STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. EMP-116, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Juno Solar, LLC, for a Certificate of Public Convenience and Necessity to Construct a 275-MW Solar Facility in Richmond County, North Carolina	)))))	BRIEF OF THE PUBLIC STAFF

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission, (Public Staff) by and through its Executive Director, Christopher J. Ayers, and pursuant to the North Carolina Utilities Commission's (Commission) directive made during the supplemental hearing on March 2, 2022, respectfully submits the following brief in the above-captioned matter addressing the issue of the impact of the decision of the Federal Energy Regulatory Commission (FERC) in *Duke Energy Progress, LLC*, 177 F.E.R.C. ¶ 61,001, 2021 WL 4551911 (F.E.R.C. October 1, 2021), *rehrg denied*, 177 F.E.R.C. ¶ 62,114, 2021 WL 5750552 (F.E.R.C. December 2, 2021), *appeal filed*, D.C. Circ. (Dec. 27, 2021) (American Beech Order) on the offer of Juno Solar, LLC (Juno), to be responsible for all costs of network upgrades above a levelized cost of transmission (LCOT) of four dollars.

I. Background

On January 28, 2020, American Beech Solar, LLC (American Beech) filed an application for a certificate of public convenience and necessity (CPCN) before this Commission in Docket No. EMP-108, Sub 0. During the proceeding, American

Beech stated that the PJM cluster it was studied in with five other projects triggered an affected system network upgrade on the Duke Energy Progress (DEP) transmission system. In the Public Staff's Second Supplemental Testimony in that docket, the Public Staff stated that Duke implemented a change to its standard affected system operating agreement effective October 1, 2020, which would eliminate the reimbursement of affected system network upgrade costs to an interconnection customer.[1] The Public Staff recommended approval of the American Beech CPCN application subject to several conditions requiring American Beech to file a copy of the executed Affected System Operating Agreement (ASOA) and a verified statement acknowledging that, under Duke's Affected Systems Business Procedure and PJM's OATT, the Interconnection Customer is responsible for all affected system costs assigned to the facility, if any, without reimbursement.[2] American Beech filed a letter in the docket stating that it would not object to the issuance of its CPCN subject to the Public Staff's conditions.[3] At this time, the Commission has not issued an order granting or denying American Beech's CPCN.

On May 20, 2021, DEP filed an executed ASOA between DEP and American Beech at FERC under DEP's Joint Open Access Transmission Tariff (Joint OATT).[4] On October 1, 2021, after the parties made several filing arguing

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[1] Second Supplemental Testimony of Jay B. Lucas, Public Staff – North Carolina Utilities Commission at 8, filed on November 17, 2020, in Docket No. EMP-108, Sub 0.

[2] *Id*. at 12-14.

[3] Letter from Applicant Regarding Public Staff Second Supplemental Testimony, filed Dec. 16, 2020 in Docket No. EMP-108, Sub 0.

[4] Duke Energy Progress, LLC Submits Tariff Filing per 35.13(a)(2) (iii): DEP-American Beech Solar ASOA SA No. 388 to be effective 5/21/2021, filed May, 20, 2021, in Docket No. ER21-1955-000.

the validity of the ASOA, FERC issued the American Beech Order, rejecting the ASOA.

In its American Beech Order, FERC stated that American Beech indicated to FERC that it was forced to choose between signing the ASOA or having DEP file an unexecuted ASOA that would result in litigation before FERC over the question of whether DEP would be required to reimburse American Beech for the costs of network upgrades constructed on the affected system under FERC's "Crediting Policy", adding an additional year of delay for the American Beech project.

FERC issued the "Crediting Policy" in Order No. 2003 to establish standard procedures and pro forma agreements for the interconnection of generating facilities to transmission grids.[5] Order No. 2003 found that utilities owning or controlling transmission grids have strong incentives to preclude independent generators from accessing the grid and have engaged in discriminatory practices in the past.[6] The crediting policy was intended to serve the following goals: (1) limit opportunities for transmission providers to favor their own generation; (2) facilitate market entry for generation competitors; (3) encourage "needed investment in generator and transmission infrastructure;" (4) ensure interconnection customers' interconnections are treated comparably to the interconnections that a non-

[5] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

[6] *Id*. at ¶ 695.

independent transmission provider makes with its own generating facilities; and (5) "enhance competition in bulk power markets by promoting the construction of new generation, particularly in areas where entry barriers due to unduly discriminatory transmission practices may still be significant."[7] Order No. 2003-C requires jurisdictional affected system operators to reimburse interconnection customers for network upgrade costs, including the cost of network upgrades constructed on affected systems, regardless of whether the interconnection customer has contracted for delivery service on the affected system operator's transmission system.[8]

FERC found in its American Beech Order that DEP had not shown that it would be just and reasonable to deviate from the pro forma Large Generator Interconnection Agreement (LGIA) that requires that an affected system operator reimburse an interconnection customer for its upfront payments for network upgrades that must be constructed on the affected system under the Crediting Policy. It noted that DEP had the burden of showing that its ASOA was just and reasonable and that DEP's argument that removing the reimbursement requirement eliminates adverse impacts to DEP's existing transmission customers was not adequately supported.[9]

In this proceeding, Juno Solar has represented to this Commission that it would agree to pay the costs of network upgrades above an LCOT of

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[7] *Id*. at ¶ 694.
[8] Order No. 2003 at ¶ 738; Order No. 2003-C at ¶ 13.
[9] American Beech Order at 13-14.

$4.00/MWh.[10] Indeed, the DEP Transitional Cluster Study Phase 1 Report (Phase 1 Report) filed in this docket on March 1, 2022, indicates that network upgrade costs attributable to the interconnection of Juno would be approximately $89,700,000, far in excess of a $4.00/MWh LCOT.[11] The Commission has asked the parties to brief the issue of whether an agreement that is contrary to the Crediting Policy required by the LGIA would be permitted in light of the American Beech Order.

