

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

DOCKET NO. SP-13695, SUB 1

In the Matter of:	)	ACCION GROUP, LLC's, THE CPRE
	)	INDEPENDENT ADMINISTRATOR,
	)	RESPONSE TO MOTION TO
	)	STRIKE,
Orion Renewable Resources LLC	)	OR IN THE ALTERNATIVE TO
	)	REOPEN HEARING BY ORION
	)	RENEWABLE RESOURCES LLC

**ACCION'S RESPONSE TO ORION RENEWABLE RESOURCES, LLC'S**

**MOTION TO COMPEL**

NOW COMES, Accion Group, LLC, the Independent Administrator for the Competitive Procurement of Renewable Energy Program ("CPRE" or "Program") (hereinafter "IA" or "Accion") and respectfully responds to Orion Renewable Resources, LLC's ("Orion") Motion to Compel filed with the North Carolina Utilities Commission (hereinafter, "NCUC" or "Commission") by saying as follows:

1. Orion has propounded upon the IA two Requests for Data. The second Request repeats a request set forth in the first Request.
2. Orion indicates in its Motion to Compel that your IA did not object to any of the requests. In fact, Accion responded to each Request indicating the information requested did not exist. As to the Request at issue, your IA clearly indicated its objections to providing the information.
3. The Request at issue pertains to information provided by competitive bidders in connection with Tranche 1 of the Program and would require that calculations be performed by the IA in order to provide the data demanded by Orion.
4. Your IA, through counsel, has repeatedly explained to counsel for Orion that:
  - A. The Request involves proprietary information produced by competitive bidders under circumstances in which they reasonably anticipated that the information regarding financial and other aspects of their bids would not be given to competitors by the IA. As such, your IA believes that, in the absence of an order compelling production of such information, it would be

inappropriate for it to voluntarily provide such competitive information to a competitor such as Orion.

B. Your IA has suggested to Orion's counsel that Orion might reasonably oppose Accion producing Orion's bid information to competitors and would reasonably expect the IA to maintain the confidentiality of such information.

C. The specific calculations requested by Orion do not exist and may undermine the market confidence in the competitive solicitation process established by the Commission.

D. It is the IA's understanding that the discovery process requires the production of existing documents or information, not the performance of various tasks necessary for creation of data that is requested but does not currently exist.

5. Your IA does not believe that North Carolina law requires a party to perform research or provide original work in the context of discovery.<sup>1</sup>

6. Practice before the NCUC generally follows the North Carolina Rules of Civil Procedure with regard to discovery matters. A request by a party that another party create new documents or perform original work is beyond the scope of permissible discovery pursuant to NC RCP. More specifically, N.C.G.S. §1A-1 and Rule 34(a) only require parties to produce documents that actually in the "*possession, custody, or control of the party upon whom the request is served.*" In this case the document requested does not exist.

7. Orion makes reference in its Motion to a Confidentiality Agreement. That Agreement specifically related to the November 2, 2020 hearing in this docket and is not open ended. Further, that agreement does not commit or obligate the IA to generate new documents.

8. More importantly, the Confidentiality Agreement is between the IA and Orion. While the IA holds information provided by other bidders, the IA does not believe it is authorized to disclose bid information received from Orion's competitors. The IA notes that Orion has not provided a release from the other bidders expressly concerning the bid information submitted to the IA. Were the IA to release the bid

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<sup>1</sup> See *Order Denying Motion to Compel*, Docket No. E-100, Sub 106, p. 1 (July 12, 2007).

information of the other bidders without their permission, respect for the CPRE process and the integrity of the IA would rightly be tarnished, if not destroyed.

9. In addition, Accion reasonably raised a concern with Orion's counsel that there is no way to adequately assure once the competitively sensitive information of a competitor is disclosed it may be used or useful to Orion in future competitive bidding circumstances. Once the information is released it cannot be put back into the bottle.

10. Finally, it is your IA's concern that should Orion, which has received a Power Purchase Agreement ("PPA") under Tranche 2, be awarded a PPA under Tranche 1 by order of the Commission, the result would be millions of dollars in additional expense to rate payers.

WHEREFORE, for the reasons set forth herein, Accion respectfully requests the Commission determine whether it is appropriate for the IA to disclose financial and other information of competitive bidders to Orion and to perform the calculations necessary to create and produce the data requested.

Respectfully submitted,

Accion Group, LLC  
By its Attorneys  
**THE CRISP LAW FIRM, PLLC**

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CERTIFICATE OF SERVICE

I certify that a copy of Accion Group, LLC's, The CPRE Independent Administrator, Response to the Motion to Compel filed by Orion Renewable Resources LLC in Docket No. SP-13695, SUB 1, has been served by electronic mail, hand delivery, or by depositing a copy in the United States mail, postage prepaid, properly addressed to parties of record.

This the 28th day of May, 2021.

S/Jack P. Crisp, Jr., Esquire  
Jack P. Crisp, Jr., Esquire