STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 1167
DOCKET NO. E-7, SUB 1166

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC Requesting Approval of Solar Rebate Program Pursuant to N.C. Gen. Stat. § 62-155(f)	**REPLY COMMENTS OF THE PUBLIC STAFF**

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission, by and through its Executive Director, Christopher J. Ayers, and respectfully submits the following reply comments regarding the Solar Rebate Program Annual Report ("Report") filed by Duke Energy Carolinas, LLC ("DEC"), and Duke Energy Progress, LLC ("DEP") (collectively, "Duke" or "the Companies") in the above-captioned docket on April 1, 2020. Pursuant to the Commission's April 7, 2020, *Order Allowing Comments on 2019 Annual Report,* the Public Staff, the North Carolina Sustainable Energy Association ("NCSEA"), and the Southern Alliance for Clean Energy ("SACE") filed initial comments on June 5, 2020.

In its initial comments, NCSEA proposed two additional changes to the Solar Rebate Program beyond the alterations proposed by Duke in its Report. First, NCSEA recommended increasing the rebate availability to more customers through either reducing the size limitations on solar rebate eligibility by half, or by

allowing rebates on only half of the system size, up to the eligibility cap.[1] Second, NCSEA indicated its support for Duke's proposed biannual releases of capacity, but proposed that the first biannual application period should open in October 2020. NCSEA states that allowing this early opening of the 2021 application period would provide additional certainty to both customers applying for the rebate, as well as certainty for rooftop solar installers.[2] NCSEA further requested that the Commission act on this request in an expedited fashion to allow the enrollment window for the 2021 rebate to open early, such that projects installed beginning in early July 2020 would be eligible for the 2021 rebate.[3]

SACE in its initial comments indicated its general support for both of the changes proposed by NCSEA, stating that the lower eligibility limits would allow more customers to participate in the program during each rebate window, and the early enrollment period would help meet unmet demand left over from the 2020 enrollment period, as well as help with economic recovery.[4] The Public Staff appreciates the comments provided by NCSEA and SACE and their goals to increase the availability of the Solar Rebate Program to more customers, but has reservations regarding each proposed change, as described below:

[1] NCSEA initial comments at 4-8. NCSEA proposes that these changes only apply to the residential and non-residential customer classes, as the demand for the nonprofit set-aside has been less than supply.

[2] *Id.* at 8-9.

[3] *Id.*

[4] SACE initial comments at 2.

1. Rebate Eligibility Adjustments

Pursuant to N.C. Gen. Stat. § 62-155(f), the incentives offered through the Solar Rebate Program by DEC and DEP must comport with the following requirements:

> (1) Shall be limited to 10,000 kW of installed capacity annually starting on January 1, 2018, and continuing until December 31, 2022, and shall provide incentives to participating customers based upon the installed alternating current nameplate capacity of the generators.
>
> (2) Nonresidential installations will also be limited to 5,000 kW in aggregate for each of the years of the program.
>
> (3) Of the capacity for nonresidential installations, 2,500 kW shall be set aside for use by nonprofit organizations; 50 kW of the set-aside shall be allocated to the NC Greenpower Solar Schools Pilot or a similar program. Any set-aside rebates that are not used by December 31, 2022, shall be reallocated for use by any customer who otherwise qualifies. For purposes of this section, "nonprofit organization" means an organization or association recognized by the Department of Revenue as tax exempt pursuant to G.S. 105-130.11(a), or any bona fide branch, chapter, or affiliate of that organization.
>
> (4) If in any year a portion of the incentives goes unsubscribed, the utility may roll excess incentives over into a subsequent year's allocation.

In addition, N.C.G.S. § 62-155(f) states that the solar rebate "incentive shall be limited to 10 kilowatts alternating current (kW AC) for residential solar installations and 100 kilowatts alternating current (kW AC) for nonresidential solar installations."

In its initial comments, NCSEA recognizes both the overall capacity limits and the capacity limitations on individual installations established by statute.

NCSEA further states that the 10,000 kW eligibility limit per utility binds the Commission with regard to the overall capacity limit.[5] Nonetheless, NCSEA proposes to modify the eligible size limitations in such a way that the overall capacity incentivized by the Solar Rebate Program would not comport with the requirements set by statute.

