

September 22, 2017

Ms. M. Lynn Jarvis
Chief Clerk
North Carolina Utilities Commission
Fifth Floor, Room 5063
430 N. Salisbury Street
Raleigh, NC 27699-4325

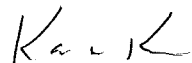
**Re: Rulemaking Proceeding to Implement G.S. 62-110.8
NCUC Docket No. E-100, Sub 150
Joint Reply Comments of NC Clean Energy Business Alliance and
NC Sustainable Energy Association**

Dear Ms. Jarvis:

Please find attached the **Joint Additional Reply Comments of NC Clean Energy Business Alliance and NC Sustainable Energy Association** for filing in the above-captioned docket. As part of our Joint Reply Comments, we have provided a "red-line" version and a "clean" version of our revisions to rules proposed by Duke Energy Progress, LLC and Duke Energy Carolinas, LLC (collectively, "Duke Energy").

By copy of this letter, I am forwarding a copy of the above to all parties of record. If you have any questions or comments regarding this filing, please do not hesitate to call me. Thank you in advance for your assistance in this matter.

Very truly yours,



Karen Kemerait

Enclosures

C: Parties of Record

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 150**

In the Matter of:)	
)	
Rulemaking Proceeding to Implement)	JOINT ADDITIONAL
G.S. 62-110.8)	REPLY COMMENTS OF
)	NORTH CAROLINA CLEAN
)	ENERGY BUSINESS
)	ALLIANCE AND NORTH
)	CAROLINA SUSTAINABLE
)	ENERGY ASSOCIATION

JOINT ADDITIONAL REPLY COMMENTS OF NCSEA AND NCCEBA

Pursuant to the North Carolina Utilities Commission's ("Commission") Order Allowing Additional Reply Comments and Modifying Procedural Schedule issued on September 13, 2017 in the above-captioned proceeding, the North Carolina Clean Energy Business Alliance ("NCCEBA") and the North Carolina Sustainable Energy Association ("NCSEA") submit the following Joint Additional Reply Comments.

I. PROCEDURAL HISTORY

On August 16, 2017, Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (collectively, "Duke"), NCCEBA, NCSEA, and the Public Staff filed comments and/or proposed rules in this rulemaking docket. On September 8, 2017, Duke filed Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Reply Comments and Amended Proposed Rule to Implement N.C. Gen. Stat. § 62-110.8(h) ("Duke's Reply Comments"), and NCCEBA and NCSEA filed Joint Reply Comments of North Carolina Clean Energy Business Alliance and North Carolina Sustainable Energy Association ("NCCEBA and NCSEA's Reply Comments"). In Duke's Reply Comments, Duke included as an attachment its proposed rules for implementing G.S. 62-110.8

(“Duke’s Proposed Rule”). In addition to filings by Duke and NCCEBA and NCSEA, the Public Staff filed a letter with the Commission.

On September 31, 2017, the Commission entered its Order Allowing Additional Reply Comments and Modifying Procedural Schedule. In the Order, the Commission allowed the parties until September 22, 2017 to file additional reply comments that identify and focus on the remaining issues in controversy.

After the Commission entered its September 31, 2017 Order, Duke developed a revised proposed rule (“Duke’s Revised Proposed Rule”) in response to intervenor comments and discussions with the parties, and shared a draft of its Revised Proposed Rule with NCCEBA and NCSEA. While Duke’s Revised Proposed Rule addresses some of the issues and concerns raised by NCCEBA and NCSEA, Duke’s Revised Proposed Rule is not fully responsive to the issues. Accordingly, NCCEBA and NCSEA have modified Duke’s Revised Proposed Rule to address the outstanding issues, and to ensure that the rules that will result in a transparent and fair process to both Duke and the industry participants. (The modified version of Duke’s Revised Proposed Rule is attached hereto as Attachment A.)

Specifically, the Joint Additional Reply Comments of NCCEBA and NCSEA address three critical issues: (1) the role of the independent administrator in selecting projects proposed pursuant to G.S. 62-133.8, and (2) the opportunity for input from interested parties on the Competitive Procurement of Renewable Energy (“CPRE”) program guidelines. In addition to the critical issues addressed in NCCEBA and NCSEA’s modified version of the rules, NCCEBA and NCSEA refer the Commission to their Joint Reply Comments of NCCEBA and NCSEA that address the importance of

resolving issues in the interconnection process to ensure proper functioning of the competitive procurement process. As previously noted, the competitive procurement process cannot be successful, and the requirements of G.S. 62-110.8(a) cannot be met, if selected projects are unable to progress through the interconnection process. As delay in the interconnection process will be an important concern in the competitive procurement process, NCCEBA and NCSEA request that the Commission create a working group to address interconnection issues as part of the competitive solicitation process.

II. REMAINING ISSUES IN CONTROVERSY

A. ROLE OF THE INDEPENDENT ADMINISTRATOR

The role of the independent administrator as set forth in Duke's Proposed Rule did not comply with the requirements of G.S. 62-110.8. However, in response to NCCEBA and NCSEA's filings in this proceeding, as well as discussions among Duke, the Public Staff, NCCEBA, and NCSEA, Duke addressed some of those issues in its Revised Proposed Rule. Notably, Duke's Revised Proposed Rule now conforms to the language of G.S. 62-133.8, and makes it clear that the independent administrator prepares the evaluation methodology that will be utilized by both the Independent Administrator and the electric public utility.

NCCEBA and NCSEA have previously explained to the Commission that G.S. 62-110.8 requires that it be "the independent administrator [who] develops the final short list and makes the determination of the winning bidder." *See*, NCCEBA and NCSEA's Reply Comments, pp. 3-4. NCCEBA and NCSEA believe that it is the legislative intent of G.S. 62-110.8 that the independent administrator, rather than Duke, select the most competitive bid for procurement by Duke. However, in Duke's Proposed

Rule and Duke's Revised Proposed Rule, Duke provides absolute discretion and authority for Duke – rather than the independent administrator – to select the winning bid (even when Duke would be selecting its own self-build proposal or a bid from an affiliate over more competitive third-party bids). In order to provide authority to Duke to select the winning bid, Duke's rules envision a two-track process where the independent administrator and the utility each create "competitive tiers" of proposals. *See*, Duke's Proposed Rule, Sec. (f)(3)(i) ("The evaluation of the CPRE RFP Solicitation process will proceed on two tracks"). It is important to recognize that NCCEBA and NCSEA continue to believe that G.S. 62-110.8 requires a single-track process where the independent administrator evaluates responses and selects the winning bid(s). However, if the Commission were to allow Duke's proposed two-track process and Duke's authority to select the winning bid(s), NCCEBA and NCSEA believe that key revisions to Duke's proposed rules must be made to protect the integrity of the process.

To ensure a fair process, NCCEBA and NCSEA believe that the independent administrator must rank the most competitive responses from the combined competitive tier and notify Duke of the most competitive proposal. *See*, Attachment A, Sec. (f)(4). If Duke were to select a proposal other than the most competitive proposal ranked by the independent administrator, NCCEBA and NCSEA believe that Duke should be required to file information with the Commission demonstrating that the selection is in the public interest. *See*, Attachment A, Sec. (f)(4)b. However, under Duke's Revised Proposed Rule, the electric public utility would only be required to provide justification for the deviation from selection of the most competitive ranking to the independent administrator and the Public Staff. Moreover, Duke's Revised Proposed Rule would provide no ability

for the independent administrator and the Public Staff to challenge an improper selection by Duke. Unlike Duke's proposed rule, NCCEBA and NCSEA's approach would ensure fairness and equity in the process and would protect the using and consuming public. NCCEBA and NCSEA respectfully request that the Commission adopt this approval in the final rules.

B. OPPORTUNITY FOR COMMENT ON PROGRAM GUIDELINES

The various proposed rules presented to the Commission in this proceeding deal with many aspects of implementation of G.S. 62-110.8; but they also leave numerous important details to be addressed in the electric public utilities' program filings and program guidelines. A critical omission in Duke's Amended Proposed Rule is that it does not provide interested parties with an opportunity to comment on the utilities' program guidelines. *See*, Duke's Amended Proposed Rule, Sec. (c). NCCEBA and NCSEA believe that the Commission's rule should explicitly allow interested parties to comment on the utilities' program guidelines. These guidelines will set forth how the utilities intend to implement a new paradigm for the procurement of renewable energy in North Carolina, and will set the stage for the next 45 months. It is imperative that this new process be implemented and executed in a fair and transparent manner. Input from industry participants, in addition to input from the utilities, is necessary to ensure the fairness and transparency of this new process.

As NCCEBA and NCSEA both noted in their respective initial comments in this proceeding, the interconnection process will have a major impact on the success of the competitive procurement process. *See*, Initial Comments of North Carolina Clean Energy Business Alliance, pp. 12-13; NCSEA's Initial Comments, pp. 10-11. Duke suggests that

interconnection issues are best addressed in the utilities' program guidelines. *See*, Duke's Reply Comments, pp. 21-23. While NCCEBA and NCSEA do not oppose Duke's suggestion that interconnection issues be addressed in the utilities' program guidelines, we note that having an issue of such importance addressed in the utilities' program guidelines makes it even more important for interested parties to have an opportunity to comment on the guidelines before they are approved the Commission.

CONCLUSION

NCCEBA and NCSEA recognize the complexity of the issues before the Commission in implementing the competitive procurement process. The organizations respectfully request that the Commission consider the issues raised in these Joint Additional Reply Comments and the proposed language included in Attachment A in its deliberations in this proceeding.

Respectfully submitted, this the 22nd day of September, 2017.

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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 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 22nd day of September, 2017.

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R8-XX COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY

- (a) Purpose. The purpose of this rule is to implement the provisions of G.S. 62-110.8, and to provide for Commission oversight of the CPRE Program(s) designed by the electric public utilities subject to G.S. 62-110.8 for the competitive procurement and development of renewable energy facilities in a manner that ensures continued reliable and cost-effective electric service to customers in North Carolina.

- (b) Definitions. Unless listed below, the definitions of all terms used in this rule shall be as set forth in G.S. 62-110.8. The following terms shall be defined as:
 - (1) "Affiliate" – is defined as provided in G.S. 62-126.3(1).
 - (2) "Bid Team" – Representatives of the electric public utility if it elects to submit a competitive Self-developed Proposal as addressed in subsection (f)(2)(iv) or an electric public utility's affiliate if it elects to submit a bid in response to a CPRE RFP Solicitation, as well as any other persons directly supporting the electric public utility's Self-developed Proposal or the affiliate's development and submission of its competitive bid.
 - (3) "Avoided cost rates" – means an electric public utility's calculation of its long-term, levelized avoided energy and capacity costs utilizing the methodology most recently approved or established by the Commission as of 30 days prior to the date of the electric public utility's upcoming CPRE RFP Solicitation for purchases of electricity from qualifying facilities pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978, as amended. The electric public utility's avoided cost rates shall be used for purposes of determining the cost effectiveness of renewable energy resources procured through a CPRE RFP Solicitation. For each CPRE RFP Solicitation, the electric public utility's avoided costs shall be calculated over the time period of the utility's pro forma contract(s) approved by the Commission. For example, where an electric public utility solicits a pro forma CPRE Program contract offering a term of 20 years, the avoided cost rate applicable to that contract would be a 20-year, levelized long-term rate calculated based upon the Commission's approved avoided cost methodology in effect at the time the solicitation is held.
 - (4) "Competitive Procurement of Renewable Energy (CPRE) Program" – Program(s) established by G.S. 62-110.8 requiring Duke Energy Carolinas, LLC and Duke Energy Progress, LLC to jointly or individually procure an aggregate 2,660 megawatts (MW) of renewable energy resource nameplate capacity subject to the requirements and limitations established therein.
 - (5) "CPRE Program Methodology" – The methodology used to evaluate all bids received in a given CPRE RFP Solicitation.
 - (6) "CPRE Program Procurement Period" – The initial 45-month period in which the aggregate 2,660 MW of renewable energy resource nameplate capacity is required to be procured under the CPRE Program(s) approved by the Commission.
 - (7) "CPRE RFP Solicitation" – A request for proposal solicitation process to be followed by the electric public utility under this Rule for the competitive

procurement of renewable energy resource capacity pursuant to the utility's CPRE Program.