II. Discussion

The Public Staff contends, as the Commission suggested at the hearing, that FERC would most likely reject Juno's LGIA with DEP just as it did American Beech's ASOA. Juno's agreement to be responsible for costs in excess of a $4.00/MWh LCOT would be a deviation from the pro forma LGIA and would require DEP to make a showing that the terms were just and reasonable. It is unclear how FERC would regard such a request from DEP for approval of Juno's agreement to pay costs for which it would ordinarily be reimbursed under the Crediting Policy. Footnote 59 of the American Beech Order cites to P 56 of Order No. 2003-B, 109 FERC ¶ 61,287, where FERC set out the requirements for a transmission provider to request a deviation from FERC's pricing policy if native load and other customers are not being held harmless. FERC went on to say:

> While we cannot envision any circumstances where our existing pricing policy will not fully protect native load and other Transmission

[10] Public Staff Witness Metz in his pre-filed testimony stated that the $4.00/MWh LCOT would equate to approximately $51.7 million. This would require Juno to fund and not seek reimbursement for approximately $38 million in network upgrade costs based on the Phase 1 Report cost allocation.

[11] Public Staff Witness Metz testified at the March 2nd Hearing that the Juno's upgrade costs assigned in the Phase 1 Report would equate to an LCOT range of $6.93 - $8.67.

> Customers, we are willing to consider alternative pricing proposals under the facts of a specific case. We emphasize that the Transmission Provider bears the full burden of showing that any such proposal is just and reasonable and not unduly discriminatory or preferential, and is appropriate under the circumstances.

Thus, it appears that FERC has set a very high bar for the granting of any deviations to its LGIA. Based on Footnote 59 of the American Beech Order, the Public Staff believes it is more likely than not that FERC would deny a request to deviate from DEP's LGIA, despite the fact that the deviation would actually serve to protect native load and other customers.

Even if one were to believe that FERC would ultimately allow such a deviation, the process that DEP would have to undertake to receive permission from FERC to deviate from the LGIA would most certainly require additional time, in excess of a year. Juno is part of DEP's Transitional Cluster Study (TCS) Process which has proscribed timelines for participating projects to meet milestones, DEP to issue study results, and both parties to execute contracts in order to move forward in the process. The LGIA between the parties addressing the amount of upgrade costs assigned to Juno and how much of those cost would be reimbursed, should the Commission issue a CPCN with the requested condition, would not be executed until late April 2023. Once the LGIA is executed by both parties, DEP would be required to file it at FERC as it is a deviation from the *pro forma* LGIA under DEP's Joint OATT. If FERC were to inquire about the LGIA at issue, using the American Beech Docket as a guide, it would most likely be August of 2023 before FERC would determine whether to allow the deviation from the LGIA. At that point, the other projects in the TCS would also have signed LGIAs or

Interconnection Agreements[12] and the revocation of Juno's CPCN and its inability to move forward in the construction process would cause much more confusion and delay than if the Juno were to drop out of the TCS before Phase II.

The Public Staff also believes that while Juno and American Beech appear similar, there are several key nuances. Juno is also voluntarily requesting to execute an agreement to fund the upgrades without reimbursement, unlike American Beech, which argued at FERC that it was forced into executing the ASOA or accepting another year of delays while the agreement was filed unexecuted and litigated at FERC. Juno, however, is requesting to interconnect to DEP's transmission system, pay for and not seek reimbursement of, on-system network upgrade costs as well as any affected systems network upgrade costs. American Beech was seeking to interconnect onto Dominion Energy's transmission system, which is a member of PJM's Regional Transmission Organization and only requesting to pay for affected systems upgrades on DEP's transmission system. Even if FERC were to look more favorably on Juno voluntarily paying for a portion of the upgrades, than the American Beech ASOA, the Public Staff contends that because Juno's upgrades are on-system upgrades compared to American Beech's affected system upgrades makes it even less likely that FERC would approve the agreement.

To be clear, to the extent that it is allowed by FERC, the Public Staff supports voluntary agreements between an interconnection customer and a

[12] State Jurisdictional projects sign Interconnection Agreements under the Commission approved North Carolina Interconnection Procedures.

transmission provider that seeks to protect native load customers from being forced to pay transmission costs that are not commiserate with the benefits of the transmission.[13] However, as indicated by the Cluster Study, the costs assigned to DEP ratepayers for the interconnection of Juno would be substantial and far outweigh the benefits, to the extent there are any such benefits.

III. Conclusion

The substantial uncertainty as to whether FERC would even approve a deviation from the LGIA under these particular facts and circumstances and the time required for FER to issue a ruling, make it even clearer that it would be inappropriate for the Commission to grant Juno a CPCN at this time under any conditions. It is impossible to quantify the costs to ratepayers until FERC has determined whether a deviation would be permitted, and that determination would not occur for a substantial amount of time. The Commission has correctly raised the American Beech Order as an impediment to the Commission's consideration of Juno's offer to accept responsibility of costs in excess of a $4.00 LCOT as a measure to protect DEP ratepayers. As such, the Public Staff reiterates its position that the Commission should deny Juno's request for a CPCN at this time.

[13] *See* Public Staff’s Motion to Intervene Out-of-Time and Comments filed in FERC Docket No. ER21-1955-003, on November 9, 2021.

Respectfully submitted this the 9th day of March, 2022.

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CERTIFICATE OF SERVICE

I certify that a copy of these Comments has 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 9th day of March, 2022.

Electronically submitted
/s/ Robert B. Josey