

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 101
DOCKET NO. E-2, SUB 1159
DOCKET NO. E-7, SUB 1156

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-100, SUB 101)	
)	
In the Matter of)	
Petition for Approval of Generator)	
Interconnection Standard)	
)	
DOCKET NO. E-2, SUB 1159)	ORDER GRANTING
DOCKET NO. E-7, SUB 1156)	LIMITED WAIVER
)	
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)	

BY THE COMMISSION: On May 15, 2015, in Docket No. E-100, Sub 101, the Commission issued an Order Approving Revised Interconnection Standard. In Ordering paragraph 3, the Commission instructed the Public Staff – North Carolina Utilities Commission (Public Staff) to convene a stakeholder process not later than two years after the date of the order and to report recommendations from the stakeholder group within four months from the first meeting of the group.

On December 15, 2017, the Public Staff filed a letter in which it stated that even though the parties had had significant discussion and identified numerous issues that merit revision, no consensus was reached regarding what revisions should be made to the Interconnection Standard. On December 20, 2017, the Commission issued an Order Requesting Comments regarding modifications to the North Carolina Interconnection Procedures (NCIP), Forms, and Agreements (collectively referred to as the NC Interconnection Standard).

On February 21, 2018, in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156, the Commission issued its Order Modifying and Approving the Joint Competitive Procurement of Renewable Energy (CPRE) Program for Duke Energy Carolinas, LLC (DEC) and Duke Energy Progress, LLC (DEP) (collectively Duke).

On July 10, 2018, in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156, and pursuant to Commission Rule R8-71(f)(2)(i), the Independent Administrator (IA) of the CPRE Program transmitted to the market participants the final documents to be used in the Tranche 1 CPRE Request for Proposal (RFP) Solicitation (herein also referred to as Tranche 1 of the CPRE RFP or CPRE Tranche 1). By that transmittal, the IA opened the Tranche 1 CPRE RFP Solicitation response period and established September 11, 2018, as the deadline for submission of proposals.

On August 10, 2018, the Chairman issued an Order Scheduling Hearing, Requesting Comments, and Extending Tranche 1 CPRE RFP Solicitation Response Deadline. The order established an evidentiary hearing to consider all of the modifications to the NC Interconnection Standard and established an oral argument on September 17, 2018, regarding the establishment of interim modifications to the NC Interconnection Standard to accommodate Tranche 1 of the CPRE RFP. The Commission subsequently continued the oral argument to September 24, 2018. The August 10, 2018 order also established October 9, 2018, as the new deadline for responses to the Tranche 1 CPRE RFP Solicitation.

On September 24, 2018, the parties appeared before the Commission for oral argument, with appearances made by Duke, NCSEA, IREC, North Carolina Pork Council, NCCEBA and the Public Staff. On September 28, 2018, Duke filed Post-Hearing Responses to Commission Questions in which it provided additional information relative to questions that had been raised during the oral argument.

Also on September 28, 2018, the Chairman issued an order entitled Request for Clarification of Statements Made During Oral Argument in which the Chairman requested Duke to clarify its oral argument comments by a filing due October 1, 2018. Specifically, the Chairman was attempting to confirm that no Interconnection Customers currently in the queue would be subject to immediately making a non-refundable pre-payment for Network Upgrades pursuant to a System Impact Study if the Commission were to approve the amendments to Section 4.3.9 of the NCIP.

On October 1, 2018, Duke filed a response to the Commission's September 28 Order, as did the Public Staff. In its response, Duke indicated that two DEP Interconnection Customers were currently in the Section 4.4 Facilities Study after receiving the System Impact Study reports identifying Network Upgrades and that these two Interconnection Customers would need to immediately make the Milestone Payment within 45 business days. Duke further indicated that three DEC Interconnection Customers currently in Facilities Study would be immediately required to make the Milestone Payments.

On October 1, 2018, the Public Staff, in its filing, indicated that its understanding of the Section 4.3.9 amendment was that it would not apply retroactively to Interconnection Customers who have already signed a Facilities Study Agreement, but rather to customers who, following Commission approval of the modified provision, receive a completed System Impact Study Report and Facilities Study Agreement. But later in its filing, the Public Staff indicates, that with regard to non-refundable payments being immediately due upon

approval of Section 4.3.9, that the Public Staff supports the Commission providing parties that have already received a System Impact Study Report indicating Preliminary Estimated Upgrade Charges a reasonable amount of time, such as 30 days from the date of the Commission's order, to submit the payment or Financial Security.