- (8) "Evaluation Team" - Representatives of the electric public utility that will be evaluating bids submitted in response to the CPRE RFP Solicitation, as well as any other persons acting for or on behalf of the electric public utility regarding any aspect of the CPRE RFP Solicitation evaluation or selection process.
 - (9) "IE Website" – The website established and maintained by the Independent Administrator as required by subsection (d)(7) of this Rule.
 - (10) "Independent Administrator" – Third-party entity to be approved by the Commission to administer the CPRE Program, to ensure the transparency of the CPRE Program process established by this Rule, and to ensure that all responses are treated equitably.
 - (11) "Market price" – The market-derived price at which an electric public utility elects to procure renewable energy, capacity, and environmental and renewable attributes through a CPRE RFP Solicitation administered under this Rule. For utility-owned assets selected under the CPRE Program, the revenue requirement shall be no greater than the annual price bid by the electric public utility with respect to such asset in the applicable CPRE RFP Solicitation. The market price shall be used to derive authorized revenues to be recovered by the electric public utility for any utility-owned assets procured in the same CPRE RFP Solicitation where the product offered and procured by the electric public utility is the same as the product procured from the third parties, and the CPRE RFP Solicitation is determined to be based on an arm's length transaction between a buyer and a seller having a reasonable knowledge of the relevant facts. The market price shall not exceed the electric public utility's avoided cost rates established for the same CPRE RFP Solicitation.
 - (12) "Renewable energy certificates" –defined as provided in G.S. 62-133.8(a)(6).
 - (13) "Renewable energy facilities" –defined in G.S. 62-133.8(a)(7), but as used in this Rule and the CPRE Program, shall be limited to renewable energy facilities with a nameplate capacity rating of 80 MW or less that have obtained Qualified Facility status, if required, under 18 C.F.R. 292.207, and that are placed in service after the date of the electric public utility's initial CPRE RFP Solicitation.
 - (14) "Renewable energy resources" – are as defined in G.S. 62-133.8(a)(8).
- (c) Initial CPRE Program Filings and Program Guidelines
- (1) An electric public utility shall develop and seek Commission approval of guidelines for the implementation of its CPRE Program and to inform market participants regarding the terms and conditions of, and process for participating in, the CPRE Program. The electric public utility shall file its initial CPRE Program guidelines at the time it initially proposes a CPRE Program for Commission approval. Interested parties shall have the opportunity to submit comments to the Commission on the CPRE Program guidelines after the electric public utility files them with the Commission. The CPRE Program guidelines should, at minimum, include the following:

- (i) Planned allocation between the electric public utilities of the 2,660 MW required to be procured during the CPRE Program Procurement Period;
 - (ii) Proposed timeframe for each electric public utility's initial CPRE RFP Solicitation(s) and planned initial procurement amount, as well as plans for additional CPRE RFP Solicitation(s) during the CPRE Program Procurement Period;
 - (iii) Minimum bidder requirements for participation in the electric public utility's initial CPRE RFP Solicitation(s);
 - (iv) Proposed criteria for the evaluation of bids for product(s) solicited to be procured under initial CPRE RFP Solicitation(s); and
 - (v) Pro forma contract(s) to be utilized in the CPRE Program.
- (2) At the time an electric public utility files its proposed CPRE Program guidelines with the Commission, it shall also identify any regulatory conditions and/or provisions of the electric public utility's code of conduct that the electric public utility seeks to waive for the duration of the CPRE Program Procurement Period as provided for in G.S. § 62-110.8(h)(2). In seeking such waiver, the electric public utility must file an application that complies with Federal Energy Regulatory rules and conditions with the Commission. The application shall be verified by the electric public utility and contain the following information:
- (i) (i) The regulatory condition or code of conduct requirement which the electric public utility is requesting a waiver;
 - (ii) (ii) The reason that the regulatory condition or code of conduct requirement unreasonably restricts the electric public utility or its affiliate from participating in the CPRE RFP Solicitation;
 - (iii) (iii) Information demonstrating that the waiver will not result in an unfair competitive advantage for the electric public utility or its affiliate; and
 - (iv) (iv) Information that the electric public utility's customers will not be harmed by the waiver.

The electric public utility shall have the burden of demonstrating that the waiver will not result in an unfair competitive advantage for the electric public utility or its affiliate, and that the waiver will hold its customers harmless. No later than 10 days after the filing of such application, any interested party, including the Public Staff of the North Carolina Utilities Commission, may file an objection to the waiver application on the basis that the waiver will result in an unfair competitive advantage for the electric public utility or its affiliate or that the waiver will not hold the electric public utility's customers harmless. The electric public utility may file a reply to any such objection within 10 days.

(d) Selection and Role of Independent Administrator.

- (1) At least thirty (30) days prior to the electric public utilities' initial CPRE Program filings required by subsection (c) of this Rule, the Commission shall invite and consider comments and recommendations from the electric public utilities, the Public Staff, and potential market participants regarding the selection of the independent third-party entity to serve as the Independent Administrator. In

addition to meeting the requirements set forth in this Rule, the Commission may establish additional minimum qualifications and requirements for an Independent Administrator responsible for administering the electric public utilities' planned CPRE RFP Solicitation(s) for renewable energy resource capacity under the CPRE Program.

- (2) Any independent third party entity requesting to be considered by the Commission for the Independent Administrator role shall be required to disclose any financial interest involving the electric public utilities implementing CPRE Programs or any potential market participant reasonably anticipated to participate in the CPRE Program, including but not limited to all substantive assignments for the electric public utilities, any electric public utility affiliate, or any other potential bidder during the preceding three (3) years.
- (3) At least seventy-five (75) days prior to the electric public utilities' initial CPRE RFP Solicitation(s), the Commission shall select and approve the third-party entity to serve as Independent Administrator to administer the CPRE RFP Solicitation(s) under the CPRE Program. From the date the Independent Administrator is selected, no bidder or potential market participant shall have any communication with the Independent Administrator or the electric public utility pertaining to the CPRE RFP Solicitation, the RFP documents and process, or the evaluation process or any related subjects except as those communications are specifically allowed by this Rule or as are made publicly through the IE Website.
- (4) The Independent Administrator will be retained by the Commission for the duration of the CPRE Program Procurement Period under a contract to be filed with the Commission at least sixty (60) days prior to the electric public utilities' initial CPRE RFP solicitation(s) and shall remain subject to ongoing Commission oversight as part of the Commission's review of the electric public utilities' annual CPRE Program Compliance Reports.
- (5) The Independent Administrator's duties shall include:
 - (i) Monitors compliance with CPRE Program requirements.
 - (ii) Reviews and comments on draft CPRE Program guidelines, plans, and other documents.
 - (iii) Facilitates and monitors permissible communications between the electric public utilities' Evaluation Team and other participants in the CPRE RFP solicitations.
 - (iv) Develop and publishes the CPRE Program Methodology that shall ensure equitable review between an electric public utility's Self-developed Proposal(s) as addressed in subsection (f)(2)(iv) and bids offered by third-party market participants.
 - (v) Receives and transmits bids.
 - (vi) Independently evaluates the bids.
 - (vii) Monitors post-bid negotiations between the electric public utilities' Evaluation Team and successful bidders.
 - (viii) Evaluates the electric public utility's Self-developed Proposals for the Commission.

- (ix) Provides an independent certification to the Commission in the CPRE Compliance Report that all public utility and third party bids were evaluated under the published CPRE Program methodology and that all bids were treated equitably through the CPRE RFP Solicitation(s).
 - (6) At least 60 days prior to the initial CPRE RFP Solicitation, the third party Independent Administrator entity shall develop and publish the CPRE Program Methodology to be used to independently evaluate all proposals offered in response to the CPRE RFP Solicitation. If the CRPE RFP Solicitation allows for electric public utility self-build options or affiliate bidding, the Independent Administrator shall ensure that if any non-publicly available transmission or distribution system information is used in preparing proposals by the electric public utility or its affiliates, such information is made available to third parties that notified the Independent Administrator or their intent to submit a proposal in response to the same CPRE RFP Solicitation.
 - (7) The Independent Administrator shall maintain the IE Website to support administration and implementation of the CPRE Program and shall post the CPRE RFP Solicitation documents, the CPRE Program Methodology, bidder FAQs and any other pertinent documents on the IE Website.
 - (8) The Independent Administrator shall be supervised by and report to the Commission.
 - (9) If the Independent Administrator becomes aware of a violation of any CPRE Program requirements, the Independent Administrator shall immediately report that violation, together with any recommended remedy, to the Commission.
 - (10) The Independent Administrator's fees shall be funded through reasonable bid fees collected by the electric public utility. The electric public utility shall be authorized to collect bid fees up to \$10,000 per bid to defray its costs of evaluating the bids and, in addition, may charge each bid an amount which shall be equal to the estimated total cost of the Independent Administrator divided by the reasonably anticipated number of bids. To the extent that insufficient funds are collected through this method to pay all of the Independent Administrator's fees, the electric public utility shall pay the outstanding cost, which will which shall subsequently be recovered from the winning bidders in the CPRE RFP Solicitation.
- (e) Communications Between CPRE Market Participants.
- (1) On or before the date an electric public utility announces the CPRE RFP Solicitation, the Bid Team shall be separately identified and physically segregated from the Evaluation Team for purposes of all activities that are part of the CPRE RFP Solicitation process. The names and complete titles of each member of the Bid Team and the Evaluation Team shall be reduced to writing and submitted to the Independent Administrator.
 - (2) There shall be no communications, either directly or indirectly, between the Bid Team and Evaluation Team during the CPRE RFP Solicitation regarding any aspect of the CPRE RFP Solicitation process, except (i) necessary communications as may be made through the Independent Administrator and (ii) negotiations between the Bid Team and the Evaluation Team for a final power purchase agreement in the

event and then only after the Bid Team has been selected by the electric public utility as a winning bid. The Evaluation Team will have no direct or indirect contact or communications with the Bid Team or any other bidder, except through the Independent Administrator as described further herein, until such time as a winning bid or bids are selected by the electric public utility and negotiations for a final power purchase agreement(s) have begun.

- (3) At no time shall any information regarding the CPRE RFP Solicitation process be shared with any bidder, including the Bid Team, unless the information is shared with all competing bidders contemporaneously and in the same manner.
 - (4) Within fifteen (15) days of the date an electric public utility announces a planned CPRE RFP Solicitation, each member of the Bid Team shall execute an acknowledgement that he or she agrees to abide by the restrictions and conditions contained in subsections (e)(3)-(4) of this Rule for the duration of the CPRE RFP Solicitation. If the Bid Team's bid is selected by the electric public utility after completion of the CPRE RFP Solicitation, each member of the Bid Team shall then also execute an acknowledgement that he or she has met the restrictions and conditions contained in subsections (e)(3)-(4). The electric public utility shall provide these acknowledgements to the Independent Administrator and shall file the acknowledgements with the Commission in support of its annual CPRE Compliance Report.
 - (5) Should any bidder, including an affiliate or electric public utility's Bid Team, attempt to contact a member of the Evaluation Team directly, such bidder shall be directed to the Independent Administrator for all information and such communication shall be reported to the Independent Administrator by the Evaluation Team member. Within ten (10) days of the date that the Independent Administrator issues the CPRE RFP Solicitation, each Evaluation Team member shall execute an acknowledgement that he or she agrees to abide by the conditions contained in subsection (e)(3)-(5) for the duration of the CPRE RFP Solicitation. If the Bid Team's bid is selected by the electric public utility after completion of the CPRE RFP Solicitation, the Evaluation Team shall also execute an acknowledgement that he or she has met the restrictions and conditions contained in subsection (e)(3)-(5) above. The electric public utility shall provide these acknowledgements to the Independent Administrator and shall file the acknowledgements with the Commission in support of its annual CPRE Compliance Report.
- (f) CPRE RFP Solicitation Structure and Process.
- (1) Identification of Bidders and Design of CPRE RFP Solicitation.
 - (i) Prior to the initial CPRE RFP Solicitation, the electric public utility shall provide the Independent Administrator with a list of potential market participants that have expressed interest, in writing, in participating in the CPRE RFP Solicitation or have participated in recent renewable energy resource solicitations issued by the electric public utilities. The Independent Administrator shall be responsible for publishing notice of the draft CPRE RFP Solicitation on the IE Website, as well as preparation of the final list of

- potential bidders to whom notice of the upcoming CPRE RFP Solicitation will be sent.
- (ii) The electric public utility will be responsible for preparing an initial draft of the CPRE RFP Solicitation guidelines and documents, including RFP procedures, credit and security obligations, a pro forma power purchase agreement, the Avoided Cost Rate against which the RFP bids will be evaluated, and a planned schedule for completing the CPRE RFP Solicitation and selecting winning bids. No later than sixty (60) days prior to the planned issue date of the CPRE RFP Solicitation, the electric public utility will supply the draft of the CPRE RFP Solicitation documents to the Independent Administrator for posting on the IE Website.
 - (iii) The CPRE RFP Solicitation guidelines shall identify all factors to be considered by the Independent Administrator and the electric public utility in its evaluation of bids. In addition to the guidelines, a pro forma power purchase agreement containing all expected material terms and conditions shall be included in the CPRE RFP Solicitation documents provided to the Independent Administrator and shall be filed with the Commission at least thirty (30) days prior to the planned CPRE RFP solicitation issuance date.
 - (iv) The Independent Administrator, in coordination with the electric public utility, may conduct a pre-issuance bidders conference to publicly discuss the draft CPRE RFP Solicitation documents with interested parties, including but not limited to potential bidders. Potential bidders may submit written questions or recommendations to the Independent Administrator regarding the draft CPRE RFP Solicitation documents in advance of the bidders' conference. All such questions and recommendations shall be posted on the IE Website. The Independent Administrator shall have no private communication with any potential bidders regarding any aspect of the draft CPRE RFP Solicitation documents.
 - (v) Based on the input received from potential bidders, and based on its own review of the draft CPRE RFP Solicitation documents, the Independent Administrator will submit a report to the electric public utility at least twenty (20) days prior to the planned CPRE RFP Solicitation issuance date detailing market participant comments and any suggested recommendations for changes to the CPRE RFP Solicitation documents. This report shall also be posted on the IE Website for review by potential bidders.
 - (vi) At least five (5) days prior to the planned CPRE RFP Solicitation issuance date, the electric public utility shall submit its final version of the CPRE RFP Solicitation documents to the Independent Administrator to be posted on the IE Website.
 - (vii) At any time after the CPRE RFP Solicitation is issued, through the time winning bids are selected by the electric public utility, the schedule for the solicitation may be modified upon mutual agreement of the electric public utility and the Independent Administrator, with equal notice provided to all market participant bidders, or upon approval by the Commission. Any

modification to the CPRE RFP Solicitation schedule will be posted to the IE Website.

