

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. SP-9590, SUB 0
DOCKET NO. E-2, SUB 1159
DOCKET NO. E-7, SUB 1156

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. SP-9590, SUB 0)	
)	
In the Matter of)	
Application of Stanly Solar, LLC, for a)	
Certificate of Public Convenience and)	
Necessity to Construct a 50-MW Solar Facility)	
in Stanly County, North Carolina)	
)	
DOCKET NO. E-2, SUB 1159)	ORDER DENYING PETITION
DOCKET NO. E-7, SUB 1156)	FOR RECONSIDERATION
)	
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 October 20, 2020, the Commission issued its Order Denying Motion for Return of CPRE Proposal Security (October 20, 2020 Order) denying Stanly Solar, LLC’s (Stanly) request that the Commission compel Duke Energy Progress, LLC (DEP, and collectively with Duke Energy Carolinas, LLC, Duke), to return the \$1 million surety bond (Proposal Security) provided by Stanly as security for its bid in Tranche 1 of the Competitive Procurement of Renewable Energy (CPRE) Program authorized by House Bill 589 (S.L. 2017-192).

On November 20, 2020, Stanly filed a Petition for Reconsideration (Petition) requesting reconsideration, pursuant to N.C. Gen. Stat. § 62-80, of the Commission’s decision to deny return of the Proposal Security. Stanly restates two issues from its original motion in support of its Petition: (1) that the Commission misinterpreted or misapprehended the provisions of the Tranche 1 Request for Proposals (RFP) and (2) that the Commission overlooked structural inequities in the RFP that disadvantaged Stanly compared to a “similarly-situated” proposal.

On January 5, 2021, Duke and Accion each filed responses to Stanly's Petition.

Finally, on January 26, 2021, Stanly filed a reply in support of its Petition.

STANDARD OF REVIEW

As provided in N.C.G.S. § 62-80, "[t]he Commission may at any time upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it." The Commission's decision to rescind, alter, or amend an order upon reconsideration under N.C.G.S. § 62-80 is within the Commission's discretion. *State ex rel. Utilities Comm'n v. MCI Telecommunications Corp.*, 132 N.C. App. 625, 630, 514 S.E.2d 276, 280 (1999). However, the Commission cannot arbitrarily or capriciously rescind, alter, or amend a prior order. Rather, there must be some change in circumstances or a misapprehension or disregard of a fact that provides a basis for the Commission to rescind, alter, or amend a prior order. *State ex rel. Utilities Comm'n v. North Carolina Gas Service*, 128 N.C. App. 288, 293-94, 494 S.E.2d 621, 626, *rev. denied*, 348 N.C. 78, 505 S.E.2d 886 (1998).

SUMMARY OF THE PARTIES' POSITIONS

Stanly's Petition for Reconsideration

Stanly seeks reconsideration of the Commission's October 20, 2020 Order on two bases. First, Stanly argues that reconsideration is justified because the Commission misapprehended the terms of the Tranche 1 RFP governing when a market participant (MP) was entitled to have its Proposal Security released. Second, Stanly states that the Commission's reconsideration of its October 20, 2020 Order is warranted because the Commission disregarded or misapprehended critical facts related to an alleged inequity in the structure of Tranche 1 of the CPRE Program which resulted in Stanly forfeiting its \$1,000,000 Proposal Security when it opted not to execute the purchase power agreement (PPA) it was awarded for economic reasons, whereas an Asset Acquisition that failed to enter into an asset purchase and sale agreement with DEP was not similarly penalized.

Duke's Response to Stanly's Petition for Reconsideration

Duke states that the Commission's October 20, 2020 Order correctly concluded that Section VI(A) of the RFP did not apply to Late-Stage Proposals. Duke observes that Stanly fails to introduce any new evidence, change in conditions, or misapprehension or disregard of fact in support of its request that the Commission reconsider its prior order on this matter. Duke argues that the Commission did not fail to acknowledge the differing security requirements in Tranche 1. Duke notes that the Commission "directly acknowledges Stanly's allegation of inequitable treatment" and argues that "the Commission fully understood Stanly's argument concerning inequitable treatment but simply did not find such argument persuasive or correct." *Id.* Duke also Stanly's

contention that the inequities raised by Stanly constitute violations of N.C.G.S. § 62 110.8(d) and Commission Rule R8-71. Duke states that the “IA has previously certified on multiple occasions pursuant to Commission Rule R8-71(h)(2)(ix) that all Tranche 1 proposals were treated equitably and the Commission has previously concluded that Duke reasonably and prudently implemented CPRE Program requirements of N.C.G.S. § 62-110.8.17.” *Id.* at 11.

The IA’s Response to Stanly’s Petition for Reconsideration

The IA opposes Stanly’s Petition for Reconsideration. The IA notes that multiple aspects of the Tranche 1 program were modified in Tranche 2 based on “lesson learned.” *Id.* at 3. The IA argues:

The fact that a competitive procurement process evolves does not indicate it was flawed when first introduced, which the IA has referred to as the “beta” iteration. Rather, the willingness to adapt and modify to make participation more attractive to MPs reflects the Commission’s and Duke’s commitment to attract a robust response from the market and to learn from each experience.

Id. The IA distinguishes between treating MPs equitably and identically, and it asserts that N.C.G.S. § 62-110.8 does not require that MPs be treated identically. Further, the IA argues that it is inappropriate to view Stanly’s request to have its Proposal Security released “in a vacuum,” cautioning that “[t]he potential ramifications for other Proposals, and the viability of competitive solicitations in North Carolina, must be also be considered.” *Id.* at 6-7.

Finally, the IA contends “Stanly’s Proposal was one of the best ranked of all those received in Tranche 1. The Proposal Security requirement is intended to confirm the sincerity of each bidder, and to secure the least cost options for customers. Stanly’s failure to execute the PPA deprived Duke’s customers of the benefit of lower cost service.” *Id.* at 7.

Stanly’s Reply in Support of its Petition for Reconsideration

In its reply, Stanly reiterates four points: (1) that the Commission’s October 20, 2020 Order fails to address the fact that Stanly’s proposal was treated inequitably compared to a similarly-situated Asset Acquisition proposal; (2) that the cited inequity gave Asset Acquisition Proposals a competitive advantage in Tranche 1 over Third-Party PPAs; (3) that the Commission’s October 20, 2020 Order incorrectly interprets Section VI(A) of the Tranche 1 RFP; and (4) that returning Stanly’s proposal security would not cause harm to any party.

DISCUSSION AND CONCLUSIONS

In reaching the following conclusions, the Commission has carefully considered the entire record before it, including all of the pleadings and supplemental materials provided by the parties and each party's respective positions and arguments on each issue. The Commission finds that Stanly has provided no new evidence, persuasive arguments, or other basis upon which to overturn the Commission's decision on reconsideration. As detailed in the October 20, 2020 Order, the Commission disagrees that Stanly is entitled to the return of its Security Proposal based on the express terms of the Tranche 1 RFP. Further, the Commission has fully considered, but is not persuaded by Stanly's assertion that it was treated inequitably. Therefore, the Commission finds good cause to deny the relief requested by Stanly and to deny Stanly's Petition for Reconsideration.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of April, 2021.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Kimberley A. Campbell". The signature is written in a cursive, flowing style.

Kimberley A. Campbell, Chief Clerk

Commissioners Daniel G. Clodfelter, Kimberly W. Duffley, and Jeffrey A. Hughes dissent.