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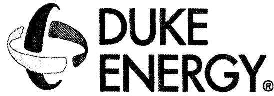

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February 24, 2020

VIA ELECTRONIC FILING

Ms. Kimberley A. Campbell, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4300

RE: Duke Energy Progress, LLC's and Duke Energy Carolinas, LLC's Joint Response to Motion for Return of CPRE Proposal Security Docket Nos. E-2, Sub 1159 and E-7, Sub 1156

Dear Ms. Campbell:

Enclosed for filing in the above-referenced dockets, please find Duke Energy Progress, LLC's and Duke Energy Carolinas, LLC's Joint Response to Motion for Return of CPRE Proposal Security.

If you have any questions, please do not hesitate to contact me. Thank you for your assistance with this matter.

Sincerely,

Jack E. Jirak

Enclosure

cc: Parties of Record

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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-2, SUB 1159
DOCKET NO. E-7, SUB 1156

In the Matter of Joint Petition of Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC, for Approval of Competitive Procurement of Renewable Energy Program	)	DUKE ENERGY PROGRESS, LLC'S AND DUKE ENERGY CAROLINAS, LLC'S JOINT RESPONSE TO MOTION FOR RETURN OF CPRE PROPOSAL SECURITY

NOW COME Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP" and together with DEC, the "Companies" or "Duke"), and hereby jointly respond to the Motion for Return of CPRE Proposal Security ("Motion") filed in the above-captioned dockets on January 14, 2020 by Stanly Solar LLC ("Stanly"). In support of this Joint Motion, Duke shows the North Carolina Utilities Commission ("Commission") the following:

I. Background

Stanly Solar was selected as a winner in Tranche 1 of the Competitive Procurement of Renewable Energy ("CPRE") for DEC and subsequently declined to move forward and execute a power purchase agreement ("PPA"). In this response, the Companies will respond to the statements of Stanly and provide further context on the circumstances that resulted in the need to draw on the security.

II. Response

a. The Commission should consider whether this is the appropriate forum in which Stanly should seek relief.

An initial question to be considered is whether the Commission is the appropriate forum for this issue. Stanly is challenging DEC's right to draw on a surety bond posted in

connection with CPRE. Paragraph 12 of the surety bond states that "[a]ll disputes relating to the execution, interpretation, construction, performance, or enforcement of the Bond and the rights and obligations thereto will be governed by the laws of, and resolved in the State and Federal courts in North Carolina. The rights and remedies of Duke Energy herein are cumulative and in addition to any and all rights and remedies that may be provided by law or equity." Therefore, there is an initial threshold question whether this issue is properly before the Commission or whether Stanly is required by the terms of surety bond to seek relief in state court. The Companies defer to the Commission's judgment on this issue.

b. Tranche 1 was conducted in compliance with the terms of RFP, including Section VI(A).

After initially requesting withdrawal due to solar panel price changes, Stanly subsequently altered the basis for its request, pointing instead to Section VI(A) of the CPRE Tranche 1 Request for Proposal ("RFP") as the basis for its withdrawal. Section VI(A) of the CPRE RFP stated, in part, as follows: "[i]n the event that the T&D Sub-Team determines during the Step 2 evaluation process that any required Interconnection Facilities or System Upgrades cannot be completed by January 1, 2021, but can be completed by July 1, 2021, the IA will notify the MP of the projected completion date of the Interconnection Facilities and System Upgrades and the MP will have the option to elect to either allow the Proposal to remain in the RFP or withdraw the Proposal from the RFP."

In order to understand the intent behind this language, some background is necessary. As the Commission is aware, the Companies have begun to identify the need for substantial transmission upgrades on its system. Such transmission upgrades can take an extended amount of time to construct. The Companies, therefore, desired to avoid a

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scenario in which a CPRE winner would not be able to interconnect until 3-4 years or more in the future. Therefore, the intent behind this provision was to provide for a mechanism by which projects that were identified in the Step 2 evaluation as requiring or relying on substantial transmission upgrades would be given an option to exit RFP.

