

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. E-100, SUB 101

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Petition for Approval of Revision to )  
Generator Interconnection Standards )  
)  
)

**COMMENTS OF THE  
PUBLIC STAFF ON  
PETITION FOR LIMITED  
WAIVER**

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission, by and through its Executive Director, Christopher J. Ayers, and respectfully submits the following comments in response to the Commission’s September 14, 2020, *Order Requesting Comments on Petition for Limited Waiver* (September 14 Order).

I. BACKGROUND

On September 3, 2020, a Joint Notice of Interconnection Settlement and Petition for Limited Waiver (Joint Notice and Petition) was filed by Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress LLC (DEP, and together with DEC, Duke); Birdseye Renewable Energy, LLC (Birdseye); Carolina Solar Energy LLC (Carolina Solar); Cypress Creek Renewables, LLC (CCR); Pine Gate Renewables, LLC (Pine Gate); Southern Current LLC (Southern Current); National Renewable Energy Corporation (NARENCO); Strata Solar, LLC, and Strata Solar Development, LLC (collectively and individually, Strata); DEPCOM Power, Inc. (DEPCOM); and Ecoplexus, Inc. (Ecoplexus) (collectively, Settling Developers),

providing notice to the Commission of a settlement agreement (Settlement Agreement) being reached regarding a number of disputes under the North Carolina Interconnection Procedures (NCIP)<sup>1</sup> and petitioning the Commission for approval of three waivers from the NCIP applicable to the Settling Developers to implement the Settlement Agreement. The waivers included the following:

- (1) Interdependency Waiver – Waiver from the interdependency provisions in Sections 1.7, 1.8, and 4.4.2 of the NCIP to allow a limited number of distribution-connected Interconnection Requests that are transmission-constrained to interconnect prior to the construction of necessary transmission upgrades, but requiring the projects to operate under a set of operating protocols designed to ensure the continued reliability and safety of the transmission system until such time as the transmission upgrades can be completed (Interdependency Waiver).<sup>2</sup>
- (2) Serial Queue Waiver – Waiver of the serial study process required under Sections 1.4.2 and 1.7.1 of the NCIP in certain circumstances to allow some projects to be interconnected out of serial queue order, provided that the waiver would not adversely impact any

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<sup>1</sup> See *Order Approving Revised Interconnection Standard and Requiring Testimony and Reports*, Docket No. E-100, Sub 101 (June 14, 2019) (“June 2019 Interconnection Order”). Capitalized terms not otherwise defined herein shall have the meaning assigned to them in the NC Procedures.

<sup>2</sup> Described in greater detail in pages 7-11 of the Joint Notice and Section 5(a) of the Settlement Agreement.

Interconnection Customer that is not a party to the Settlement Agreement.<sup>3</sup>

- (3) Material Modification Waiver – Waiver of Sections 1.5.1.1.4 and 1.5.1.2.7 of the NCIP to allow certain Interconnection Requests to reduce the capacity of their proposed generating facility by more than ten percent without being seen as indicia of a Material Modification that would ordinarily require the withdrawal of the original Interconnection Request.<sup>4</sup>

The Commission in its September 14 Order directed the Public Staff and requested other parties to file comments on the limited waiver provisions no later than September 25, 2020, and requested all parties to file reply comments on or before October 2, 2020.

## II. GENERAL COMMENTS

The Public Staff is not a party to the Settlement Agreement and did not directly participate in the discussions resulting in the development of the Agreement. Nonetheless, the Public Staff has participated in numerous informal dispute resolution meetings between Duke and the Settling Developers pursuant to Section 6.2.4 of the NCIP and recognizes the challenges that have arisen during

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<sup>3</sup> Described in greater detail in pages 11-12 of the Joint Notice and Section 3(c)(i) of the Settlement Agreement.

<sup>4</sup> Described in greater detail on page 12 of the Joint Notice and Section 2(b)(ii) of the Settlement Agreement

Duke's implementation of the NCIP, particularly over the past six years.<sup>5</sup> During that time, utilities in North Carolina have experienced a tremendous increase in the number and size of generator Interconnection Requests being received. In addition, the NCIP has been significantly revised twice during that time as a result of extensive stakeholder and Commission proceedings, most recently in the Commission's June 2019 Interconnection Order, and the utilities have implemented additional guidance and policies designed to ensure the safe and efficient interconnection of generation resources on their system. These revisions and guidance, while designed to improve the efficiency of the process and ensure the safe and efficient interconnection of generation resources on their system, have in some cases resulted in additional disputes over Duke's implementation of these changes. In addition, consistent with the June 2019 Interconnection Order, Duke currently has an interconnection queue reform proposal pending before the Commission in this docket that would result in further extensive changes to the NCIP, and is pursuing additional changes to its interconnection procedures in South Carolina, as well as at the Federal Energy Regulatory Commission ("FERC") due to the combined nature of Duke's interconnection queue.<sup>6</sup>

As noted in the Joint Notice and Petition, the Commission has encouraged informal resolution of disputes "both to promote judicial economy by allowing parties to achieve good faith compromise and to more efficiently resolve active or

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<sup>5</sup> These challenges were discussed in detail in the November 19, 2018, testimony of Public Staff witnesses Jay Lucas and Tommy Williamson, and the January 8, 2019, rebuttal testimony of Jay Lucas in this docket.

