

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION  
DOCKET NO. E-100, SUB 181**

**In the Matter of:** )  
**Proceeding to Modify Certain** ) **NCSEA’S REPLY COMMENTS**  
**Existing Power Purchase Agreements** )  
**with Eligible Small Power Producers** )  
**Pursuant to Section 6 of Session Law** )  
**2021-165** )

**NCSEA’S REPLY COMMENTS**

NOW COMES the North Carolina Sustainable Energy Association (“NCSEA”), an intervenor in the above-captioned docket, and, pursuant to the North Carolina Utilities Commission’s (the “Commission”) January 25, 2022 Order Establishing Proceeding and Requesting Comments (“Order”), offers the following reply comments in response to the various initial comments made by the parties in this docket.

Having reviewed the materials filed by the other parties, NCSEA supports the collaborative proposal set forth by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, “Duke Energy”) and Strata Clean Energy Holdings, LLC and SCEPC, LLC (collectively, “Strata”). NCSEA offers the following additional comments on both (i) the opportunity afforded to eligible small power producers to negotiate amendments to their power purchase agreements outside of the current proceeding and (ii) the contractual term offered to eligible small power producers that elect to extend into longer term power purchase agreements (“PPA”) pursuant to Section 6 of Session Law 2021-165 (a process referred to herein as “blend and extend”) which may retrofit their facilities with energy storage systems.

**I. AN ELIGIBLE SMALL POWER PRODUCER SHOULD BE PERMITTED TO INDEPENDENTLY NEGOTIATE MODIFICATIONS TO ITS POWER PURCHASE AGREEMENT.**

Section 6.(a) of Session Law 2021-165 (“HB 951”) directs the Commission to initiate a docket in which to establish the rates to be paid to an eligible small power producer which elects to modify its existing PPA to extend the remaining term thereof by an additional ten years.<sup>1</sup> Accordingly, the Commission initiated this proceeding in which to set such rates. In its initial comments, Duke Energy has proposed a “blend and extend” rate schedule for the Commission’s approval, in satisfaction of the Commission’s statutory obligation under Section 6.(a) of HB 951.<sup>2</sup>

In addition to requiring that the Commission establish rates to be paid in connection with any amended PPA pursuant to Section 6.(a), Section 6.(c) of HB 951 creates an avenue for eligible small power producers to independently negotiate amendments to PPAs “in lieu of the aforementioned proceeding” whereby the Commission is required to establish rates to be paid under negotiated PPAs.<sup>3</sup> Pursuant to Section 6.(c) of HB 951, Duke Energy and Strata have negotiated the terms by which PPAs between Duke Energy and eligible small power producers affiliated with Strata will be amended (the “Stipulation Agreement”).<sup>4</sup>

Duke Energy further proposes that the Stipulation Agreement independently negotiated between it and Strata should serve as a “framework for implementing the Blend

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<sup>1</sup> Section 6.(a)(1) of HB 951.

<sup>2</sup> See, *Initial Comments and Blend and Extend Proposal of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC*, Exhibit B (April 7, 2022)(“Duke Energy Initial Comments”).

<sup>3</sup> Section 6.(c) of HB 951.

<sup>4</sup> Duke Energy Initial Comments at Exhibit A. (“The Stipulating Parties have engaged in good faith negotiations pursuant to Section 6.(c) of Part IV of HB 951 and have reached agreement on the Blend and Extend framework described herein[.]”)

and Extend requirements for . . . other Eligible Small Power Producers”.<sup>5</sup> In addition to the newly proposed “blend and extend” rates, the Stipulation agreement contains terms for the disposition of renewable energy credits and the integration of storage to existing facilities.

