

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) ACCION GROUP, LLC’s, THE CPRE
Energy Carolinas, LLC, and Duke) INDEPENDENT ADMINISTRATOR,
Energy Progress, LLC, for Approval of) RESPONSE TO THE REPLY IN
Competitive Procurement of Renewable) SUPPORT OF MOTION FOR
Energy Program) RETURN OF CPRE PROPOSAL
SECURITY

NOW COMES, Accion Group, LLC, the Independent Administrator for the Competitive Procurement of Renewable Energy Program (“CPRE” or “Program”) (hereinafter “IA” or “Accion”) and requests leave to submit additional observations and to seek guidance of the North Carolina Utility Commission (hereinafter, “NCUC” or “Commission”) on issues that could have significant impact on CPRE Tranche 2 and Tranche 3. ¹

In the Reply, Stanly Solar (“Stanly”) would have the Commission:

1. Obviate a term of a contract and assert jurisdiction over a contract dispute ²;
2. Permit a MP to decline to execute a CPRE PPA based on a business decision, and then shift the burden to the IA and Duke at the conclusion of a CPRE Tranche; ³ and,
3. Permit a MP to challenge CPRE Tranche evaluation determinations six (6) months after being offered a PPA, and five months after the MP notified the IA that “based on current panel pricing” the MP would not execute a PPA.

¹ The IA notes our initial Response was submitted on February 20, 2020 and the Reply in Support of Notion for Return of CPRE Proposal Security (“Reply”) filed on March 13, 2020. The IA first learned of the Reply on April 20, 2020.

² The Surety Bond, with agreed-upon choice of venue for dispute resolution provision, was provided by the IA in our February 20, 2020 Response.

³ The last footnote on the last page of the Reply is the first time Stanly acknowledges to the NCUC that it declined to execute a CPRE PPA because of a business decision that to do so would be unprofitable due to the cost of solar panels. The chronology of Stanly’s refusal to meet the terms of the Program are provided in the copy of exchanges between the IA and Stanly that were provided to the Commission as Attachment A to the IA’s initial Response.

The IA requests this guidance as the CPRE Tranche 2 evaluation is nearing the point where MPs will be required to provide Proposal Security to proceed to Step 2 (the transmission and distribution system impact analysis). Should the Commission determine that the terms of the proforma Surety Bond are no longer acceptable to the NCUC, this needs to be addressed before the IA proceeds in the evaluation process.

The guidance of the Commission is appropriate for, notwithstanding assertions by Stanly to the contrary, the CPRE rules were devised by the NCUC, not Duke and the IA, and the IA is committed to faithfully administer the Program the Commission designed.

In summary, Stanly asserts that the terms of the Surety Bond that were fully vetted with stakeholders and subject to the comment process required by the Commission should be revised twenty (20) months after being finalized ⁴ for all MPs to use, and twelve (12) months after Stanly first provided the Surety Bond with the contractual commitments. This approach would neuter the ability to hold MPs responsible for their bids and open the door for MPs to withdraw at any point up until the execution of a PPA. If this is the direction of the NCUC, the IA will work with Duke and the Public Staff to revise the CPRE evaluation process.

The Commission's guidance on when each CPRE Tranche is final and no longer subject to challenge will assist the IA in the administration of the Program. The Proposal Security process was approved by the Commission as a way to avoid the IA and the Duke T&D Evaluation Team from expending resources to evaluate bids and their system impact costs for Projects that are not committed to proceed to sign a PPA. Also, the CPRE process is designed to have the Proposals selected for PPAs to be final to avoid the uncertainty of MPs backing out at the eleventh hour, and the potential for failing to meet

⁴ The Commission approved the Tranche 1 documents June 25, 2018.

Program goals. If that is to change, clarification and direction from the Commission will permit the IA to establish revised expectations and notice for the marketplace.

The IA is mindful that the current uncertainty resulting from the worldwide pandemic may increase the incidence of some MPs asserting that changed circumstances make CPRE bids unsustainable. The IA is conducting RFPs in other jurisdictions and the issue has arisen there. The establishment of a firm deadline for raising such concerns would be of great assistance to the IA and MP to bring certainty to the decision-making by the IA and Duke. For example, in some jurisdictions the finality of PPAs is established as of when the period for challenges and appeals has tolled.

The IA respectfully requests the NCUC establish:

1. Whether the proforma Surety Bond is subject to review and revision by the NCUC after the conclusion of a CPRE Tranche, in addition to the prior review process employed in both Tranche 1 and Tranche 2.
2. When each CPRE Tranche will be final and no longer subject to challenge or change.

Respectfully submitted,

April 21, 2020



Harold T. Judd, Esquire
President
Accion Group, LLC
The Carriage House
244 North Main Street
Concord, New Hampshire 03301
603-229-1644

CERTIFICATE OF SERVICE

I certify that a copy of Accion Group, LLC's, The CPRE Independent Administrator's Response to The Reply in Support Of Motion For Return Of Proposal Security Response To Verified Petition For Relief By Stanly Solar in Docket No. E-2, SUB 1159 and Docket No. E-7, SUB 1156, has been served by electronic mail on counsel for Stanly and Duke Energy Carolinas, LLC.

This the 21st day of April, 2020.