- (2) Issuance of CPRE RFP Solicitation and Bidder Communications.
 - (i) The Independent Administrator will transmit the final CPRE RFP Solicitation to the bidder list via the IE Website. Upon issuance of the final CPRE RFP Solicitation, the only bidder communications permitted prior to submission of bids shall be conducted through the Independent Administrator. Bidder questions and Independent Administrator responses shall be posted on the IE Website. To the extent such questions and responses contain competitively sensitive information that a particular bidder deems to be a trade secret, this information may be redacted by the bidder.
 - (ii) The electric public utility may not communicate with any bidder regarding the RFP Process, the content of the CPRE RFP Solicitation documents, or the substance of any potential response by a bidder to the RFP; provided, however, the electric public utility shall provide timely, accurate responses to an Independent Administrator request for information regarding any aspect of the CPRE RFP Solicitation documents or the CPRE RFP Solicitation process.
 - (iii) Bidders shall submit bids pursuant to the solicitation schedule contained in the CPRE RFP Solicitation documents, as determined by the electric public utility and the Independent Administrator and posted to the IE Website. The electric public utility and the Independent Administrator shall have access to all bids and all supporting documentation submitted by bidders in the course of the CPRE RFP Solicitation process.
 - (iv) If the electric public utility wishes to consider an option for full or partial ownership of an electric public utility self-developed option as part of the CPRE RFP solicitation, the utility must submit its construction proposal ("Self-developed Proposal") to provide all or part of the capacity requested in the CPRE RFP solicitation to the Independent Administrator at the time all other bids are due. Once submitted, the Self-developed Proposal may not be modified by the soliciting electric public utility. Provided, however, that in the event that the electric public utility demonstrates to the satisfaction of the Independent Administrator that the Self-developed Proposal contains an error and that correction of the error will not be harmful to the RFP Process, the soliciting entity may correct the error. Persons who have participated or assisted in the preparation of the Self-developed Proposal on behalf of the electric public utility's Bid Team in any way may not be a member of the affiliate's Bid Team, nor communicate with the affiliate Bid Team during the RFP Process about any aspect of the RFP Process. The soliciting entity's Self-developed Proposal must include a total revenue requirement comparable to bids submitted by third-party market participants.
- (3) Evaluation of Responses to CPRE RFP Solicitation.
 - (i) The evaluation stage of the CPRE RFP Solicitation process will proceed on two tracks. On one track, the electric public utility will evaluate all bids based upon the CPRE Program Methodology and criteria. The electric public utility will conduct this track in an appropriate manner designed to ensure equitable

review between any Self-developed Proposals and bids offered by third-party market participants, consistent with the principles and procedures contained in this Rule.

- (ii) A second track will be conducted by the Independent Administrator. The Independent Administrator shall have discretion to utilize whatever approach it considers the optimum combination of auditing the electric public utility track and conducting its own independent evaluation based upon the CPRE Program Methodology in order to equitably evaluate all renewable energy resource options submitted to the electric public utility in response to the CPRE RFP Solicitation.
- (iii) The electric public utility or the Independent Administrator may request further information from any bidder regarding its bid. Any communications between the electric public utility and a bidder in this regard shall be conducted through the Independent Administrator. Should it be determined necessary by the Independent Administrator, the electric public utility and the bidder, conference calls between the electric public utility and a bidder may be conducted for the sole purpose of clarification and understanding of a particular bid. All conference calls must be initiated by the Independent Administrator, and the Independent Administrator will be present on each call for its duration. Communications will be conducted on a confidential basis between the Independent Administrator and the bidder, and may include one face-to-face meeting among the Independent Administrator, the electric public utility, and each bidder to discuss the bidder's proposal.
- (iv) In order to conduct both its independent evaluation function and its auditing function, the Independent Administrator shall have access to all information and resources utilized by the electric public utility in conducting its analysis. The electric public utility shall provide complete and open access to all documents and information utilized by the electric public utility, and the Independent Administrator shall be allowed to actively and contemporaneously monitor all aspects of the electric public utility evaluation process. The electric public utility shall facilitate this access so that the electric public utility evaluation process is transparent to the Independent Administrator. To the extent the Independent Administrator determines that the evaluation processes of the two tracks are yielding different results, the Independent Administrator shall notify the electric public utility and attempt to identify the reasons for the differences as early as practicable.
- (v) The Independent Administrator may make reasonable requests for the electric public utility's Evaluation Team to conduct analyses concerning bids received to support the CPRE Program Methodology. Analyses provided to the Independent Administrator shall be equivalent in quality and content as that developed by the electric public utility for purposes of its own evaluation.
- (vi) No bidder, including any bidder that is an affiliate of the electric public utility, shall communicate with the electric public utilities' Evaluation Team during the course of the CPRE RFP Solicitation process regarding any aspect of the RFP.

- (vii) The electric public utility shall perform its evaluation of the bids and shall develop a competitive tier that narrows the bids to a manageable number that the electric public utility believes are the best competitive options ("Utility Competitive Tier"). The Independent Administrator shall independently evaluate the bids and develop its own competitive tier that narrows the bids to a manageable number that the Independent Administrator believes are the best competitive options ("IE Competitive Tier").
 - (viii) The electric public utility shall provide the Utility Competitive Tier to the Independent Administrator. Simultaneously, the Independent Administrator shall provide the IE Competitive Tier to the electric public utility.
 - (ix) If the Utility Competitive Tier and the IE Competitive Tier are identical, the Independent Administrator shall create a single Competitive Tier ("the Combined Competitive Tier"). If there are differences between the Utility Competitive Tier and the IE Competitive Tier, the electric public utility, the Independent Administrator, and the Public Staff shall meet to resolve such differences in order to agree on a Combined Competitive Tier.
- (4) Selection of CPRE Program Resource(s).
- (i) The Independent Administrator shall post the Combined Competitive Tier list on the IE Website showing each bidder's relative rank and the total evaluated cost of each bid. Each bidder on this list will be identified blindly so each bidder knows the identity of the bidder for only its bid but sees its rank compared to those of all other anonymous bidders who made the Competitive Tier. After it has completed its final ranking of the Combined Competitive Tier, and pursuant to the CPRE RFP Solicitation schedule, the Independent Administrator shall notify the electric public utility and the Public Staff of the most competitive proposal or proposals to meet the renewable energy resource capacity requested in the CPRE RFP Solicitation.
 - (ii) The electric public utility is responsible for selecting the most competitive resource(s) through the CPRE RFP Solicitation from the Combined Competitive Tier either to be submitted to the Commission for certification or to enter into a power purchase agreement. If the electric public utility selects a proposal or proposals other than the most competitive proposal(s) ranked by the Independent Administrator, it shall file evidence with the Commission that demonstrates its selection is in the public interest. If the Independent Administrator or the Public Staff believes that the electric public utility's selection is not in the public interest, the Independent Administrator or the Public Staff shall have 15 days to file a response with the Commission. The Commission will then determine whether the electric public utility's selection is in the public interest and should be allowed.
- (g) CPRE Program Plan.
- (1) Each electric public utility shall file its initial CPRE Program plan with the Commission at the time initial CPRE Program Guidelines are filed under subsection (c) and thereafter shall be filed on or before September 1 annually. The electric public utility shall file its CPRE Program plan as part of its biennial integrated resource plan filings, and the CPRE Program plan filed pursuant to this rule will be

reviewed in the same docket as the electric public utility's biennial integrated resource plan filing.

- (2) The initial CPRE Program plan shall be filed on November 27, 2017 and cover the initial CPRE Program Procurement Period. Each year thereafter, beginning in 2018, each electric public utility subject to this rule shall file with the Commission an updated CPRE Program plan covering the remainder of the CPRE Program Procurement Period. At a minimum, the plan shall include the following information:
 - (i) an explanation of whether the electric public utility is jointly or individually implementing the aggregate CPRE Program requirements mandated by G.S. 62-110.8(a);
 - (ii) a description of the electric public utility's planned CPRE RFP Solicitations and specific actions planned to procure renewable energy resources during the CPRE Program planning period;
 - (iii) an explanation of how the electric public utility has allocated the amount of CPRE Program resources projected to be procured during the CPRE Program Procurement Period relative to the aggregate CPRE Program requirements;
 - (iv) if designated by location, an explanation of how the electric public utility has determined the locational allocation within its balancing authority area;
 - (v) an estimate of renewable energy generating capacity that is not subject to economic dispatch or economic curtailment that is under development and projected to have executed power purchase agreements and interconnection agreements with the electric public utility or that is otherwise projected to be installed in the electric public utility's balancing authority area within the CPRE Program planning period; and
 - (vi) a copy of the electric public utility's CPRE Program guidelines then in effect as well as a pro forma power purchase agreement used in its most recent CPRE RFP Solicitation.
 - (3) Upon the expiration of the CPRE Program Procurement Period, the electric public utility shall file a CPRE Program Plan in the following calendar year identifying any additional CPRE Program procurement requirements, as provided for in G.S. 62-110.8(a).
 - (4) In any year in which an electric public utility determines that it has fully complied with the CPRE Program requirements set forth in G.S. 62-110.8(a), the electric public utility shall notify the Commission in its CPRE Program Plan, and may also petition the Commission to discontinue the CPRE Program Plan filing requirements beginning in the subsequent calendar year.
- (h) CPRE Program Compliance Report.
- (1) Based on the electric public utility's CPRE Program compliance report, and the comments on that report by the Independent Administrator, the Public Staff and other interested parties, the Commission shall determine whether the utility is in compliance with the CPRE Program requirements. Each electric public utility shall file its annual CPRE Program compliance report, together with direct testimony and exhibits of expert witnesses, on the same date that it files its cost recovery request

under subsection (j) of this rule, which shall also be the filing date for the information required by Rule R8-55. The Commission shall consider each electric public utility's CPRE Program compliance report at the hearing provided for in subsection (j) of this rule and shall determine whether the electric public utility is in compliance with the CPRE Program requirements of G.S. 62-110.8. Public notice and deadlines for intervention and filing of additional direct and rebuttal testimony and exhibits shall be as provided for in subsection (j) of this rule.