However, the Step 2 evaluation process is not intended nor can it identify a specific interconnection date. To understand why, it is necessary to understand how the Step 2 evaluation process fits within the overall interconnection process. Broadly speaking, the interconnection process commences with the System Impact Study and then proceeds to Facilities Study and then to Interconnection Agreement. The System Impact Study assesses the impact of the generating facility on the Companies' system and identifies any necessary upgrades. However, by design, there is a substantial amount of additional design, engineering and site review that must occur after System Impact Study in order to have a fully-scoped project. Furthermore and more importantly, the Companies are not able to provide a firm commitment regarding an in-service date until a project achieves an executed Interconnection Agreement. This is because there are practical limits to the amount of transmission-level interconnections that can be completed in any given time period. Because non-CPRE projects continue to be processed under the applicable interconnection procedures during CPRE, the Companies have no way of knowing how many non-CPRE transmission-level projects may progress to an executed Interconnection Agreement prior to the point in time at which a wining CPRE project executes an IA. In other words, a winning CPRE project cannot be provided a firm in-service date until completion of the interconnection process because that is the point in time at which the

fully-scoped work is identified and the number of non-CPRE transmission-connected projects with executed Interconnection Agreements is definitively known.

In the case of Stanly, there are two points to be made. First, Stanly was not dependent on any major transmission upgrades and therefore was not notified pursuant to Section VI(A) of the RFP. As discussed above, the T&D Sub-Team did not have sufficient information to allow it to determine a specific in-service date for any CPRE project at the time of the Step 2 evaluation. Second, Stanly was a Late Stage Project, as that term is defined in the RFP. Late Stage Projects were those projects that had already completed a System Impact Study and elected to bid into CPRE based on their existing System Impact Study results. Because of this election, Stanly was not included in the Step Two grouping study and not specifically evaluated by the T&D Sub-Team and therefore the provision of Section VI(A) are inapplicable.

c. The treatment of the DEC/DEP Proposal Team was Consistent with Terms of RFP and Involves a Different Scenario

In further support of its request, Stanly points to the withdrawal of an Asset Acquisition bid, which was summarized in the IA's Final Report (see Section XIII(E)). Stanly describes the fact that no security was required of the Asset Acquisition bid and states that "[t]o require Stanly to forfeit a million dollars for withdrawing from Tranche 1, especially where Stanly should have been given that right, would result in severely inequitable treatment of Stanly as compared to the Duke-sponsored asset acquisition proposal that was allowed to withdraw from Tranche 1 without any financial penalty."

Stanly's assertion in this respect glosses over the substantially different facts and circumstances at issue in the withdrawal of the Asset Acquisition bid. As the Commission

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is well aware, the CPRE RFP contains an Asset Acquisition component wherein third parties are permitted to bid in assets for acquisition by DEP/DEC (as compared with submitting a PPA bid). The Asset Acquisition component therefore creates a process in which the DEC/DEP Proposal Team is required to assess particular Asset Acquisition bids. The Asset Acquisition bids are submitted by the third party as $/KW (*i.e.*, an upfront fixed capital price). Over a very short period of time (relative to the amount of time that an acquirer would normally have to evaluate a substantial capital project for potential acquisition), the DEC/DEP Proposal Team must then evaluate the Asset Acquisition bid and determine whether to sponsor the project. If it elects to move forward, the DEC/DEP Proposal Team then translates the as-bid capital price into a $/MWh energy price that it is willing to sponsor into the RFP. The $/MWh energy bid price submitted by the DEC/DEP Proposal Team is a direct product of the $/KW capital price bid.

The Tranche 1 RFP, as established with input from all stakeholder and input and oversight from the IA, did not contain a mechanism to "lock" the third-party bidder into the $/KW price until later in the process, and the amount of time available for Asset Acquisition Proposal review by the DEP/DEC Proposal time did not allow sufficient time to executed definitive, binding documents. Nor would it make sense for the DEC/DEP Proposal Team and the third party Asset Acquisition bidder to expend the substantial resources that would be required to achieve definitive documents until it is known whether the project has been selected as a winning CPRE project.

In the case of the withdrawn bid in Tranche 1, the third party bidder increased its $/kW as-bid capital price after the DEC/DEP Proposal Team submitted their $MWh PPA price. In other words, the party that actually increased their price was the third-party Asset

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Acquisition bidder. The increase was so substantial that the DEC/DEP Proposal Team could not maintain its as-bid PPA price and was forced to withdraw its bid that was based on and completely dependent on the third party's price.