<sup>6</sup> See Updated Queue Reform Redline included as Attachment 1 to DEC and DEP's Reply Comments in Support of Queue Reform Proposal filed in this docket on August 31, 2020 (Queue Reform Proposal).

potential litigation without conceding liability.”<sup>7</sup> The Public Staff similarly supports the informal resolution of these interconnection disputes, provided that safety and reliability of the system is maintained, non-participating customers are not burdened with additional costs, and that the settlement does not result in the discriminatory treatment of other interconnection customers. The Public Staff notes that settlements involving a large number of interconnection customers were filed in this docket in 2016 and 2018 to resolve some of the implementation issues that have arisen.<sup>8</sup> However, other projects have proceeded to file formal complaints before the Commission to seek resolution,<sup>9</sup> or sought resolution of these issues in other judicial proceedings.<sup>10</sup> The Joint Notice and Petition would resolve some, but not all, of the pending informal disputes and formal complaints related to the NCIP.

The Public Staff has been supportive of the queue reform efforts underway in this docket, and recognizes that an effective transition process from the prior serial queue to the cluster approach envisioned in Duke’s Queue Reform Proposal relies in part on the resolution of many of these disputes. In addition, the

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<sup>7</sup> Joint Notice and Petition at 6, referencing the Commission’s March 1, 2017 *Order Declining to Adopt Proposed Settlement Rules* in Docket No. M-100, Sub 145, and the Commission’s June 22, 2018 *Order Accepting Stipulation, Deciding Contested Issues and Requiring Revenue Reduction* in Docket No. E-7, Sub 1146 et al.

<sup>8</sup> See, e.g., Settlement Agreement dated August 29, 2016, by and among DEC and DEP and other settling interconnection customers filed in this docket on August 29, 2018, related to Duke’s implementation of an additional impact study called “circuit stiffness review” or “CSR” criteria; and the Settlement Agreement dated January 30, 2018, by and among DEC and DEP, the Public Staff, the North Carolina Clean Energy Business Alliance, and other settling parties filed in this docket on February 2, 2018, related to Duke’s implementation of its Method of Service Guidelines.

<sup>9</sup> See Complaint of Williams Solar, LLC, in Docket No. E-2, Sub 1220 (October 24, 2019).

<sup>10</sup> See Complaint of Elk Solar, LLC, Vintage Solar 2, LLC, Woodington Solar, LLC, Airport Solar, LLC, Brewington Solar, LLC, and Gray Fox Solar, LLC complaint against DEP (N.C. Superior Court, Case No. 19 CVS 12012 (filed Aug. 30, 2019)).

prospective cost controls and cost bounding measures proposed in Attachment 5 of Duke's August 31, 2020 Reply Comments in Support of Queue Reform Proposal in this docket should help to reduce the number of future complaints regarding cost overruns, clarify the responsibility for Interconnection Customers to be responsible for interconnection costs, and provide additional transparency and cost certainty for Interconnection Customers going forward.

### III. COMMENTS ON WAIVER REQUESTS

**Interdependency Waiver** – As previously described, the Interdependency Waiver would allow a limited number of transmission-constrained distribution projects (“Transmission Interdependent Allocated MW Projects”) to interconnect prior to the construction of transmission Upgrades that were previously identified as being required to allow the interconnection, provided that the Transmission Interdependent Allocated MW Projects comply with a set of operating protocols to ensure the continued safe and reliable operation of the transmission system until such time as the transmission Upgrades can be completed. The operating protocols would provide Duke with additional rights to curtail the output of the Transmission Interdependent Allocated MW Projects in order to ensure compliance with all applicable NERC standards. These curtailment rights would be in addition to existing system emergency curtailment rights applicable to all Qualifying Facilities (QF), as discussed in the Commission’s October 11, 2017 *Order Establishing Standard Rates and Contract Terms for Qualifying Facilities* in Docket No. E-100, Sub 148, as well as the limited “dispatch down” or “operator instruction” curtailment rights that may be applicable in some negotiated QF power

purchase agreements. The “Transmission Contingency Violation Curtailment” rights provided under the Joint Notice and Petition would allow Duke to curtail no more than 190 megawatt-hours (MWh) per MW AC of installed capacity per calendar year to avoid potential transmission contingency violations without compensating the Interconnection Customer. To the extent the Transmission Contingency Violation Curtailment exceeded the allowable limit, however, Duke would be required to compensate the Transmission Interdependent Allocated MW Project for the lost energy sales. It is the Public Staff’s understanding based on communications with Duke that to the extent Duke was required to compensate an Interconnection Customer for exceeding the allowable Transmission Contingency Violation Curtailment limits, Duke would not seek recovery of those costs from its retail or wholesale customers.

