

January 24, 2022

Catherine Rivera

Boards and Commissions Coordinator

NC Department of Administration

By email to:

catherine.rivera@doa.nc.gov

RE: Feedback to Andrea Harris Task Force on Upcoming Stakeholder Process conducted by Duke Energy Carolinas in light of Executive Order 246 and HB 951 as enacted in 2021 N.C. Sess. Laws 165

<https://www.ncleg.gov/Sessions/2021/Bills/House/PDF/H951v6.pdf>

Dear Ms. Rivera,

Thank you for inviting people to provide feedback to the Andrea Harris Task Force on an ongoing basis. The Andrea Harris Task Force has made significant steps in identifying defective agency processes and in helping state agencies to develop best practices. The Andrea Harris Task Force has also developed concrete objectives to achieve the aims of Executive Order 143 and is regularly assessing progress of agencies towards these objectives. The demonstrated commitment of the Task Force in advancing robust public participatory strategies and holding state agencies accountable motivated us to submit feedback regarding an upcoming stakeholder process which has been sprung upon environmental justice communities within the past two weeks.

More concerning, is the appearance that this was done without consulting the Andrea Harris Task Force, the NC DEQ Environmental Justice and Equity Advisory Board, or any other body which has, over the course of several months, been sanctioned by the state to provide support in ensuring adequate community participation. Additionally, it appears that the referenced stakeholder process was conducted without following any of the proposals put forth by the Andrea Harris Task Force. If true, this process does not promote environmental justice, nor equity, and violates best practices for public participation and inclusivity. Given that this process will develop a plan for the NC Utilities Commission to approve for achieving reductions in greenhouse gasses, it is critical that these defects get corrected immediately.

The Andrea Harris Task Force has set forth the following objectives for promoting environmental justice and inclusion:

- Enhance public engagement and increase public participation by low income, minority communities in Department decisions and actions;
- Quantify health and welfare benefits of pollution reduction and identify opportunities to increase the deployment of clean energy resources;
- Advance climate justice by prioritizing actions that equitably reduce greenhouse gas emissions, increase community resilience to the impacts of climate change, and

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advance sustainable economic and infrastructure recovery efforts for low-income, minority and vulnerable communities; and

- Encourage and enhance environmental justice, inclusion and equity education.

These objectives require comprehensive reforms to many state agency processes. One agency process which has not yet been reformed involves the most significant decisions made by any state level commission-the North Carolina Utility Commission. Its current process relies primarily upon an obscure and difficult to access web-based portal for communicating with the public. This arcane process defies best practices for meaningful involvement in critical decisions by environmental justice community members. This barrier has resulted in a skewed participatory process, with communities lacking actual notice, much less meaningful involvement. Only overwhelmingly well-resourced advocacy and lobbying organizations having the resources and knowledge to access the docket process and participate meaningfully in these proceedings.

North Carolina recently legislated a goal to eliminate 70% of its power sector carbon dioxide emissions by 2030. There are multiple pathways for NC to reach this 70% target, but they are not created equal. For example, any pathway that includes a prominent role for swine waste biogas would create financial windfalls for agribusiness and investor-owned utilities while further impoverishing the lives of poor and minority neighbors of industrial hog farms. This policy choice would raise energy bills for low wealth communities while creating or entrenching pollution hotspots in the same communities. In enacting the 70% reduction goal, the law states:

“ ...the Utilities Commission shall:

(1) Develop a plan, no later than December 31, 2022, with the electric public utilities, including stakeholder input, for the utilities to achieve the authorized reduction goals, which may, at a minimum, consider power generation, transmission and distribution, grid modernization, storage, energy efficiency measures, demand-side management, and the latest technological breakthroughs to achieve the least cost path consistent with this section to achieve compliance with the authorized carbon reduction goals (the "Carbon Plan").”

See 2021 N.C. Sess. Laws 165, Part 1, Section 1.

The law requires the North Carolina Utilities Commission to develop the Carbon Plan. In turn, the North Carolina Utilities Commission ordered Duke Energy to conduct stakeholder meetings and report back with a proposed plan to the NCUC, advising the public of this by means of its obscure docket mechanism. While these dockets can be accessed by persons with access to the internet, intimate familiarity in navigating the web-portal is required to find a notice. These dockets are not designed to provide meaningful participation opportunities to the ratepayers of North Carolina. Rather they are designed for the professional class of lawyers who specialize in this area of legal practice.

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Dockets are opened upon orders of the Commission. The description for the docket for the stakeholder plan does not promote transparency at all. The description for the docket for the stakeholder plan did not mention stakeholders at all. Rather the description reads: “Carbon Plan of Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC, Pursuant to Session Law 2021-165.” See <https://starw1.ncuc.net/NCUC/PSC/DocketDetails.aspx?DocketId=8d6cc88e-c26a-438d-9061-3dd2301b15f7> Only those who are familiar with legal citations and utilities law would be able to decipher this obscure reference. Only after locating the docket and searching through the myriad entries, would references to stakeholders be discovered. None of the best practices recommended by this Task Force or the Secretary’s Environmental Justice and Equity Board are being followed with this process for involvement.

In responding to the NCUC Order, Duke Energy Carolinas (“DEC”) and Duke Energy Progress (“DEP”) also relied on the NCUC’s obscure docket mechanism for advising the public of its plans to conduct stakeholder meetings ordered by the NC Utilities Commission. The document DEC and DEP filed may be accessed here: <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=c4afe29f-58a9-4fdb-964d-105c4332836e> Last week, a coalition of eleven environmental nongovernmental organizations filed a letter within the docket to complain about the process and offer suggested improvements for transparency and inclusion. See <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=0731f9d1-3dc9-4ab0-8a64-2ecc09fb4b27>

Their concerns and ours are supported by the current low level of participation in the docket mechanism. Since the docket was opened in October of 2021, a total of only 17 persons have signed up to this docket by intervention—each of them are large industrial users or producers of electricity or state officials. These are the parties of record to the proceeding. And the notice of stakeholder process that was filed with the NCUC was sent solely to these “parties of record.”

On Friday, the NCUC issued a follow up Order asking for stakeholders to provide input on its stakeholder processes. <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=f1f07441-474b-4637-b870-334a8f9a166f> It is absurd and circular logic to solicit people’s feedback about involvement using a subscription-based docket mechanism. The only folks who got notice of this request for feedback about the process were those few who were already subscribed. From beginning to end, the NCUC’s obscure docket process is an obstacle to engaging stakeholders. It would appear that NCUC staff are not aware of best practices for environmental justice and inclusion efforts undertaken in North Carolina since 2020, including EO 246 most recently.

Environmental justice, community health, and implementation of our state climate goals will each benefit greatly from transitioning our energy system from fuel cycle dominated generation to wind, solar, and energy conservation. This can only occur if we have a Carbon Plan that seeks to promote environmental justice, in substance and in procedure, and includes a robust and effective participatory strategy. The procedure used by the

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NCUC and DEP and DEC is fundamentally defective. We very much appreciate your urgent attention and action on this important matter.

Very Truly Yours,

/s/

William J. Barber, III
Board Member, NC DEQ Environmental Justice and Equity Advisory Board;
Co-Chair, Just Transition Subcommittee

Ryke Longest
Clinical Professor of Law, Duke School of Law

Encl: (4)

cc:
Honorable Pam Cashwell, Secretary of Administration,
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