and bearing additional burdens because Duke's Petition necessitates doing so, not because of a belief in the importance or desirability of joint-state implementation.

### **III. CONCLUSION**

NCSEA agrees with CIGFUR, CUCA, SACE et al., and the Tech Customers that there are a multitude of legal and policy reasons why Duke's request for joint implementation of the Carbon Plain is improper, unwarranted, and unwieldy. As such, NCSEA respectfully requests that the Commission take the foregoing reply comments into account in its deliberations and that the Commission deny Duke's Petition.

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<sup>30</sup> Petition at 2.



Respectfully submitted, this the 10th day of January, 2022.

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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 Reply Comments 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 10th day of January, 2022.

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