First, in evaluating the individual size limitations, NCSEA recognizes the statute limits the incentive to "10 kilowatts alternating current (kW AC) for residential solar installations and 100 kilowatts alternating current (kW AC) for nonresidential solar installations." The Public Staff views this language as a recognition by the General Assembly of the reality that solar installation size and capacity will vary by each customer – for example, many residential installations will be less than 10 kW, but others will be larger. By limiting the rebate eligibility to up to 10 kW and 100 kW, the General Assembly established the upper threshold for determining the portion of an installation that would be eligible for the rebate. NCSEA states, however, that these provisions provide discretion to the Commission to establish a maximum system size for rebate eligibility, so long as the eligible size limit does not exceed the statutory limits.[6] Under this interpretation, NCSEA posits that the Commission may establish rebate eligibility limits for each customer class that are lower than those established by statute. The Public Staff disagrees with this interpretation.

[5] NCSEA initial comments at 4.
[6] *Id.* at 4-5.

The cardinal principle of statutory interpretation is to ensure that the legislative intent is accomplished. Harris v. Nationwide Mut. Ins. Co., 332 N.C. 184, 191, 420 S.E.2d 124, 128 (1992). Statutory interpretation properly begins with an examination of the plain words of the statute, and if the statute is clear and unambiguous, the Commission must conclude that the Legislature intended the statute to be implemented according to the plain meaning of its terms. Three Guys Real Estate v. Harnett County, 345 N.C. 468, 472, 480 S.E.2d 681, 683 (1997).

N.C.G.S. § 62-155(f) does not define what constitutes a residential or nonresidential installation, but does provide a clear limit on the portion of the capacity at each installation that is eligible to receive the incentive. As noted in NCSEA's comments, facilities with a capacity larger than the incentive eligibility limit are still eligible for the rebate up to the maximum size called for in statute,[7] such that a 15-kW residential installation is eligible for incentives on the first 10 kW of its installation, and a 150-kW nonresidential installation is eligible for incentives on the first 100 kW of its installation. Put another way, the installations are incentivized up to the statutory limit, but there is no incentive provided for the additional capacity that exceeds the capacity limit.

Similarly, the plain language of N.C.G.S. § 62-155(f) would therefore prohibit the Commission from adopting a limit on incentive eligibility that is less than the capacity amounts called for in the statute. If the Commission were to amend the rebate program such that only the first 5 kW of each residential

[7] *Id.* at 5.

installation or the first 50 kW of each nonresidential installation were eligible to receive the rebate, they would be substituting their judgment for that of the General Assembly over the appropriate amount of capacity to incentivize at each facility.

In addition, the Public Staff disagrees with NCSEA that the Commission could allow the incentive to be applicable to only one-half of the capacity at each facility, such that the amount of the overall solar capacity installed to meet the capacity limit would be in effect doubled for those customer classes. While on its face the proposal does not directly assign the incentive to more than 10,000 kW, from a practical perspective a solar rebate customer must install one kW to get the next one incentivized. This "BOGO" incentive structure is, in effect, still incentivizing every kW installed up to the eligibility limit, despite NCSEA's statements otherwise. In addition, by not applying the pro-rata approach to the capacity eligible for the non-profit set-aside established by the General Assembly, NCSEA's proposal would potentially result in a larger amount of capacity being incentivized for residential and non-residential customers, counter to the specific division of capacity established by the General Assembly. Further, proposing to limit the eligible capacity to only the first half of the capacity installed at each facility would likely prove confusing to customers and parties marketing the Solar Rebate Program, and may further complicate implementation of the Program for the remaining two years that it is offered.