- (2) Each year, beginning in 2019, each electric public utility subject to this rule shall file with the Commission a report describing the electric public utility's competitive procurement of renewable energy resources under its CPRE Program and ongoing actions to comply with the requirements of G.S. 62-110.8 during the previous calendar year, which shall be the "reporting year." The report shall include the following information, including supporting documentation:
 - (i) a description of CPRE RFP Solicitation(s) undertaken by the electric public utility during the reporting year;
 - (ii) a description of the sources, amounts, and costs of third-party power purchase agreements and proposed authorized revenues for utility-owned assets for renewable energy resources procured through CPRE RFP Solicitation(s) during the reporting year, including the dates of all CPRE Program contracts or utility commitments to procure renewable energy resources during the reporting year;
 - (iii) the forecasted nameplate capacity and megawatt-hours of renewable energy and the number of renewable energy certificates obtained through the CPRE Program during the reporting year;
 - (iv) identification of all proposed renewable energy facilities under development by the electric public utility that were bid into a CPRE RFP Solicitation during the reporting year, including whether any non-publicly available transmission or distribution system operations information was used in preparing the proposal, and, if so, an explanation of how such information was made available to third parties that notified the utility of their intention to submit a proposal in the same CPRE RFP Solicitation;
 - (v) the electric public utility's avoided cost rates applicable to the CPRE RFP Solicitation(s) undertaken during the reporting year and confirmation that all renewable energy resources procured through a CPRE RFP Solicitation are priced at or below the electric public utility's avoided cost based upon the methodology approved by the Commission;
 - (vi) the actual total costs and authorized revenues incurred by the electric public utility during the calendar year to comply with G.S. 62-110.8;
 - (vii) the status of the electric public utility's compliance with the aggregate CPRE Program procurement requirements set forth in G.S. 62-110.8(a);
 - (viii) a copy of the contract then in effect between the electric public utility and third-party entity hired to administer the CPRE RFP Solicitations, supporting information regarding the administrative fees collected from market participants in the CPRE RFP Solicitation during the reporting year, as well as

- any cost incurred by the electric public utility during the reporting year to implement the CPRE RFP Solicitation; and
- (ix) certification by the Independent Administrator that all public utility and third-party bid responses were evaluated under the published CPRE Program Methodology and that all bids were treated equitably through the CPRE RFP Solicitation(s) during the reporting year.
- (i) Compliance with CPRE Program Requirements.
 - (1) An electric public utility shall be in compliance with the CPRE Program requirements during a given year where the Commission finds and determines that the electric public utility's CPRE Program plan is reasonably designed to meet the requirements of G.S. 62-110.8 and determines based on the utility's most recently filed CPRE Program compliance report that the electric public utility is reasonably and prudently implementing the CPRE Program requirements.
 - (2) An electric public utility or other interested party may petition the Commission to modify or delay the provisions of G.S. 62-110.8 in whole or in part upon a clear and convincing showing that the electric public utility or other interested party made reasonable efforts to comply with the CPRE Program requirements and that modification or delay is in the public interest. In such petition, the electric public utility or other interested party shall provide an explanation for the reason for the modification or delay, and a date certain when it will fully comply with the CPRE Program requirements. The Commission may grant such petition only upon a finding that the electric public utility or other interested party made a clear and convincing showing that it made reasonable efforts to comply with the CPRE Program requirements, and that it is in the public interest to grant the petition. The Commission shall not grant a modification or waiver request that would allow an electric public utility to procure energy and capacity from renewable energy facilities in an aggregate amount less than the total volume of renewable energy resources required to be procured by electric public utilities during the Initial CPRE Program Procurement Period.
 - (3) Renewable energy certificates claimed by an electric public utility while complying with G.S. 62-110.8 must have been earned after January 1, 2018, and may be retired to meet an electric public utility's REPS compliance obligations under G.S. 62-133.8.
 - (4) Any facility selected through a CPRE RFP Solicitation shall register with the Commission as a renewable energy facility under Rule R8-66 no later than 60 calendar days of written notification that it was selected and shall assure that renewable energy certificates contracted for under the CPRE Program shall be issued by, or imported into, the North Carolina Renewable Energy Tracking System.
 - (j) Cost or authorized revenue recovery.
 - (1) Beginning in 2018, for each electric public utility subject to this Rule, the Commission shall schedule an annual public hearing pursuant to G.S. 62-110.8(g) to review the costs incurred or authorized revenue justified by the electric public

- utility to comply with G.S. 62-110.8. The annual rider hearing for each electric public utility will be scheduled as soon as practicable after the hearing held by the Commission for the electric public utility under Rule R8-55.
- (2) The Commission shall permit each electric public utility to charge an increment or decrement as a rider to its rates to recover in a timely manner the reasonable costs and authorized revenues prudently-incurred to implement its CPRE Program and to comply with G.S. 62-110.8. For utility-owned assets selected under the CPRE Program, the utility shall propose a revenue requirement no greater than the annual price bid by such utility with respect to such asset in the applicable CPRE RFP Solicitation. Where the electric public utility proposes to determine authorized revenues based upon the market price of renewable energy resources procured through a CPRE RFP Solicitation, the Commission shall approve authorized revenue to be recovered under this section upon finding that such recovery is in the public interest.
 - (3) Unless otherwise ordered by the Commission, the test period for each electric public utility shall be the same as its test period for purposes of Rule R8-55.
 - (4) Rates set pursuant to this section shall be recovered during a fixed recovery period that shall coincide, to the extent practical, with the recovery period for the cost of fuel and fuel-related cost rider established pursuant to Rule R8-55.
 - (5) The costs and authorized revenue will be further modified through the use of a CPRE Program experience modification factor (CPRE EMF) rider. The CPRE EMF rider will reflect the difference between reasonable and prudently-incurred CPRE Program projected costs, authorized revenue, and the revenues that were actually realized during the test period under the CPRE Program rider then in effect. Upon request of the electric public utility, the Commission shall also incorporate in this determination the experienced over-recovery or under-recovery of the costs and authorized revenue up to 30 days prior to the date of the hearing, provided that the reasonableness and prudence of these costs and authorized revenues shall be subject to review in the utility's next annual CPRE Program cost recovery hearing.
 - (6) The CPRE EMF rider will remain in effect for a fixed 12-month period following establishment and will carry through as a rider to rates established in any intervening general rate case proceedings.
 - (7) Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently-incurred costs and authorized revenues to be refunded to an electric public utility's customers through operation of the CPRE EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.
 - (8) Each electric public utility shall follow deferred accounting with respect to the difference between actual reasonable and prudently-incurred costs or authorized revenue and related revenues realized under rates in effect.
 - (9) The annual increase in CPRE Program-related amounts to be recovered by an electric public utility in any recovery period from its North Carolina retail customers to comply with G.S. 62-110.8 shall not exceed one percent (1%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for

the preceding calendar year determined as of December 31 of the previous calendar year. Any amount in excess of that limit shall be carried over and recovered in the next recovery period.

- (10) Each electric public utility, at a minimum, shall submit to the Commission for purposes of investigation and hearing the information required for the CPRE Program compliance report for the 12-month test period established in subsection (3) consistent with Rule R8-55, accompanied by supporting workpapers and direct testimony and exhibits of expert witnesses, and any change in rates proposed by the electric public utility at the same time that it files the information required by Rule R8-55.
 - (11) The electric public utility shall publish a notice of the annual hearing for 2 successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least 30 days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-110.8(g) and setting forth the time and place of the hearing.
 - (12) Persons having an interest in said hearing may file a petition to intervene setting forth such interest at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed at the discretion of the Commission for good cause shown.
 - (13) The Public Staff and other intervenors shall file direct testimony and exhibits of expert witnesses at least 15 days prior to the hearing date. If a petition to intervene is filed less than 15 days prior to the hearing date, it shall be accompanied by any direct testimony and exhibits of expert witnesses the intervenor intends to offer at the hearing.
 - (14) The electric public utility may file rebuttal testimony and exhibits of expert witnesses no later than 5 days prior to the hearing date.
 - (15) The burden of proof as to whether CPRE Program-related costs or authorized revenues to be recovered under this section were reasonable and prudently-incurred shall be on the electric public utility.
- (k) Expedited review and approval of Certificate of Public Convenience and Necessity ("CPCN") for generating facilities procured under the CPRE Program.
- (1) Where a renewable energy facility is selected through a CPRE RFP Solicitation and is either (i) proposed to be constructed, owned, and operated by an electric public utility requiring a CPCN; (ii) planned to be acquired from a third party to be owned and operated by the electric public utility requiring transfer of an existing CPCN; or (iii) proposed to be owned and operated by a third party, the electric public utility or third party shall file a petition for the expedited review and approval of a CPCN or transfer of CPCN(s) to construct, own, and operate the generating facilities.
 - (2) Petitions for CPCN(s) filed and approved pursuant to this section shall satisfy the requirements of G.S. 62-110.1(a) and G.S. 62-82, and the electric public utility and third party shall not otherwise be required to follow the procedures for obtaining a CPCN under Rule R8-61.

- (3) An application to obtain a new CPCN for a renewable energy facility selected through the CPRE RFP Solicitation or planned to be constructed by the electric public utility under this section shall be comprised of the following Exhibits:
- (4) The full and correct name, business address, business telephone number, and electronic mailing address of the facility owner;
- (5) A statement of whether the facility owner is an individual, a partnership, or a corporation, and, if a partnership, the name and business address of each general partner and, if a corporation, the state and date of incorporation and the name, business address, business telephone number, and electronic mailing address of an individual duly authorized to act as corporate agent for the purpose of the application, and if a foreign corporation, whether domesticated in North Carolina;
- (6) The ownership of the facility site and, if the owner is other than the applicant, the applicant's interest in the facility site; and
- (7) The following exhibits shall be provided.
 - (i) Exhibit 1 shall include:
 - (a) A color map or aerial photo showing the location of the generating facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks, with the proposed location of major equipment indicated on the map or photo, including: the generator, fuel handling equipment, plant distribution system, startup equipment, site boundary, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities. A U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system is preferred;
 - (b) The E911 street address, county in which the proposed facility would be located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree; and
 - (c) Whether the electric public utility is the site owner, and, if not, providing the full and correct name of the site owner and the electric public utility's interest in the site.
 - (ii) Exhibit 2 shall include:
 - (a) The nature of the renewable energy facility, including the type and source of its power or fuel;
 - (b) A description of the buildings, structures and equipment comprising the renewable energy facility and the manner of its operation;
 - (c) The gross and net projected maximum dependable capacity of the renewable energy facility as well as the renewable energy facility's nameplate capacity, expressed as megawatts (alternating current);
 - (d) The projected date on which the renewable energy facility will come on line;
 - (e) The service life of the project;
 - (f) The projected annual production of the renewable energy facility in kilowatt-hours, including a detailed explanation of the anticipated

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- (9) Procedure for Expedited Transfer of CPCN. — Where an electric public utility procures a renewable energy facility through a CPRE RFP Solicitation that will be owned and operated by the electric public utility and the renewable energy facility has been previously granted a CPCN by the Commission, the electric public utility shall apply to the Commission to assign or transfer the CPCN. The Commission shall issue an Order within 30 days of the electric public utility's filing of the application, either approving the transfer of the CPCN or directing further review of the CPCN transfer application if circumstances so require.
 - (i) In support of its application to transfer the CPCN, the electric public utility shall:
 1. Describe the terms and conditions of the electric public utility's procurement of the renewable energy facility under the CPRE Program;
 2. Identify any significant changes to the information previously filed by the third party CPCN applicant that was reviewed and approved the Commission in granting the CPCN to be assigned or transferred.
 - (ii) All applications to transfer an existing CPCN shall be signed and verified by the electric public utility applicant. An application to transfer an existing CPCN shall also be verified by the entity which was initially granted the CPCN that it intends to transfer the CPCN to the electric public utility.
 - (10) Procedure for Acquiring Project Development Assets. — Where an electric public utility purchases assets from a third party developer that has previously obtained a CPCN with the intent of further developing the project and submitting the renewable energy facility in to a future CPRE RFP Solicitation, the electric public utility shall provide notice to the Commission in the docket where the CPCN was granted that the electric public utility has acquired ownership of the project development assets, but shall not be required to submit an application for transfer of the CPCN unless and until the project is selected through the CPRE process or the utility otherwise elects to proceed with construction of the renewable energy facility. An electric public utility proceeding under this section shall file an application and obtain Commission approval to transfer the CPCN prior to commencing the construction or operation of any renewable energy facility. No rights under the CPCN shall transfer to the electric public utility unless and until the Commission approves transfer of the CPCN.
- (l) CPRE Program Power Purchase Agreement Requirements
 - (1) At least 60 days prior to holding a CPRE RFP Solicitation, the Independent Administrator shall post the pro forma contract to be utilized during the CPRE RFP Solicitation on the IE Website to inform market participants of terms and conditions of the competitive solicitation. The electric public utility shall also file the pro forma contract with the Commission and identify any material changes to the pro forma contract terms and conditions from the contract used in the electric public utility's most recent CPRE RFP Solicitation.
 - (2) Each electric public utility shall include appropriate language in all pro forma contracts (i) providing 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; (ii) defining limits and compensation for resource dispatch and curtailments; (iii) defining environmental and renewable energy attributes to include all attributes that would be created by renewable energy facilities owned by the electric public utility; and (iv) prohibiting the seller from claiming or otherwise remarketing the environmental and renewable energy attributes, including the renewable energy certificates being procured by the electric public utility under power purchase agreements entered into under the CPRE Program. An electric public utility may redefine its rights to dispatch, operate, and control solicited renewable energy facilities, including defining limits and compensation for resource dispatch and curtailments, in pro forma contracts to be offered in future CPRE RFP Solicitations, and may also elect to solicit multiple products based upon differing rights to dispatch, operate, and control solicited renewable energy facilities through developing multiple pro forma contracts within a single CPRE RFP Solicitation.