NCSEA agrees with Duke Energy’s position that “[b]ecause the Blend and Extend rate proposal outlined in the Stipulation [Agreement] achieves the objectives of Section 6, including by ensuring both an immediate and long-term reduction in costs for customers and is in the public interest . . . the Stipulation [Agreement] provides an appropriate framework by which to establish Blend and Extend rates for all Eligible Small Power Producers under Section 6 of HB 951.”<sup>6</sup> However requiring other eligible small power producers to accept the terms of the Stipulation Agreement in order to “blend and extend” their PPAs without affording a meaningful opportunity to negotiate amendments that differ from the terms of the Stipulation Agreement would not meet the requirements of Section 6.(c) of HB 951, which requires eligible small power producers be allowed to independently negotiate amendments to PPAs outside of the instant proceeding.

Strata and Duke Energy have reached agreement on an array of PPA terms that will allow Strata to supply clean energy and its related benefits to Duke Energy and its customers at just and reasonable rates by negotiating independently and outside of the current proceeding. NCSEA believes the Commission should approve the Stipulation Agreement between Strata and Duke Energy. In addition, the Commission should ensure that in Duke Energy’s efforts to “avoid the need for a separate approval process for each PPA”<sup>7</sup> by offering all eligible small power producers the same framework, eligible small

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<sup>5</sup> *Id.* at 13.

<sup>6</sup> *Id.* at 5.

<sup>7</sup> *Id.* at 7.

power producers are still encouraged to negotiate the terms of their PPAs pursuant to Section 6.(c) and afforded a meaningful opportunity to do so. Should the Commission agree with Duke Energy that the terms of the Stipulation Agreement are an appropriate framework for other eligible small power producers, such a finding should not foreclose other producers from negotiating modifications to their existing PPAs, pursuant to Section 6.(c), just as Strata and Duke Energy have done.

**II. THE TERM LIMITS PROSCRIBED IN N.C. GEN. STAT. 62-156(C) NEED NOT APPLY TO A FACILITY RETROFITTED WITH ENERGY STORAGE CAPACITY.**

In the Order, the Commission requested comments on “whether eligible small power producers that elect to extend into longer term power purchase agreements may retrofit their facilities with energy storage systems[.]”<sup>8</sup> Any solar facilities that are retrofitting energy storage are still “generating solar electricity” in compliance with the requirements of Section 6.(b) of HB 951, even if some of that solar electricity is stored and discharged at a later time. Any eligible small power producer that elects to “blend and extend” its PPA should be eligible to retrofit its facility with energy storage capacity, pursuant to the requirements and restrictions established by the Commission in its August 17, 2021 Order Approving SISC Avoidance Requirements and Addressing Solar-Plus-Storage Qualifying Facility Installations.<sup>9</sup>

On July 27, 2017 the North Carolina General Assembly passed Session Law 2017-192 (“HB 589”) which amended N.C. Gen. Stat. 62-156 and implemented a fixed five-year term limit for PPAs between small power producers with a design capacity over 1,000 kW

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<sup>8</sup> Order at 2.

<sup>9</sup> *Order Approving SISC Avoidance Requirements and Addressing Solar-Plus-Storage Qualifying Facility Installations*, Docket Nos. E-100, Sub 101 and E-100, Sub 158 (August 17, 2021).

and the utility for the sale of electricity.<sup>10</sup> HB 951’s “blend and extend” provision, however, only applies to small power producers that “established a legally enforceable obligation in accordance with the Commission’s then applicable requirements on or before November 15, 2016,” which was prior to the enactment of HB 589 and the statute amended thereby.<sup>11</sup> Furthermore, HB 951 clearly states that the law affords eligible small power producers an opportunity to extend the term of their existing power purchase agreements despite the contract term limits prescribed in N.C. Gen. Stat. 62-156(c).<sup>12</sup>

Duke Energy states in its initial comments that contracting to purchase the output from an energy storage system for a contract term longer than five years, after the original PPA term has expired, would be inconsistent with N.C. Gen. Stat. 62-156(c).<sup>13</sup> Similarly, Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (“Dominion”) proposes in its initial comments that for eligible small power producers with a capacity greater than 1MW and no more than 5 MW, Dominion will only contract to purchase the output from an energy storage system for a five-year term, citing the contract term limits in N.C. Gen. Stat. 62-156(c).<sup>14</sup>

NCSEA disagrees with both Duke Energy and Dominion that the contract term limits set forth in N.C. Gen. Stat. 62-156(c) are applicable to an eligible small power

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<sup>10</sup> N.C. Gen Stat. 62-156(c).