On October 1, 2018, the Commission provided Duke and the Public Staff, with confidential questions via email, to which the Company provided confidential responses via email on October 1, 2018, and October 2, 2018. Contemporaneously, the Commission emailed all parties to the docket placing them on notice that the questions had been emailed to the Company and the Public Staff. Commission question 2 requested further clarification as follows:

You seem to indicate that the two state-jurisdictional projects in DEP would be subject to the proposed modification of Section 4.3.9? However, this interpretation seems to be inconsistent with the plain language of Section 4.3.9. Specifically, according to your October 1, 2018 letter, these two projects are past the applicable point in the interconnection process requiring payment, as they have "executed Facility Study Agreements." You appear to be applying the amendment retroactively? Should not these facilities proceed under the existing NCIP for payment of Network Upgrades and not be required to make the prepayment under the new Section 4.3.9, correct?

Duke and the Public Staff jointly responded that they support requiring Interconnection Customers in Facilities Study to make the Milestone Payment and do not consider it to be a retroactive application of the proposed amendment. Duke and the Public Staff indicated support of a timeframe of 30 business days from the date of the Commission's order for such Milestone Payment to be made by the Interconnection Customer.

On October 5, 2018, the Commission issued an order in the above-referenced dockets. Paragraph 2 of the ordering paragraphs ordered:

[t]hat Interconnection Customers affected by Section 4.3.9. that are currently in the facilities study stage of the NCIP shall have 30 business days from the date of this Order to submit a prepayment for network upgrades. For a given Interconnection Request, if no such payment is received, the Interconnection Request shall be removed from the interconnection queue.

On November 9, 2018, Cypress Creek Renewables (Cypress Creek), filed a motion to intervene, and separately filed a motion to stay. The Commission granted intervention on November 9, 2018. In its motion to stay, Cypress Creek requested that the Commission, with respect to two of its projects, Fair Bluff Solar, LLC and Homer Solar, LLC (collectively the Cypress Creek Projects), stay the effectiveness of ordering paragraph 2 of its October 5, 2018 Order Approving Interim Modifications to North Carolina Interconnection Procedures for Tranche 1 of the CPRE RFP and the associated last two sentences of the Commission's modification of Section 4.3.9 of the NCIP until December 11, 2018. On

November 19, 2018, the Commission granted the stay for the Cypress Creek Projects until December 11, 2018.

On November 21, 2018, Cypress Creek filed a Petition for Limited Waiver, or in the Alternative, for Modification to the North Carolina Interconnection Procedures, and Request for Expedited Consideration. In its filing, Cypress Creek requests that the Commission grant its Homer and Fair Bluff projects a limited waiver from Section 4.3.9 of the NCIP, the scope of which is discussed in more detail below. In the alternative, Cypress Creek requests the Commission to further modify Section 4.3.9 to provide an exception from the requirement that Interconnection Customers in Facilities Study at the time of the October 5 Order provide prepayment or nonrefundable Financial Security to cover Network Upgrades within 30 business days after entry of the Order where the potential exists for those customers' Network Upgrade costs to increase substantially based on non-payment of Network Upgrade costs by higher-queued Interconnection Customers. Cypress Creek maintains that requiring the Milestone Payment would work an extreme hardship on the Cypress Creek Projects with no benefit to any other party or to ratepayers. Cypress Creek argues that requiring the Milestone Payment at the present time hardship does nothing to accomplish Duke and the Commission's stated goal of revising the NCIP for facilitating Tranche 1 of the CPRE RFP, that being to provide certainty as to the "baseline" for the Tranche 1 study and to reduce the potential problem of "phantom upgrades."

In support of its petition, Cypress Creek reiterates its position as set forth in its motion for stay. Specifically, Cypress Creek states that it is the owner of two solar projects, the Cypress Creek Projects, that are uniquely and negatively impacted by this aspect of the Commission's October 5 Order. Cypress Creek states that the Cypress Creek Projects have signed Facilities Study Agreements and are both interdependent with an earlier-queued FERC-jurisdictional Interconnection Customer, Friesian Solar LLC, and that Friesian Solar has triggered Network Upgrades which are approximately \$200 million. Cypress Creek posits that the Cypress Creek Projects have interdependent Network Upgrades that total approximately \$9.6 million. Cypress Creek states that neither Friesian Solar, nor the Cypress Creek Projects, bid into Tranche 1 of the CPRE RFP. In fact, Cypress Creek indicates that both projects would not have been able to bid into Tranche 1 of the CPRE RFP due to the fact that Tranche 1 of the CPRE RFP provides that any project that cannot complete System Upgrades by July 1, 2021, shall be removed from consideration. Cypress Creek reiterates that if Friesian Solar does not commit to paying the approximately \$200 million in upgrades that the interdependent Cypress Creek Projects would become non-viable and would exit the queue, resulting in Cypress Creek forfeiting \$9.6 million in Financial Security to Duke.