- (3) No later than 30 days after an electric public utility executes a power purchase agreement that is competitively procured pursuant to a CPRE RFP Solicitation, the electric public utility shall file the power purchase agreement with the Commission. If the power purchase agreement is with an affiliate, the electric public utility shall file the power purchase agreement with the Commission pursuant to G.S. 62-153(a).
- (4) Upon expiration of the contract term of a power purchase agreement procured pursuant to this Rule, a generating facility owner other than the electric public utility may enter into a new contract with the electric public utility pursuant to G.S. 62-156 or obtain a new contract based on an updated market based mechanism, as determined by the Commission pursuant to G.S. 62-110.8(a). If market-based authorized revenue for a generating facility owned by the electric public utility and procured pursuant to this Rule was initially determined by the Commission to be in the public interest, then the electric public utility shall similarly be permitted to continue to receive authorized revenue based on an updated market based mechanism, as determined by the Commission pursuant to G.S. 62-110.8(a). Any market based rate for either utility owned or non-utility owned facilities shall not exceed the electric public utility's avoided cost rate set pursuant to G.S. 62-156. If the electric public utility's initial bid includes assumptions about market price after the initial term, such information shall be made available to the Independent Administrator and all bidders.

R8-XX COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY

- (a) Purpose. The purpose of this rule is to implement the provisions of G.S. 62-110.8, and to provide for Commission oversight of the CPRE Program(s) designed by the electric public utilities subject to G.S. 62-110.8 for the competitive procurement and development of renewable energy facilities in a manner that ensures continued reliable and cost-effective electric service to customers in North Carolina.
- (b) Definitions. Unless listed below, the definitions of all terms used in this rule shall be as set forth in G.S. 62-110.8. The following terms shall be defined as:
 - (1) "Affiliate" – is defined as provided in G.S. 62-126.3(1).
 - (2) "Bid Team" – Representatives of the electric public utility if it elects to submit a competitive Self-developed Proposal as addressed in subsection (f)(2)(iv) or an electric public utility's affiliate if it elects to submit a bid in response to a CPRE RFP Solicitation, as well as any other persons directly supporting the electric public utility's Self-developed Proposal or the affiliate's development and submission of its competitive bid.
 - (3) "Avoided cost rates" – means an electric public utility's calculation of its long-term, levelized avoided energy and capacity costs utilizing the methodology most recently approved or established by the Commission as of 30 days prior to the date of the electric public utility's upcoming CPRE RFP Solicitation for purchases of electricity from qualifying facilities pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978, as amended. The electric public utility's avoided cost rates shall be used for purposes of determining the cost effectiveness of renewable energy resources procured through a CPRE RFP Solicitation. For each CPRE RFP Solicitation, the electric public utility's avoided costs shall be calculated over the time period of the utility's pro forma contract(s) approved by the Commission. For example, where an electric public utility solicits a pro forma CPRE Program contract offering a term of 20 years, the avoided cost rate applicable to that contract would be a 20-year, levelized long-term rate calculated based upon the Commission's approved avoided cost methodology in effect at the time the solicitation is held.
 - (4) "Competitive Procurement of Renewable Energy (CPRE) Program" – Program(s) established by G.S. 62-110.8 requiring Duke Energy Carolinas, LLC and Duke Energy Progress, LLC to jointly or individually procure an aggregate 2,660 megawatts (MW) of renewable energy resource nameplate capacity subject to the requirements and limitations established therein.
 - (5) "CPRE Program Methodology" – The methodology used to evaluate all bids received in a given CPRE RFP Solicitation.
 - (6) "CPRE Program Procurement Period" – The initial 45-month period in which the aggregate 2,660 MW of renewable energy resource nameplate capacity is required to be procured under the CPRE Program(s) approved by the Commission.
 - (7) "CPRE RFP Solicitation" – A request for proposal solicitation process to be followed by the electric public utility under this Rule for the competitive

procurement of renewable energy resource capacity pursuant to the utility's CPRE Program.

- (8) "Evaluation Team" - Representatives of the electric public utility that will be evaluating bids submitted in response to the CPRE RFP Solicitation, as well as any other persons acting for or on behalf of the electric public utility regarding any aspect of the CPRE RFP Solicitation evaluation or selection process.
- (9) "IE Website" – The website established and maintained by the Independent Administrator as required by subsection (d)(7) of this Rule.
- (10) "~~Independent Evaluator~~Administrator" – Third-party entity to be approved by the Commission to administer the CPRE Program-, to ensure the transparency of the CPRE Program process established by this Rule, and to ensure that all responses are treated equitably.
- (11) "Market price" – The market-derived price at which an electric public utility elects to procure renewable energy, capacity, and environmental and renewable attributes through a CPRE RFP Solicitation administered under this Rule. For utility-owned assets selected under the CPRE Program, the revenue requirement shall be no greater than the annual price bid by the electric public utility with respect to such asset in the applicable CPRE RFP Solicitation. The market price ~~may~~shall be used to derive authorized revenues to be recovered by the electric public utility for any utility-owned assets procured in the same CPRE RFP Solicitation where the product offered and procured by the electric public utility is the same as the product procured from the third parties, and the CPRE RFP Solicitation is determined to be based on an arm's length transaction between a buyer and a seller having a reasonable knowledge of the relevant facts. The market price shall not exceed the electric public utility's avoided cost rates established for the same CPRE RFP Solicitation.
- (12) "Renewable energy certificates" –defined as provided in G.S. 62-133.8(a)(6).
- (13) "Renewable energy facilities" –defined in G.S. 62-133.8(a)(7), but as used in this Rule and the CPRE Program, shall be limited to renewable energy facilities with a nameplate capacity rating of 80 MW or less that have obtained Qualified Facility status, if required, under 18 C.F.R. 292.207, and that are placed in service after the date of the electric public utility's initial CPRE RFP Solicitation.
- (14) "Renewable energy resources" – are as defined in G.S. 62-133.8(a)(8).

(c) Initial CPRE Program Filings and Program Guidelines

- (1) An electric public utility shall develop and seek Commission approval of guidelines for the implementation of its CPRE Program and to inform market participants regarding the terms and conditions of, and process for participating in, the CPRE Program. The electric public utility shall file its initial CPRE Program guidelines at the time it initially proposes a CPRE Program for Commission approval. Interested parties shall have the opportunity to submit comments to the Commission on the CPRE Program guidelines after the electric public utility files them with the Commission. The CPRE Program guidelines should, at minimum, include the following:

ADDITIONAL REPLY COMMENTS ATTACHMENT A

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- (i) Planned allocation between the electric public utilities of the 2,660 MW required to be procured during the CPRE Program Procurement Period;
 - (ii) Proposed timeframe for each electric public utility's initial CPRE RFP Solicitation(s) and planned initial procurement amount, as well as plans for additional CPRE RFP Solicitation(s) during the CPRE Program Procurement Period;
 - (iii) Minimum bidder requirements for participation in the electric public utility's initial CPRE RFP Solicitation(s); and
 - (iv) Proposed criteria for the evaluation of bids for product(s) solicited to be procured under initial CPRE RFP Solicitation(s); and
(iv)(v) Pro forma contract(s) to be utilized in the CPRE Program.
- (2) At the time an electric public utility files its proposed CPRE Program guidelines with the Commission, it shall also identify any regulatory conditions and/or provisions of the electric public utility's code of conduct that the electric public utility seeks to waive for the duration of the CPRE Program Procurement Period as provided for in G.S. § 62-110.8(h)(2). In seeking such waiver, the electric public utility must file an application that complies with Federal Energy Regulatory rules and conditions with the Commission. The application shall be verified by the electric public utility and contain the following information:
- (i) The regulatory condition or code of conduct requirement which the electric public utility is requesting a waiver;
 - (ii) The reason that the regulatory condition or code of conduct requirement unreasonably restricts the electric public utility or its affiliate from participating in the CPRE RFP Solicitation;
 - (iii) Information demonstrating that the waiver will not result in an unfair competitive advantage for the electric public utility or its affiliate; and
 - (iv) Information that the electric public utility's customers will not be harmed by the waiver.

The electric public utility shall have the burden of demonstrating that the waiver will not result in an unfair competitive advantage for the electric public utility or its affiliate, and that the waiver will hold its customers harmless. No later than 10 days after the filing of such application, any interested party, including the Public Staff of the North Carolina Utilities Commission, may file an objection to the waiver application on the basis that the waiver will result in an unfair competitive advantage for the electric public utility or its affiliate or that the waiver will not hold the electric public utility's customers harmless. The electric public utility may file a reply to any such objection within 10 days.

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- (d) Selection and Role of Independent EvaluatorAdministrator.
- (1) At least thirty (30) days prior to the electric public utilities' initial CPRE Program filings required by subsection (c) of this Rule, the Commission shall invite and consider comments and recommendations from the electric public utilities, the Public Staff, and potential market participants regarding the selection of the independent third-party entity to serve as the Independent EvaluatorAdministrator. In addition to meeting the requirements set forth in this Rule, the Commission may

establish additional minimum qualifications and requirements for an Independent Administrator responsible for administering the electric public utilities' planned CPRE RFP Solicitation(s) for renewable energy resource capacity under the CPRE Program.

- (2) Any independent third party entity requesting to be considered by the Commission for the Independent Administrator role shall be required to disclose any financial interest involving the electric public utilities implementing CPRE Programs or any potential market participant reasonably anticipated to participate in the CPRE Program, including but not limited to all substantive assignments for the electric public utilities, any electric public utility affiliate, or any other potential bidder during the preceding three (3) years.
- (3) At least seventy-five (75) days prior to the electric public utilities' initial CPRE RFP Solicitation(s), the Commission shall select and approve the third-party entity to serve as Independent Administrator to administer the CPRE RFP Solicitation(s) under the CPRE Program. From the date the Independent Administrator is selected, no bidder or potential market participant shall have any communication with the Independent Administrator or the electric public utility pertaining to the CPRE RFP Solicitation, the RFP documents and process, or the evaluation process or any related subjects except as those communications are specifically allowed by this Rule or as are made publicly through the IE Website.
- (4) The Independent Administrator will be retained by the ~~electric public utility or jointly by the electric public utilities~~ Commission for the duration of the CPRE Program Procurement Period under a contract to be filed with the Commission at least sixty (60) days prior to the electric public utilities' initial CPRE RFP solicitation(s) and shall remain subject to ongoing Commission oversight as part of the Commission's review of the electric public utilities' annual CPRE Program Compliance Reports.
- (5) The Independent ~~Evaluator~~ Administrator's duties shall include:
 - (i) Monitors compliance with CPRE Program requirements.
 - (ii) Reviews and comments on draft CPRE Program guidelines, plans, and other documents.
 - (iii) Facilitates and monitors permissible communications between the electric public utilities' Evaluation Team and other participants in the CPRE RFP solicitations.
 - (iv) Develop and publishes the CPRE Program Methodology that shall ensure equitable review between an electric public utility's Self-developed Proposal(s) as addressed in subsection (f)(2)(iv) and bids offered by third-party market participants.
 - (v) Receives and transmits bids.
 - (vi) Independently evaluates the bids.
 - (vii) Monitors post-bid negotiations between the electric public utilities' Evaluation Team and successful bidders.
 - (viii) Evaluates the electric public utility's Self-developed Proposals for the Commission.

