

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. E-100, SUB 140

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Biennial Determination of Avoided Cost	)	<b>MEMORANDUM OF</b>
Rates for Electric Utility Purchases from	)	<b>ADDITIONAL AUTHORITY</b>
Qualifying Facilities - 2014	)	

**Contextual Background**

On 7 August 2015, Dominion North Carolina Power (“DNCP”) proposed a “LEO form” for *mandatory* use by qualifying facilities (“QFs”). *Reply Comments of DNCP*, Exhibit E (“Notice of Commitment to Sell the Output of a QF to DNCP”), Commission Docket No. E-100, Sub 140 (7 August 2015). DNCP’s proposed “LEO form” contains the following Section 1 language:

[ \_\_\_\_\_ ] (“Seller”) hereby commits to sell to Virginia Electric and Power Company d/b/a Dominion North Carolina Power (the “Company”) all of the electrical output of the Seller’s qualifying facility (“QF”) described in Seller’s self-certification of QF status filed with the Federal Energy Regulatory Commission in Docket No. QF \_\_\_\_\_ (the “Facility”).

On 10 September 2015, the Public Staff indicated to the North Carolina Utilities Commission (“Commission”), with the consent of Duke Energy Carolinas, LLC (“DEC”), Duke Energy Progress, LLC (“DEP”) and the North Carolina Sustainable Energy Association (“NCSEA”) (collectively, the “Parties”), that “[t]he Parties were in agreement as to the contents of the first four sections of DNCP’s form and believe they can be adapted for use by DEC and DEP.”

While NCSEA has agreed to the language in Section 1 of DNCP’s proposed form, NCSEA has also maintained, and continues to maintain, that QF use of the form should be *permissive* rather than *mandatory*. *See, e.g., NCSEA’s Proposed Order*, p. 54, Commission Docket No. E-100, Sub 140 (18 September 2015).

**Additional Authority**

On 22 September 2015 – after the filing of proposed orders in this proceeding – the Commission issued an *Order Establishing Date of Legally Enforceable Obligation* (“LEO Order”) in Commission Docket No. E-22, Sub 521, in which the Commission “conclude[d]

that Complainants were not required to have obtained QF status in order to satisfy the Commission's two-prong LEO test." LEO Order at p. 15.<sup>1</sup>

Given that (1) the language of Section 1 in DNCP's "LEO form" – to which the parties have agreed – presupposes QF self-certification and (2) the Commission's LEO Order indicates that "Complainants were not required to have obtained QF status in order to satisfy the Commission's two-prong LEO test[.]" NCSEA submits this memorandum because NCSEA believes the LEO Order is relevant to this proceeding, particularly the issue of whether the LEO form should be *permissive or mandatory*.<sup>2</sup>

Respectfully submitted,

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<sup>1</sup> Prior to the filing of this memorandum, NCSEA contacted the Parties. NCSEA understands that DNCP make ask the Commission to reconsider the LEO Order. At present, however, and until such time as the Commission might determine otherwise, NCSEA believes the LEO Order reflects the state of the law on this issue in North Carolina.

<sup>2</sup> While NCSEA is unaware of a Commission rule regarding memoranda of additional authority, the North Carolina Rules of Appellate Procedure does have such a rule: "Additional authorities discovered by a party after filing its brief may be brought to the attention of the court by filing a memorandum thereof with the clerk of the court and serving copies upon all other parties. The memorandum may not be used as a reply brief or for additional argument, but shall simply state the issue to which the additional authority applies and provide a full citation of the authority." N.C. R. App. P. 28(g). NCSEA has striven to hew closely to the guidelines created by this rule.

**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 8<sup>th</sup> day of October, 2015.

    /s/ Peter Ledford    

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