In requesting a waiver, Cypress Creek indicates that requiring this Milestone Payment will not benefit any party. Specifically, Cypress Creek maintains that there is "no CPRE Tranche 1 bidder whose bid evaluation depends on certainty about the Homer and Fair Bluff Network Upgrades." Cypress Creek asserts that it has been informed by Duke that no other lower-queued Interconnection Customer is interdependent on the Homer Network Upgrades and, although "[i]t's unclear whether Fair Bluff has been sufficiently studied to support the same conclusion, [that] it seems likely to be the case."

Cypress Creek thereafter reiterates that CPRE Tranche 1 is only open to projects that will be placed into service no later than July 2021; thus, no project dependent on the Friesian Solar or Cypress Creek Projects will qualify for CPRE Tranche 1. Lastly, Cypress Creek states that if the Friesian Solar project does fund the upgrades, that the Cypress Creek Projects are ready, willing, and able to commit to funding the \$9.6 million in Network Upgrades.

Therefore, Cypress Creek requests that the Commission temporarily waive the requirement pursuant to Section 4.3.9 and required instead that the Cypress Creek Projects provide Milestone Payments for the Independent Upgrades upon the earlier of: (i) Friesian Solar having made a contractual commitment to fund the Interdependent Upgrades that is irrevocable and not subject to any contingencies, (ii) Friesian Solar having been removed from the queue, or (iii) December 31, 2019.

In the alternative, Cypress Creek submits that if the Commission does not grant the requested limited waiver to the Cypress Creek Projects that the Commission amend the revised Section 4.3.9 of the NCIP to append the following language:

Notwithstanding the foregoing, where the interconnection of a Generating Facility proposed by an Interconnection Customer that has received its system impact study and already proceeded to the facilities study phase is interdependent with Network Upgrades that are the responsibility of another Interconnection Customer (including a FERC-jurisdictional customer) with a higher Queue Position, such Interconnection Customer shall not be irrevocably obligated to fund independent Network Upgrades or to provide Financial Security for such upgrades until the utility notifies such Interconnection Customer of its total Network Upgrade cost obligation after the higher queued Interconnection Customer has either (i) has made a contractual commitment to fund the interdependent upgrades that is irrevocable and not subject to any contingencies, or (ii) has been removed from the queue. Within 30 business days of receiving notice from the utility, such Interconnection Customer shall submit the required payment or Financial Security for such Network Upgrades or be removed from the queue.

Cypress Creek contends that this additional language – which will have effect only in the limited circumstances described above (i.e., where the cancellation of an earlier-queued project would result in significantly increased Network Upgrades for a project that has already provided Financial Security for its own identified Network Upgrades) – will further the policy goals of the Commission in a fair and reasonable manner, without imposing unreasonable hardship on the Cypress Creek Projects or any similarly situated project.

Cypress Creek indicates that NCCEBA and NCSEA state that they support the waiver request and alternative petition for further modification to Section 4.3.9. Cypress Creek further indicates that Duke and the Public Staff support the waiver request but

oppose the alternative petition for further modification to Section 4.3.9. Lastly, Cypress Creek requests expedited consideration.

Based upon the filings of the parties and the record and the unique circumstances surrounding the Cypress Creek Projects, the Commission finds and concludes that good cause exists to grant Cypress Creek's petition for a waiver and to temporarily waive the requirement pursuant to Section 4.3.9 as to the Cypress Creek Projects and require instead that the Cypress Creek Projects provide Milestone Payments for the Independent Upgrades upon the earlier of: (i) Friesian Solar having made a contractual commitment to fund the Interdependent Upgrades that is irrevocable and not subject to any contingencies, (ii) Friesian Solar having been removed from the queue, or (iii) December 31, 2019. The Commission shall not amend the revised Section 4.3.9 of the NCIP at this time because Cypress Creek only requested this relief in the alternative if a waiver was not granted.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of December, 2018.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, appearing to read "Janice H. Fulmore", is written over a faint, circular official stamp.

Janice H. Fulmore, Deputy Clerk

Commissioner Jerry C. Dockham did not participate in this decision.