- (ix) Provides an independent certification to the Commission in the CPRE Compliance Report that all public utility and third party bids were evaluated under the published CPRE Program methodology and that all bids were treated equitably through the CPRE RFP Solicitation(s).
- (6) At least 360 days prior to the initial CPRE RFP Solicitation, the third party Independent Administrator entity shall develop and publish the CPRE Program Methodology to be used to independently evaluate all proposals offered in response to the CPRE RFP Solicitation. If the CPRE RFP Solicitation allows for electric public utility self-build options or affiliate bidding, the Independent Administrator shall ensure that if any non-publicly available transmission or distribution system information is used in preparing proposals by the electric public utility or its affiliates, such information is made available to third parties that notified the Independent Administrator or their intent to submit a proposal in response to the same CPRE RFP Solicitation. Prior to developing and publishing the CPRE Program Methodology to be used to independently evaluate all bidder proposals, the Independent shall meet with the electric public utility Evaluation Team to share evaluation techniques and practices. The Independent shall also meet with the electric public utility Evaluation Team at least 60 days prior to each subsequent CPRE RFP Solicitation to discuss the efficacy of the CPRE Program Methodology and whether changes to the Methodology may be appropriate based upon the product to be solicited by the electric public utility in the next CPRE RFP Solicitation.
- (7) The Independent Administrator shall maintain the IE Website to support administration and implementation of the CPRE Program and shall post the CPRE RFP Solicitation documents, the CPRE Program Methodology, bidder FAQs and any other pertinent documents on the IE Website.
- (8) The Independent Administrator shall be supervised by and report to the Commission. ~~In carrying out its duties, the Independent shall work in coordination with the electric public utilities' Evaluation Team(s) with respect to CPRE Program implementation and the CPRE RFP Solicitation bid evaluation process.~~
- (9) If the Independent Administrator becomes aware of a violation of any CPRE Program requirements, the Independent Administrator shall immediately report that violation, together with any recommended remedy, to the Commission.
- (10) The Independent Evaluator/Administrator's fees shall be funded through reasonable bid fees collected by the electric public utility. The electric public utility shall be authorized to collect bid fees up to \$10,000 per bid to defray its costs of evaluating the bids and, in addition, may charge each bid an amount which shall be equal to the estimated total cost of the Independent Administrator divided by the reasonably anticipated number of bids. To the extent that insufficient funds are collected through this method to pay all of the Independent Administrator's fees, the electric public utility shall pay the outstanding cost, which will which shall subsequently be recovered from the winning bidders in the CPRE RFP Solicitation.

(e) Communications Between CPRE Market Participants.

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- (1) On or before the date an electric public utility announces the CPRE RFP Solicitation, the Bid Team shall be separately identified and physically segregated from the Evaluation Team for purposes of all activities that are part of the CPRE RFP Solicitation process. The names and complete titles of each member of the Bid Team and the Evaluation Team shall be reduced to writing and submitted to the Independent Evaluator/Administrator.
- (2) There shall be no communications, either directly or indirectly, between the Bid Team and Evaluation Team during the CPRE RFP Solicitation regarding any aspect of the CPRE RFP Solicitation process, except (i) necessary communications as may be made through the Independent Administrator and (ii) negotiations between the Bid Team and the Evaluation Team for a final power purchase agreement in the event and then only after the Bid Team has been selected by the electric public utility as a winning bid. The Evaluation Team will have no direct or indirect contact or communications with the Bid Team or any other bidder, except through the Independent Administrator as described further herein, until such time as a winning bid or bids are selected by the electric public utility and negotiations for a final power purchase agreement(s) have begun.
- (3) At no time shall any information regarding the CPRE RFP Solicitation process be shared with any bidder, including the Bid Team, unless the information is shared with all competing bidders contemporaneously and in the same manner.
- (4) Within fifteen (15) days of the date an electric public utility announces a planned CPRE RFP Solicitation, each member of the Bid Team shall execute an acknowledgement that he or she agrees to abide by the restrictions and conditions contained in subsections (e)(3)-(4) of this Rule for the duration of the CPRE RFP Solicitation. If the Bid Team's bid is selected by the electric public utility after completion of the CPRE RFP Solicitation, each member of the Bid Team shall then also execute an acknowledgement that he or she has met the restrictions and conditions contained in subsections (e)(3)-(4). The electric public utility shall provide these acknowledgements to the Independent Administrator and shall file the acknowledgements with the Commission in support of its annual CPRE Compliance Report.
- (5) Should any bidder, including an affiliate or electric public utility's Bid Team, attempt to contact a member of the Evaluation Team directly, such bidder shall be directed to the Independent Administrator for all information and such communication shall be reported to the Independent Administrator by the Evaluation Team member. Within ten (10) days of the date that the Independent Administrator issues the CPRE RFP Solicitation, each Evaluation Team member shall execute an acknowledgement that he or she agrees to abide by the conditions contained in subsection (e)(3)-(5) for the duration of the CPRE RFP Solicitation. If the Bid Team's bid is selected by the electric public utility after completion of the CPRE RFP Solicitation, the Evaluation Team shall also execute an acknowledgement that he or she has met the restrictions and conditions contained in subsection (e)(3)-(5) above. The electric public utility shall provide these acknowledgements to the Independent Administrator and shall file the

acknowledgements with the Commission in support of its annual CPRE Compliance Report.

(f) CPRE RFP Solicitation Structure and Process.

(1) Identification of Bidders and Design of CPRE RFP Solicitation.

- (i) Prior to the initial CPRE RFP Solicitation, the electric public utility shall provide the Independent Administrator with a list of potential market participants that have expressed interest, in writing, in participating in the CPRE RFP Solicitation or have participated in recent renewable energy resource solicitations issued by the electric public utilities. The Independent Administrator shall be responsible for publishing notice of the draft CPRE RFP Solicitation on the IE Website, as well as preparation of the final list of potential bidders to whom notice of the upcoming CPRE RFP Solicitation will be sent.
- (ii) The electric public utility will be responsible for preparing an initial draft of the CPRE RFP Solicitation guidelines and documents, including RFP procedures, ~~evaluation factors~~, credit and security obligations, a pro forma power purchase agreement, the Avoided Cost Rate against which the RFP bids will be evaluated, and a planned schedule for completing the CPRE RFP Solicitation and selecting winning bids. No later than sixty (60) days prior to the planned issue date of the CPRE RFP Solicitation, the electric public utility will supply the draft of the CPRE RFP Solicitation documents to the Independent Administrator for posting on the IE Website.
- (iii) The CPRE RFP Solicitation guidelines shall identify all factors to be considered by the Independent Administrator and the electric public utility in its evaluation of bids. In addition to the guidelines, a pro forma power purchase agreement containing all expected material terms and conditions shall be included in the CPRE RFP Solicitation documents provided to the Independent Administrator and shall be filed with the Commission at least thirty (30) days prior to the planned CPRE RFP solicitation issuance date.
- (iv) The Independent ~~Evaluator~~ Administrator, in coordination with the electric public utility, may conduct a pre-issuance bidders conference to publicly discuss the draft CPRE RFP Solicitation documents with interested parties, including but not limited to potential bidders. Potential bidders may submit written questions or recommendations to the Independent Administrator regarding the draft CPRE RFP Solicitation documents in advance of the bidders' conference. All such questions and recommendations shall be posted on the IE Website. The Independent Administrator shall have no private communication with any potential bidders regarding any aspect of the draft CPRE RFP Solicitation documents.
- (v) Based on the input received from potential bidders, and based on ~~their~~ its own review of the draft CPRE RFP Solicitation documents, the Independent Administrator will submit a report to the electric public utility at least twenty (20) days prior to the planned CPRE RFP Solicitation issuance date detailing market participant comments and any suggested recommendations ~~from the Independent Administrator~~ for changes to the CPRE RFP Solicitation

- documents. This report shall also be posted on the IE Website for review by potential bidders.
- (vi) At least five (5) days prior to the planned CPRE RFP Solicitation issuance date, the electric public utility shall submit its final version of the CPRE RFP Solicitation documents to the Independent Administrator to be posted on the IE Website.
 - (vii) At any time after the CPRE RFP Solicitation is issued, through the time winning bids are selected by the electric public utility, the schedule for the solicitation may be modified upon mutual agreement of the electric public utility and the Independent ~~Evaluator~~ Administrator, with equal notice provided to all market participant bidders, or upon approval by the Commission. Any modification to the CPRE RFP Solicitation schedule will be posted to the IE Website.
- (2) Issuance of CPRE RFP Solicitation and Bidder Communications.
- (i) The Independent Administrator will transmit the final CPRE RFP Solicitation to the bidder list via the IE Website. Upon issuance of the final CPRE RFP Solicitation, the only bidder communications permitted prior to submission of bids shall be conducted through the Independent ~~Evaluator~~ Administrator. Bidder questions and Independent Administrator responses shall be posted on the IE Website. To the extent such questions and responses contain competitively sensitive information that a particular bidder deems to be a trade secret, this information may be redacted by the bidder.
 - (ii) The electric public utility may not communicate with any bidder regarding the RFP Process, the content of the CPRE RFP Solicitation documents, or the substance of any potential response by a bidder to the RFP; provided, however, the electric public utility shall provide timely, accurate responses to an Independent Administrator request for information regarding any aspect of the CPRE RFP Solicitation documents or the CPRE RFP Solicitation process.
 - (iii) Bidders shall submit bids pursuant to the solicitation schedule contained in the CPRE RFP Solicitation documents, as determined by the electric public utility and the Independent Administrator and posted to the IE Website. The electric public utility and the Independent Administrator shall have access to all bids and all supporting documentation submitted by bidders in the course of the CPRE RFP Solicitation process.
 - (iv) If the electric public utility wishes to consider an option for full or partial ownership of an electric public utility self-developed option as part of the CPRE RFP solicitation, the utility must submit its construction proposal ("Self-developed Proposal") to provide all or part of the capacity requested in the CPRE RFP solicitation to the Independent Administrator at the time all other bids are due. Once submitted, the Self-developed Proposal may not be modified by the soliciting electric public utility, ~~except pursuant to the process provided for in subsection (f)(3)(x) to present a final best offer.~~ Provided, however, that in the event that the electric public utility demonstrates to the satisfaction of the Independent Administrator that the Self-developed Proposal contains an error and that correction of the error will not be harmful to the

RFP Process, the soliciting entity may correct the error. Persons who have participated or assisted in the preparation of the Self-developed Proposal on behalf of the electric public utility's Bid Team in any way may not be a member of the affiliate's Bid Team, nor communicate with the affiliate Bid Team during the RFP Process about any aspect of the RFP Process. The soliciting entity's Self-developed Proposal must include a total revenue requirement comparable to bids submitted by third-party market participants.

- (3) Evaluation of Responses to CPRE RFP Solicitation.
 - (i) The evaluation stage of the CPRE RFP Solicitation process will proceed on two tracks. On one track, the electric public utility will evaluate all bids based upon the CPRE Program Methodology and criteria set forth in the CPRE RFP Solicitation documents. The electric public utility will conduct this track in an appropriate manner designed to ensure equitable review between any Self-developed Proposals and bids offered by third-party market participants, consistent with the principles and procedures contained in this Rule.
 - (ii) A second track will be conducted by the Independent Evaluator Administrator. The Independent Administrator shall have discretion to utilize whatever approach they consider the optimum combination of auditing the electric public utility track and conducting its own independent evaluation based upon the CPRE Program Methodology in order to equitably evaluate all renewable energy resource options submitted to the electric public utility in response to the CPRE RFP Solicitation.
 - (iii) The electric public utility or the Independent Administrator may request further information from any bidder regarding its bid. Any communications between the electric public utility and a bidder in this regard shall be conducted through the Independent Evaluator Administrator. The electric public utility shall be informed of the content of any communications between the Independent Administrator and a bidder. Should it be determined necessary by the Independent Evaluator Administrator, the electric public utility and the bidder, conference calls between the electric public utility and a bidder may be conducted for the sole purpose of clarification and understanding of a particular bid. All conference calls must be initiated by the Independent Administrator, and the Independent Administrator will be present on each call for its duration. Communications will be conducted on a confidential basis between the Independent Administrator and the bidder, and may include one face-to-face meeting between among the Independent Evaluator Administrator, the electric public utility, and each bidder to discuss the bidder's proposal.
 - (iv) In order to conduct both its independent evaluation function and its auditing function, the Independent Administrator shall have access to all information and resources utilized by the electric public utility in conducting its analysis. The electric public utility shall provide complete and open access to all documents and information utilized by the electric public utility, and the Independent Administrator shall be allowed to actively and contemporaneously monitor all aspects of the electric public utility evaluation process. The electric public utility shall facilitate this access so that the

electric public utility evaluation process is transparent to the Independent Evaluator/Administrator. To the extent the Independent Administrator determines that the evaluation processes of the two tracks are yielding different results, the Independent Administrator shall notify the electric public utility and attempt to identify the reasons for the differences as early as practicable. Where practicable, the electric public utility and the Independent Administrator shall attempt to reconcile such differences.

