

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1159
DOCKET NO. E-7, SUB 1156

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Joint Petition of Duke Energy Carolinas, LLC,)	
and Duke Energy Progress, LLC, for)	ORDER ON CLARIFICATION
Approval of Competitive Procurement of)	
Renewable Energy Program)	

BY THE COMMISSION: On February 21 and June 25, 2018, in the above-captioned proceedings, the Commission issued Orders that, among other things, approved the use of a pro forma purchase power agreement (PPA) in the Tranche 1 CPRE RFP Solicitation, which opened for bidding on July 10, 2018. In addition, those Orders require Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP) (together, Duke), to continue discussions with the North Carolina Clean Energy Business Alliance (NCCEBA), North Carolina Sustainable Energy Association (NCSEA), the Public Staff, and other interested parties regarding the terms and conditions contained in the pro forma PPA. The Commission's stated goal in directing the parties to continue their discussions was to reach consensus on the provisions of the pro forma PPA for future CPRE RFP Solicitations.¹ Further, the Commission directed Duke to file with the Commission a report on the results of the Tranche 1 CPRE RFP Solicitation, with the goal of determining whether the provisions of the pro forma PPA are a barrier to achieving the goals of the CPRE Program established by the enactment of N.C. Gen. Stat. § 62-110.8.²

On July 19, 2019, NCCEBA and NCSEA jointly filed a motion for clarification, requesting that the Commission "provide clarification about any further inclusion of energy storage requirements in pro forma PPAs for later CPRE tranches and PPAs not part of CPRE without Commission approval." More specifically, NCCEBA and NCSEA "request clarification that the energy storage protocols contained in the Tranche 1 pro forma CPRE PPA may not be included in any pro forma PPAs — other than the Tranche 1 pro forma CPRE PPA — until the Commission approves the energy storage requirements for use in other pro forma PPAs." In support of their requested clarification, NCCEBA and NCSEA state that they believe such clarification is consistent with the intent of the Commission's Orders issued in these proceedings. Further, NCCEBA and NCSEA note that those Orders directed Duke to continue discussions with NCCEBA and NCSEA, the Public Staff, and other interested parties regarding revisions to the pro forma PPA, and

¹ Order Modifying and Approving Joint CPRE Program, at 15-16, Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 (February 21, 2018).

² Order Denying Joint Motion, Approving Pro Forma PPA, and Providing Other Relief, at 7-9, Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 (June 25, 2018).

did not approve the energy storage provisions for inclusion in PPAs other than the pro forma PPA to be used in the Tranche 1 CPRE RFP. However, NCCEBA and NCSEA then state that “because the [June 25] Order did not specifically state that the energy storage protocols may only be included in the Tranche 1 pro forma CPRE PPA until approved for other PPAs, clarification is needed.”³ Finally, throughout their motion NCCEBA and NCSEA repeatedly emphasize that the Commission “has not yet approved rules and regulations for energy storage” and the importance of energy storage “policies and rules.”

North Carolina General Statutes Section 62-110.8(b)(3) requires DEC and DEP to submit to the Commission for approval and make publicly available at least 30 days prior to each competitive procurement solicitation a pro forma contract that will be used in the solicitation. Commission Rule R8-71(f)(ii) and (iii) provides additional requirements for filing and publishing certain documents, including the pro forma PPA, sixty (60) days prior to the issuance or opening of a CPRE RFP Solicitation. In addition, Commission Rule R8-71(g)(1) requires DEC and DEP to file an initial CPRE Program plan on or before September 1 of each year, and, pursuant to Rule R8-71(g)(2)(vi), the CPRE Program plan shall include a copy of CPRE Program guidelines then in effect as well as the pro forma PPA used in its most recent CPRE RFP Solicitation. Finally, Commission Rule R8-71(l) provides detailed requirements related to the CPRE Program PPAs, including posting the pro forma contract to the IA Website and filing the pro forma contract with the Commission, along with an identification of any material changes to the contract from the contract used in the most recent CPRE RFP Solicitation.

Based upon the foregoing and the entire record in these proceedings, the Commission concludes that the Commission’s February 21 and June 25 Orders are unambiguous in expressing the Commission’s intent to approve the pro forma PPA for use in the Tranche 1 CPRE RFP Solicitation only.⁴ The Commission was equally clear in directing Duke to continue discussions on the terms of the pro forma PPA with NCCEBA, NCSEA, the Public Staff, and other interested parties, and to bring the results of those discussions (in addition to the report required pursuant to Ordering Paragraph No. 4 of the Commission’s June 25 Order) to the Commission’s attention. Those matters will inform the Commission’s future decisions on whether to approve use of a revised pro forma PPA for the Tranche 2 CPRE RFP Solicitation or future CPRE RFP Solicitations. Further, the above-cited provisions of the Commission’s rules require filing or publication of the pro forma PPA at various points in the course of the CPRE Program prior to the Tranche 2 CPRE RFP Solicitation, affording NCCEBA and NCSEA opportunities to comment on the provisions that they find objectionable or otherwise petition the Commission for appropriate relief. Moreover, the Commission’s February 21 and June 25 Orders did not (and could not) relieve either DEC or DEP from their obligation under N.C. Gen. Stat. § 62-110.8(b)(3) to submit to the Commission for approval, and make publicly available, the pro forma contract at least “30 days prior to each competitive procurement solicitation.” N.C. Gen. Stat. § 62-110.8(b)(3) (emphasis added). Finally, to

³ NCCEBA and NCSEA do not identify the “other PPAs” to which it directs its request for clarification.

⁴ See fns. 1 and 2, *supra*. See also Order Denying Joint Motion, Approving Pro Forma PPA, and Providing Other Relief, at 4 and 9, Docket Nos. E-2, Sub 1159, and E-7, Sub 1156 (June 25, 2018); and Order Modifying and Approving Joint CPRE Program, at 30, Docket Nos. E-2, Sub 1159, and E-7, Sub 1156 (February 21, 2018).

the extent that NCCEBA and NCSEA's motion addresses "other PPAs," and their interest in establishing policies and rules for energy storage, the Commission concludes that it is inappropriate to take up those issues in this proceeding.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of July, 2018.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "Janice H. Fulmore". The signature is written in a cursive, flowing style.

Janice H. Fulmore, Deputy Clerk

Commissioner Charlotte A. Mitchell did not participate in this decision.