<sup>11</sup> Section 6.(b) of HB 951.

<sup>12</sup> *Id.* § 6.(a)(1). (“Provide eligible small power producers a one-time option to elect . . . to amend their existing power purchase agreement, extending into a new longer term power purchase agreement for a term equal to the remaining term of the existing power purchase agreement plus an additional 10 years, *notwithstanding the contract term limits prescribed in G.S. 62-156(c).*”(emphasis added))

<sup>13</sup> Duke Energy Initial Comments at 14-15.

<sup>14</sup> *Initial Comments of Dominion Energy North Carolina*, p. 9 (April 7, 2021). (“Assuming that the Blend and Extend QF that is seeking to add a retrofit storage component to its facility has a capacity of greater than 1 MW and less than or equal to 5 MW, the maximum term of the Company’s purchase obligation with respect to the storage component would not exceed five years. This is consistent with N.C. Gen. Stat. 62-156(c), which limits the term for QFs not eligible for standard offer rates and terms to five years.”)

producer that contracts to sell the output of an energy storage system after electing to “blend and extend” their existing PPA pursuant to HB 951. HB 951 allows eligible small power producers which are “generating solar electricity[,]”<sup>15</sup> all of which established contractual obligations to sell their output prior to the enactment of HB 589, to extend their contract lengths despite the statutory term limits contained in N.C. Gen. Stat. 62-156(c).<sup>16</sup> The Commission need not consider the contract term limits in N.C. Gen. Stat. 62-156(c) applicable to any PPA amendment contracting for the sale of the output of an energy storage system entered into between an eligible small power producer that has elected to “blend and extend” their existing PPA term for an additional ten years and the utility, as the directives of Sections 6.(a)(1) and 6.(b) of HB 951 supersede N.C. Gen. Stat. 62-156(c).

### **III. CONCLUSION**

NCSEA supports the collaborative work of Duke Energy and Strata and urges the Commission to approve the rates and terms proposed therein for “blending and extending” Strata’s existing PPAs. NCSEA respectfully requests that the Commission ensure other eligible small power producers be afforded the same opportunity to negotiate the terms of their PPA amendments pursuant to Section 6.(c) of HB 951. Nothing in HB 951 nor N.C. Gen. Stat. 62-156(c) requires that the contract term for the sale of the output of an energy storage system with which an eligible small power producer’s facility has been retrofitted must be capped at five years. In setting the terms by which a facility that has elected to “blend and extend” their PPA pursuant to HB 951 will be compensated for the output of

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<sup>15</sup> Section 6.(b) of HB 951.

<sup>16</sup> *Id.* § 6.(a)(1).

an energy storage system, the Commission need not impose a five-year cap on contract term length.

Respectfully submitted, this the 12<sup>th</sup> day of May, 2022.

/s/ Taylor M. Jones  
Taylor M. Jones  
Regulatory Counsel  
NCSEA  
N.C. State Bar No. 58831  
4800 Six Forks Road, Suite 300  
Raleigh, NC 27609  
919-832-7601 Ext. 112  
taylor@energync.org

**CERTIFICATE OF SERVICE**

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing filing 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 12<sup>th</sup> day of May, 2022.

/s/ Taylor M. Jones  
Taylor M. Jones  
Regulatory Counsel  
NCSEA  
N.C. State Bar No. 58831  
4800 Six Forks Road, Suite 300  
Raleigh, NC 27609  
919-832-7601 Ext. 112  
taylor@energync.org