The Companies certainly recognize that third-party bidders can theoretically be faced with somewhat similar situations in which third-party contractors or suppliers increase prices after bid submission. However, third-party bidders have substantially more opportunity to mitigate those risk by entering into fixed price agreements or other means. In the case of the Asset Acquisition process in which the DEC/DEP Proposal Team is required to assess and evaluate multiple projects in a short amount of time, there was not sufficient time to enter into binding agreements with respect to price.

In summary, it is not accurate to equivocate the two situations given the dramatically different commercial contexts. Finally, it is important to note that Stanly is not alleging that any violation of the RFP occurred with respect to the DEC/DEP Proposal Team withdrawal.

d. The Companies and the IA have built on lessons learned in Tranche 1 to improve Tranche 2.

As designed, the Companies have worked with the IA and through the stakeholder process to build on lessons learned from Tranche 1. Among the many changes to the Tranche 2 RFP are changes addressing the two issues discussed in this response. First, the Companies and the IA have revised the RFP such that it is clearer that no firm in-service date will be provided during the Step 2 evaluation. Second, the DEC/DEP Proposal Team has worked with the IA and through the stakeholder process to modify the Asset Acquisition bid process so that third-party Asset Acquisition bidders are required to post

security at the time of the Asset Acquisition bid in order to provide certainty that the bidder will not subsequently seek to increase the price. Once again, these improvements reflect the evolution and improvement of the CPRE RFP process, consistent with the Commission's direction.

e. The Companies desire to correct and clarify certain statements in the Motion.

In its Motion, Stanly states asserts that the security should be returned because "Duke did not incur any unfunded study costs for Stanly that might be offset by the Performance Security. If Duke were to retain Stanly's Performance Security it would simply be a one million dollar windfall for the company." This statement is misleading for two primary reasons. First, the intent of the Step 2 surety bond is not to cover study costs. Instead, the surety bond is intended to protect integrity of the RFP process by ensuring that projects that are moved into the Step 2 evaluation actually move forward to PPA if selected as a winning project. Second, even if DEP draws on the surety bond, the proceeds will not be a windfall for Duke. Instead, the amounts would be credited to customers, including to North Carolina retail customers through the CPRE tariff.

Stanly also points to the fact that other projects were not asked to post Proposal Security until a later date than Stanly. However, this is an absolutely unavoidable result of the RFP process by which only the most competitive projects that are moved into the Step 2 evaluation are required to post Proposal Security. If the procurement targets cannot be satisfied with such initial list, the IA provides the opportunity for lower ranked projects to move into Step 2, which requires posting of Proposal Security. This is the reason that certain projects were not required to post until a later date than Stanly.

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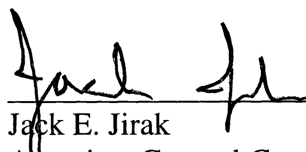
III. Conclusion

DEC determined that in light of the totality of the circumstances, it was appropriate to draw on the Stanly surety bond. However, DEC defers to the Commission's direction as to whether or not an exception should be made given the facts and circumstances. Most importantly, the Companies have worked with the IA to improve the RFP in accordance with the design of the process.

WHEREFORE, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC respectfully request that the Commission accept this Joint Response to Motion for Return of CPRE Proposal Security and provide such further direction as the Commission deems appropriate.

Respectfully submitted, this 24th day of February, 2020.



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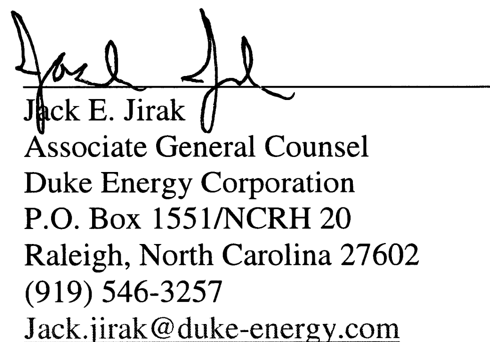
Counsel for Duke Energy Carolinas, LLC and Duke Energy Progress, LLC

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Progress, LLC's and Duke Energy Carolinas, LLC's Joint Response to Motion for Return of CPRE Proposal Security, in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid to parties of record.

This the 24th day of February, 2020.



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