In general, the Public Staff does not take issue with this waiver provision, since it appears to be structured in a way that provides Duke’s system planning and operations personnel with sufficient flexibility to operate the system in a safe, reliable fashion. However, the Public Staff requests that Duke in its reply comments provide additional technical support for the “Allocated MW” that would potentially be eligible to move forward as Transmission Interdependent Allocated MW Projects for each utility. In particular, the Public Staff notes that the majority of the Allocated MW would be in the DEP system, which already has significant solar capacity and could pose further operational challenges to the utility’s system

operators.<sup>11</sup> In addition, the Public Staff requests that Duke address whether the Allocated MW that would be able to move forward under the waiver proposal could potentially impact either utility's system operations or daily least cost economic dispatch stack in such a way as to reduce operational efficiencies or increase costs. The discussion by each utility on the topic of "impacts" should cover but is not limited to the following categories: operations & maintenance; fuel utilization; increases or decreases in the cycling of traditional thermal assets; and whether the additional capacity will drive further need for future capital investments like static VAR compensators, energy storage, or locational voltage support to account for ramp restraints and or intermittency.

**Serial Queue Waiver** – The Serial Queue Waiver would allow some Interconnection Customers in certain circumstances to be interconnected out of serial queue order, provided that the waiver would not adversely impact any Interconnection Customer that is not a party to the Settlement Agreement. In general, the Public Staff does not oppose this waiver request, and recognizes that Section 3(c)(i) of the Settlement Agreement prohibits any outcome that would adversely impact any Interconnection Customer that is not a party to the Settlement Agreement. However, due to the complex interdependencies that can occur at the transmission or distribution level, the Public Staff has concerns that

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<sup>11</sup> See, e.g., The Duke 2020 IRP filed on September 1, 2020, in Docket E-100, Sub 165, indicates that due to "the growing concentration of legacy PURPA solar facilities installed in the DEP BA, associated operational challenges and reliability risks on the DEP system and growing risks of uncompensated system emergency curtailments in DEP, and projections of DEP's and DEC's respective ability to reliably accommodate additional solar energy have informed the Companies' decision to allocate CPRE development primarily in the DEC service territory." Duke Energy Carolinas Integrated Resource Plan 2020 Biennial Report – CPRE, Attachment II, p 16.



some changes in serial queue treatment of certain participating projects could adversely affect the upgrade costs that may be assigned to other non-participating projects. The Public Staff requests that Duke in its reply comments describe in greater detail the measures it will implement to ensure that the Serial Queue Waiver will not negatively impact non-participating Interconnection Customers.

**Material Modification Waiver** – Similar to the concerns raised in the Serial Queue Waiver, the Public Staff has concerns about the ability of DEP and DEC to ensure that non-participating projects are not impacted by the waiver. For example, if a participating project reduces its capacity under the settlement terms and is able to avoid Upgrade costs, the Upgrade costs could possibly be reassigned to a non-participating project that had proceeded under the NCIP with the expectation that the Upgrades would already be in place, based on publicly available information on the interconnection queue. While the Public Staff does not know whether such scenarios might exist in the DEC or DEP system, the Public Staff requests that Duke provide further evidence supporting its position that non-participating customers would not be impacted by the waiver.

#### IV. CONCLUSIONS

While the Commission's September 14 Order directed the Public Staff to provide comments on the limited waivers, the Public Staff notes that several other provisions of the Settlement Agreement beyond those related to the limited waivers are relevant to customers. Of particular relevance, the Public Staff notes that Section 4(e) of the Settlement Agreement explicitly provides that Duke would not

seek recovery of any costs from its retail or wholesale customers resulting from the cost-capping provisions in the Settlement Agreement. In addition, the Settlement Agreement requires participating Interconnection Customers that received an Interconnection Agreement since January 1, 2018, to be responsible for applicable administrative overhead, commissioning costs, and study costs. Further, Section 1(j) provides that Duke would not seek reimbursement of any portion of these costs not recovered from participating Interconnection customers from its retail or wholesale customers. Consistent with the Commission's June 2019 Interconnection Order, the Public Staff believes that these measures are consistent with the Commission's finding that it is appropriate that the utilities "to the greatest extent possible, to continue to seek to recover from Interconnection Customers all expenses (including reasonable overhead expenses) associated with supporting the generator interconnection process" under the NCIP.<sup>12</sup>

WHEREFORE, the Public Staff prays that the Commission take these comments into consideration in reaching its decision in this proceeding.

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<sup>12</sup> June 2019 Interconnection Order at 18.

This the 25th day of September, 2020.

PUBLIC STAFF  
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### **CERTIFICATE OF SERVICE**

I certify that a copy of these comments have been served on all parties of record or their attorneys, or both, by United States mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 25th day of September 2020.

Electronically submitted  
/s/ Tim R. Dodge