- (v) The Independent Administrator may make reasonable requests for the electric public utility's Evaluation Team to conduct analyses concerning bids received to support the CPRE Program Methodology. Analyses provided to the Independent Administrator shall be equivalent in quality and content as that developed by the electric public utility for purposes of its own evaluation.
 - (vi) No bidder, including any bidder that is an affiliate of the electric public utility, shall communicate with the electric public utilities' Evaluation Team during the course of the CPRE RFP Solicitation process regarding any aspect of the RFP.
 - (vii) The electric public utility shall perform its evaluation of the bids and shall develop a competitive tier that narrows the bids to a manageable number that the electric public utility believes are the best competitive options ("Utility Competitive Tier"). The Independent Administrator shall independently evaluate the bids and develop its own competitive tier that narrows the bids to a manageable number that the Independent Administrator believes are the best competitive options ("IE Competitive Tier").
 - (viii) The electric public utility shall provide the Utility Competitive Tier to the Independent Evaluator/Administrator. Simultaneously, the Independent Administrator shall provide the IE Competitive Tier to the electric public utility.
 - (ix) If the Utility Competitive Tier and the IE Competitive Tier are identical, the Independent Administrator shall create a single Competitive Tier ("the Combined Competitive Tier"). If there are differences between the Utility Competitive Tier and the IE Competitive Tier, the electric public utility, the Independent Evaluator/Administrator, and the Public Staff shall meet to resolve such differences in order to agree on a Combined Competitive Tier.
- (4) Selection of CPRE Program Resource(s).
- (i) The Independent Administrator shall post the Combined Competitive Tier list on the IE Website showing each bidder's relative rank and the total evaluated cost of each bid. Each bidder on this list will be identified blindly so each bidder knows the identity of the bidder for only its bid but sees its rank compared to those of all other anonymous bidders who made the Competitive Tier. The Independent shall notify all bidders on the Combined Competitive Tier lists that they have the opportunity to better their bids as final best offers. Any refreshed bids received by the electric public utility and Independent shall then be evaluated independently by the electric public utility and the Independent Evaluator, consistent with the process outlined above for initial bids.

After it has completed its final ranking of the Combined Competitive Tier, and pursuant to the CPRE RFP Solicitation schedule, the Independent Administrator shall notify the electric public utility and the Public Staff of the most competitive proposal or proposals to meet the renewable energy resource capacity requested in the CPRE RFP Solicitation.

(ii) The electric public utility is responsible for selecting the most competitive resource(s) through the CPRE RFP Solicitation from the Combined Competitive Tier either to be submitted to the Commission for certification or to enter into a power purchase agreement. If the electric public utility selects a proposal or proposals other than the most competitive proposal(s) ranked by the Independent Administrator, it shall file evidence with the Commission that demonstrates its selection is in the public interest. If the Independent Administrator or the Public Staff believes that the electric public utility's selection is not in the public interest, the Independent Administrator or the Public Staff shall have 15 days to file a response with the Commission. The Commission will then determine whether the electric public utility's selection is in the public interest and should be allowed.

~~(i) After it has completed its final evaluation of bids from the Combined Competitive Tier, and pursuant to the CPRE RFP Solicitation schedule, the electric public utility shall notify the Independent of which resource(s) the electric public utility has selected from the Combined Competitive Tier to meet the renewable energy resource capacity requested in the CPRE RFP Solicitation. If the selection(s) by the electric public utility deviates from the relative ranking of the Combined Competitive Tier, the electric public utility shall provide a written justification for the deviation to the Independent and the Public Staff. If the Independent does not find the selected resources reasonable and acceptable, it shall meet with the electric public utility and the Public Staff to discuss its alternative recommendation(s) based upon its independent evaluation.~~

~~(ii) The Independent shall then notify the electric public utility whether it believes the resources selected by the electric public utility are reasonable and acceptable given the results of its independent evaluation and, upon receiving written notice of the electric public utility's final selection(s), shall post the final selection(s) on the IE Website.~~

~~(iii) The electric public utility is responsible for determining which resource(s) it will select through the CPRE RFP Solicitation to either be submitted to the Commission for certification pursuant to Subsection (k) of this Rule or to enter into a power purchase agreement from the Combined Competitive Tier. The electric public utility shall consider the Independent Evaluator's ranking and evaluation in making its decision, but the electric public utility remains ultimately responsible for the selection of renewable energy resource capacity to meet its obligations under the CPRE Program.~~

(g) CPRE Program Plan.

- (1) Each electric public utility shall file its initial CPRE Program plan with the Commission at the time initial CPRE Program Guidelines are filed under subsection

(c) and thereafter shall be filed on or before September 1 annually. The electric public utility ~~may~~shall file its CPRE Program plan as part of its ~~future~~-biennial integrated resource plan filings, and the CPRE Program plan filed pursuant to this rule will be reviewed in the same docket as the electric public utility's biennial integrated resource plan filing.

- (2) The initial CPRE Program plan shall be filed on November 27, 2017 and cover the initial CPRE Program Procurement Period. Each year thereafter, beginning in 2018, each electric public utility subject to this rule shall file with the Commission an updated CPRE Program plan covering the remainder of the CPRE Program Procurement Period. At a minimum, the plan shall include the following information:
 - (i) an explanation of whether the electric public utility is jointly or individually implementing the aggregate CPRE Program requirements mandated by G.S. 62-110.8(a);
 - (ii) a description of the electric public utility's planned CPRE RFP Solicitations and specific actions planned to procure renewable energy resources during the CPRE Program planning period;
 - (iii) an explanation of how the electric public utility has allocated the amount of CPRE Program resources projected to be procured during the CPRE Program Procurement Period relative to the aggregate CPRE Program requirements;
 - (iv) if designated by location, an explanation of how the electric public utility has determined the locational allocation within its balancing authority area;
 - (v) an estimate of renewable energy generating capacity that is not subject to economic dispatch or economic curtailment that is under development and projected to have executed power purchase agreements and interconnection agreements with the electric public utility or that is otherwise projected to be installed in the electric public utility's balancing authority area within the CPRE Program planning period; and
 - (vi) a copy of the electric public utility's CPRE Program guidelines then in effect as well as a pro forma power purchase agreement used in its most recent CPRE RFP Solicitation.
- (3) Upon the expiration of the CPRE Program Procurement Period, the electric public utility shall file a CPRE Program Plan in the following calendar year identifying any additional CPRE Program procurement requirements, as provided for in G.S. 62-110.8(a).
- (4) In any year in which an electric public utility determines that it has fully complied with the CPRE Program requirements set forth in G.S. 62-110.8(a), the electric public utility shall notify the Commission in its CPRE Program Plan, and may also petition the Commission to discontinue the CPRE Program Plan filing requirements beginning in the subsequent calendar year.

(h) CPRE Program Compliance Report.

- (1) Based on the electric public utility's CPRE Program compliance report, and the comments on that report by the Independent Administrator, the Public Staff and other interested parties, the Commission shall determine whether the utility is in

compliance with the CPRE Program requirements. Each electric public utility shall file its annual CPRE Program compliance report, together with direct testimony and exhibits of expert witnesses, on the same date that it files its cost recovery request under subsection (j) of this rule, which shall also be the filing date for the information required by Rule R8-55. The Commission shall consider each electric public utility's CPRE Program compliance report at the hearing provided for in subsection (j) of this rule and shall determine whether the electric public utility is in compliance with the CPRE Program requirements of G.S. 62-110.8. Public notice and deadlines for intervention and filing of additional direct and rebuttal testimony and exhibits shall be as provided for in subsection (j) of this rule.

- (2) Each year, beginning in 2019, each electric public utility subject to this rule shall file with the Commission a report describing the electric public utility's competitive procurement of renewable energy resources under its CPRE Program and ongoing actions to comply with the requirements of G.S. 62-110.8 during the previous calendar year, which shall be the "reporting year." The report shall include the following information, including supporting documentation:
 - (i) a description of CPRE RFP Solicitation(s) undertaken by the electric public utility during the reporting year;
 - (ii) a description of the sources, amounts, and costs of third-party power purchase agreements and proposed authorized revenues for utility-owned assets for renewable energy resources procured through CPRE RFP Solicitation(s) during the reporting year, including the dates of all CPRE Program contracts or utility commitments to procure renewable energy resources during the reporting year;
 - (iii) the forecasted nameplate capacity and megawatt-hours of renewable energy and the number of renewable energy certificates obtained through the CPRE Program during the reporting year;
 - (iv) identification of all proposed renewable energy facilities under development by the electric public utility that were bid into a CPRE RFP Solicitation during the reporting year, including whether any non-publicly available transmission or distribution system operations information was used in preparing the proposal, and, if so, an explanation of how such information was made available to third parties that notified the utility of their intention to submit a proposal in the same CPRE RFP Solicitation;
 - (v) the electric public utility's avoided cost rates applicable to the CPRE RFP Solicitation(s) undertaken during the reporting year and confirmation that all renewable energy resources procured through a CPRE RFP Solicitation are priced at or below the electric public utility's avoided cost based upon the methodology approved by the Commission;
 - (vi) the actual total costs and authorized revenues incurred by the electric public utility during the calendar year to comply with G.S. 62-110.8;
 - (vii) the status of the electric public utility's compliance with the aggregate CPRE Program procurement requirements set forth in G.S. 62-110.8(a);
 - (viii) a copy of the contract then in effect between the electric public utility and third-party entity hired to administer the CPRE RFP Solicitations, supporting

information regarding the administrative fees collected from market participants in the CPRE RFP Solicitation during the reporting year, as well as any cost incurred by the electric public utility during the reporting year to implement the CPRE RFP Solicitation; and

- (ix) certification by the Independent Administrator that all public utility and third-party bid responses were evaluated under the published CPRE Program Methodology and that all bids were treated equitably through the CPRE RFP Solicitation(s) during the reporting year.

(i) Compliance with CPRE Program Requirements.

- (1) An electric public utility shall be in compliance with the CPRE Program requirements during a given year where the Commission finds and determines that the electric public utility's CPRE Program plan is reasonably designed to meet the requirements of G.S. 62-110.8 and determines based on the utility's most recently filed CPRE Program compliance report that the electric public utility is reasonably and prudently implementing the CPRE Program requirements.
- (2) An electric public utility or other interested party may petition the Commission to modify or delay the provisions of G.S. 62-110.8 in whole or in part upon a clear and convincing showing that the electric public utility or other interested party made reasonable efforts to comply with the CPRE Program requirements and that modification or delay is in the public interest. In such petition, the electric public utility or other interested party shall provide an explanation for the reason for the modification or delay, and a date certain when it will fully comply with the CPRE Program requirements. The Commission may grant such petition only upon a finding that the electric public utility or other interested party made a clear and convincing showing that it made reasonable efforts to comply with the CPRE Program requirements, and that it is in the public interest to grant the petition. The Commission shall not grant a modification or waiver request that would allow an electric public utility to procure energy and capacity from renewable energy facilities in an aggregate amount less than the total volume of renewable energy resources required to be procured by electric public utilities during the Initial CPRE Program Procurement Period. The Commission may grant such petition upon finding that it is in the public interest to do so.
- (3) Renewable energy certificates claimed by an electric public utility while complying with G.S. 62-110.8 must have been earned after January 1, 2018, and may be retired to meet an electric public utility's REPS compliance obligations under G.S. 62-133.8.
- (4) Any facility selected through a CPRE RFP Solicitation shall register with the Commission as a renewable energy facility under Rule R8-66 no later than 60 calendar days of written notification that it was selected and shall assure that renewable energy certificates contracted for under the CPRE Program shall be issued by, or imported into, the North Carolina Renewable Energy Tracking System.

(j) Cost or authorized revenue recovery.

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- (1) Beginning in 2018, for each electric public utility subject to this Rule, the Commission shall schedule an annual public hearing pursuant to G.S. 62-110.8(g) to review the costs incurred or authorized revenue justified by the electric public utility to comply with G.S. 62-110.8. The annual rider hearing for each electric public utility will be scheduled as soon as practicable after the hearing held by the Commission for the electric public utility under Rule R8-55.
- (2) The Commission shall permit each electric public utility to charge an increment or decrement as a rider to its rates to recover in a timely manner the reasonable costs and authorized revenues prudently-incurred to implement its CPRE Program and to comply with G.S. 62-110.8. For utility-owned assets selected under the CPRE Program, the utility ~~may~~ shall propose a revenue requirement ~~no greater than the annual using the market price bid by such utility with respect to such asset established in the same CPRE RFP Solicitation to calculate forecasted authorized revenues over the equivalent term as the power purchase agreement solicited in the applicable CPRE RFP Solicitation.~~ Where the electric public utility proposes to determine authorized revenues based upon the market price of renewable energy resources procured through a CPRE RFP Solicitation, the Commission shall approve authorized revenue to be recovered under this section upon finding that such recovery is in the public interest.
~~Notwithstanding an electric public utility's proposal that the authorized revenue for utility-owned assets be determined using the market price, the Commission may approve authorized revenues determined as otherwise provided for in G.S. 62-110.8(g), if the Commission finds that using the market price is not in the public interest.~~
- ~~(2)~~ (3) Unless otherwise ordered by the Commission, the test period for each electric public utility shall be the same as its test period for purposes of Rule R8-55.
- ~~(3)~~ (4) Rates set pursuant to this section shall be recovered during a fixed recovery period that shall coincide, to the extent practical, with the recovery period for the cost of fuel and fuel-related cost rider established pursuant to Rule R8-55.
- ~~(4)~~ (5) The costs and authorized revenue will be further modified through the use of a CPRE Program experience modification factor (CPRE EMF) rider. The CPRE EMF rider will reflect the difference between reasonable and prudently-incurred CPRE Program projected costs, authorized revenue, and the revenues that were actually realized during the test period under the CPRE Program rider then in effect. Upon request of the electric public utility, the Commission shall also incorporate in this determination the experienced over-recovery or under-recovery of the costs and authorized revenue up to 30 days prior to the date of the hearing, provided that the reasonableness and prudence of these costs and authorized revenues shall be subject to review in the utility's next annual CPRE Program cost recovery hearing.
- ~~(5)~~ (6) The CPRE EMF rider will remain in effect for a fixed 12-month period following establishment and will carry through as a rider to rates established in any intervening general rate case proceedings.
- ~~(6)~~ (7) Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently-incurred costs and authorized revenues to be refunded to an electric public utility's customers through operation of the CPRE EMF rider shall include an amount of

interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.

(7)(8) Each electric public utility shall follow deferred accounting with respect to the difference between actual reasonable and prudently-incurred costs or authorized revenue and related revenues realized under rates in effect.

(8)(9) The annual increase in CPRE Program-related amounts to be recovered by an electric public utility in any recovery period from its North Carolina retail customers to comply with G.S. 62-110.8 shall not exceed one percent (1%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year determined as of December 31 of the previous calendar year. Any amount in excess of that limit shall be carried over and recovered in the next recovery period.

(9)(10) Each electric public utility, at a minimum, shall submit to the Commission for purposes of investigation and hearing the information required for the CPRE Program compliance report for the 12-month test period established in subsection (3) consistent with Rule R8-55, accompanied by supporting workpapers and direct testimony and exhibits of expert witnesses, and any change in rates proposed by the electric public utility at the same time that it files the information required by Rule R8-55.

(10)(11) The electric public utility shall publish a notice of the annual hearing for 2 successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least 30 days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-110.8(g) and setting forth the time and place of the hearing.

(11)(12) Persons having an interest in said hearing may file a petition to intervene setting forth such interest at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed at the discretion of the Commission for good cause shown.

(12)(13) The Public Staff and other intervenors shall file direct testimony and exhibits of expert witnesses at least 15 days prior to the hearing date. If a petition to intervene is filed less than 15 days prior to the hearing date, it shall be accompanied by any direct testimony and exhibits of expert witnesses the intervenor intends to offer at the hearing.

(13)(14) The electric public utility may file rebuttal testimony and exhibits of expert witnesses no later than 5 days prior to the hearing date.

(14)(15) The burden of proof as to whether CPRE Program-related costs or authorized revenues to be recovered under this section were reasonable and prudently-incurred shall be on the electric public utility.

(k) Expedited review and approval of Certificate of Public Convenience and Necessity ("CPCN") for generating facilities procured under the CPRE Program to be owned by an electric public utility.

(1) Where a renewable energy facility is selected through a CPRE RFP Solicitation and is either (i) proposed to be constructed, owned, and operated by an electric public utility requiring a CPCN; or (ii) is planned to be acquired from a third party to be

ADDITIONAL REPLY COMMENTS ATTACHMENT A

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owned and operated by the electric public utility requiring transfer of an existing CPCN; or (iii) proposed to be owned and operated by a third party, the electric public utility or third party shall file a petition for the expedited review and approval of a CPCN or transfer of CPCN(s) to construct, own, and operate the generating facilities.

- (2) Petitions for CPCN(s) filed and approved pursuant to this section shall satisfy the requirements of G.S. 62-110.1(a) and G.S. 62-82, and the electric public utility and third party shall not otherwise be required to follow the procedures for obtaining a CPCN under Rule R8-61.
- (3) An application to obtain a new CPCN for a renewable energy facility selected through the CPRE RFP Solicitation or planned to be constructed by the electric public utility under this section shall be comprised of the following Exhibits:
- (4) The full and correct name, business address, business telephone number, and electronic mailing address of the facility owner;
- (5) A statement of whether the facility owner is an individual, a partnership, or a corporation, and, if a partnership, the name and business address of each general partner and, if a corporation, the state and date of incorporation and the name, business address, business telephone number, and electronic mailing address of an individual duly authorized to act as corporate agent for the purpose of the application, and if a foreign corporation, whether domesticated in North Carolina;
- (6) The ownership of the facility site and, if the owner is other than the applicant, the applicant's interest in the facility site; and
- (7) The following exhibits shall be provided.
 - (i) Exhibit 1 shall include:
 - (a) A color map or aerial photo showing the location of the generating facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks, with the proposed location of major equipment indicated on the map or photo, including: the generator, fuel handling equipment, plant distribution system, startup equipment, site boundary, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities. A U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system is preferred;
 - (b) The E911 street address, county in which the proposed facility would be located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree; and
 - (c) Whether the electric public utility is the site owner, and, if not, providing the full and correct name of the site owner and the electric public utility's interest in the site.
 - (ii) Exhibit 2 shall include:
 - (a) The nature of the renewable energy facility, including the type and source of its power or fuel;
 - (b) A description of the buildings, structures and equipment comprising the renewable energy facility and the manner of its operation;

- (c) The gross and net projected maximum dependable capacity of the renewable energy facility as well as the renewable energy facility's nameplate capacity, expressed as megawatts (alternating current);
 - (d) The projected date on which the renewable energy facility will come on line;
 - (e) The service life of the project;
 - (f) The projected annual production of the renewable energy facility in kilowatt-hours, including a detailed explanation of the anticipated kilowatt and kilowatt-hour outputs, on-peak and off-peak, for each month of the year; and
 - (g) The projected annual production of renewable energy certificates that is eligible for compliance with the State's renewable energy and energy efficiency portfolio standard.
- (iii) Exhibit 3 shall include:
- (a) A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the renewable energy facility and a statement of whether each has been obtained or applied for.
 - (b) A copy of those that have been obtained should be filed with the application; a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained.
- (iv) Exhibit 4 shall contain the expected cost to construct, operate and maintain the proposed facility.
- (3)(8) Procedure for Expedited Review of New CPCN. — Upon the filing of an application appearing to meet the requirements set forth above, the Commission will process it as follows:
- (i) The Commission will issue an order requiring the applicant to publish notice of the application once a week for four successive weeks in a newspaper of general circulation in the county where the renewable energy facility is proposed to be constructed. The applicant shall be responsible for filing with the Commission an affidavit of publication after the final publication of the notice.
 - (ii) The Chief Clerk will deliver 2 copies of the application and the notice to the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration for distribution by the Coordinator to State agencies having an interest in the application. The Chief Clerk will request comments from state agencies within 20 days of delivering notice to the Clearinghouse Coordinator.
 - (iii) If a written complaint is filed with the Commission within 10 days after the last date of the publication of the notice, the Commission will schedule a public hearing to determine whether a certificate should be awarded and will give reasonable notice of the time and place of the hearing to the applicant ~~electric public utility~~ and to each complaining party and will require the applicant to publish notice of the hearing in the newspaper in which the notice of the application was published. If no complaint is received within the time

specified, the Commission may, upon its own initiative, order and schedule a hearing to determine whether a certificate should be awarded and, if the Commission orders a hearing upon its own initiative, it will require notice of the hearing to be published by the applicant in the newspaper in which the notice of the application was published.

- (iv) If no complaint is received within the time specified and the Commission does not order a hearing upon its own initiative, the Commission will enter an order awarding the CPCN requested in the application.

(4)(9) Procedure for Expedited Transfer of CPCN. — Where an electric public utility procures a renewable energy facility through a CPRE RFP Solicitation that will be owned and operated by the electric public utility and the renewable energy facility has been previously granted a CPCN by the Commission, the electric public utility shall apply to the Commission to assign or transfer the CPCN. The Commission shall issue an Order within 30 days of the electric public utility's filing of the application, either approving the transfer of the CPCN or directing further review of the CPCN transfer application if circumstances so require.

- (i) In support of its application to transfer the CPCN, the electric public utility shall:

1. Describe the terms and conditions of the electric public utility's procurement of the renewable energy facility under the CPRE Program;
2. Identify any significant changes to the information previously filed by the third party CPCN applicant that was reviewed and approved the Commission in granting the CPCN to be assigned or transferred.

- (ii) All applications to transfer an existing CPCN shall be signed and verified by the electric public utility applicant. An application to transfer an existing CPCN shall also be verified by the entity which was initially granted the CPCN that it intends to transfer the CPCN to the electric public utility.

(5)(11) Procedure for Acquiring Project Development Assets. — Where an electric public utility purchases assets from a third party developer that has previously obtained a CPCN with the intent of further developing the project and submitting the renewable energy facility in to a future CPRE RFP Solicitation, the electric public utility shall provide notice to the Commission in the docket where the CPCN was granted that the electric public utility has acquired ownership of the project development assets, but shall not be required to submit an application for transfer of the CPCN unless and until the project is selected through the CPRE process or the utility otherwise elects to proceed with construction of the renewable energy facility. An electric public utility proceeding under this section shall file an application and obtain Commission approval to transfer the CPCN prior to commencing the construction or operation of any renewable energy facility. No rights under the CPCN shall transfer to the electric public utility unless and until the Commission approves transfer of the CPCN.

(l) CPRE Program Power Purchase Agreement Requirements

- (1) At least 360 days prior to holding a CPRE RFP Solicitation, the Independent Administrator shall post the pro forma contract to be utilized during the CPRE RFP

Solicitation on the IE Website to inform market participants of terms and conditions of the competitive solicitation. The electric public utility shall also file the pro forma contract with the Commission and identify any material changes to the pro forma contract terms and conditions from the contract used in the electric public utility's most recent CPRE RFP Solicitation.

- (2) Each electric public utility shall include appropriate language in all pro forma contracts (i) providing 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; (ii) defining limits and compensation for resource dispatch and curtailments; (iii) defining environmental and renewable energy attributes to include all attributes that would be created by renewable energy facilities owned by the electric public utility; and (iv) prohibiting the seller from claiming or otherwise remarketing the environmental and renewable energy attributes, including the renewable energy certificates being procured by the electric public utility under power purchase agreements entered into under the CPRE Program. An electric public utility may redefine its rights to dispatch, operate, and control solicited renewable energy facilities, including defining limits and compensation for resource dispatch and curtailments, in pro forma contracts to be offered in future CPRE RFP Solicitations, and may also elect to solicit multiple products based upon differing rights to dispatch, operate, and control solicited renewable energy facilities through developing multiple pro forma contracts within a single CPRE RFP Solicitation.
- (3) No later than 30 days after an electric public utility executes a power purchase agreement that is competitively procured pursuant to a CPRE RFP Solicitation, the electric public utility shall file the power purchase agreement with the Commission. If the power purchase agreement is with an affiliate, the electric public utility shall file the power purchase agreement with the Commission pursuant to G.S. 62-153(a).
- (4) Upon expiration of the contract term of a power purchase agreement procured pursuant to this Rule, a generating facility owner other than the electric public utility may enter into a new contract with the electric public utility pursuant to G.S. 62-156 or obtain a new contract based on an updated market based mechanism, as determined by the Commission pursuant to G.S. 62-110.8(a). If market-based authorized revenue for a generating facility owned by the electric public utility and procured pursuant to this Rule was initially determined by the Commission to be in the public interest, then the electric public utility shall similarly be permitted to continue to receive authorized revenue based on an updated market based mechanism, as determined by the Commission pursuant to G.S. 62-110.8(a). Any market based rate for either utility owned or non-utility owned facilities shall not exceed the electric public utility's avoided cost rate set pursuant to G.S. 62-156. If the electric public utility's initial bid includes assumptions about market price after the initial term, such information shall be made available to the Independent Administrator and all bidders.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing **Joint Additional Reply Comments of NC Clean Energy Business Alliance and NC Sustainable Energy Association** has 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:

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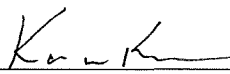
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This the 22nd day of September, 2017.

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