The Public Staff believes that the plain language of the statute is clear and unambiguous. To the extent, however, there are questions of ambiguity regarding the capacity limits established by the General Assembly, it is appropriate to

consider the overall policy objectives of the General Assembly in including the Solar Rebate Program in House Bill 589 (H589). In construing the language of the H589, the Commission should be guided by the principal that the intent of the legislature controls. In re Hardy, 294 N.C. 90, 95, 240 S.E.2d 367, 371 (1978). The intent is gleaned first from the words, but also from the nature and purpose of the statute and the consequences which would follow from a construction one way or another. In re Estate of Kirkman, 302 N.C. 164, 167, 273 S.E.2d 712, 715 (1981). The words, phrases, and individual expressions of a statute must be interpreted in context and as a part of the composite whole to uphold and give effect to the reason for and the purpose of the statute. Id.; Hardy, at 96, 240 S.E.2d at 371-72.

H589 included many elements as part of a comprehensive package of renewable energy reform, and of significance to the Solar Rebate Program, for which all customers must take service under DEC and DEP's net metering tariff, the General Assembly also enacted N.C. Gen. Stat. § 62-126.4, which directed each electric public utility to file for Commission approval revised net metering rates, and also a legacy provision that allowed net metering facilities placed in service prior to the date the Commission approves new net metering rates to elect to continue net metering under the current net metering rate until January 1, 2027. As part of its developing the comprehensive reforms enacted in H589, the General Assembly made a determination to further incentivize a specific capacity of net metered solar facilities through the Solar Rebate Program over the 2018-2023 timeframe, but also directed the electric public utilities to investigate "the costs and benefits of customer-sited generation" and for the Commission "to establish net

metering rates under all tariff designs that ensure that the net metering retail customer pays its full fixed cost of service."[8] These elements should be read *in pari materia* with the rest of H589 and cannot be viewed in isolation. Therefore, for the Commission to incentivize a larger amount of capacity through the Solar Rebate Program to be installed and receiving service under the current net metering tariff would be counter to the clear intent of the General Assembly in enacting these provisions in H589. If NCSEA and SACE believe that the individual or overall rebate eligibility limits for customers should be modified, the appropriate venue for such changes is the General Assembly, not through creative interpretations of the authority granted to the Commission by the General Assembly to implement the Solar Rebate Program.

2. Biannual window early opening

In their initial comments, NCSEA and SACE both indicate that they support Duke's proposed twice-annual enrollment period. In addition, NCSEA and SACE propose to advance the start of the 2021 enrollment period to October 2020 in order to allow customers and installers to begin to move forward with the next round of enrollments in a timely manner. As noted in the Public Staff's initial comments, increasing the number of enrollment periods will necessarily increase the administrative costs associated with the Program, so those additional costs

[8] The Public Staff has inquired regarding the status of DEC's and DEP's net metering filing in Docket No. E-7, Sub 1214 and E-2, Sub 1219. Duke indicated that they have had "informal discussions with interested stakeholders about a potential collaborative stakeholder process that could be utilized prior to the NCUC initiating a new net metering docket." In addition, DEC and DEP have indicated that their ongoing Second Meter Project for Solar Generators will "inform the investigation of costs and benefits which is required before any proposed revisions may be made to the net metering tariffs."

should be considered by the Commission in its determination of whether to accept this proposal. In addition, the Public Staff believes that a lottery system, as opposed to the "first-come, first-served" basis may still be the most equitable way to ensure all customers have a fair opportunity to apply for the limited supply of available incentives.

To the extent the Commission does not believe larger modifications such as a lottery are appropriate at this time, the Public Staff does not object to the twice-annual enrollment period provided that the increase in administrative costs associated with the Program changes are minimal or offset by reductions in the rebate amounts.[9] However, while the Public Staff appreciates the desire of NCSEA and SACE to begin early action on the 2021 enrollment window, the biannual enrollment periods should begin taking place with the January 2021 enrollment window to provide for sufficient time for DEC and DEP to make the necessary alterations to the Program, test the system for functionality, and inform customers, rooftop installers, and other market participants of the changes to the enrollment windows. The Public Staff believes that the current 90-Day Rule in the Solar Rebate Program, which requires a customer to apply no later than 90 days following the installation of a qualifying solar PV system, provides a sufficient timeframe for those customers seeking to apply for the available capacity in the next enrollment window.

[9] The Public Staff notes that in 2019, program administrative costs comprised approximately 5% of total program costs. See 2019 Solar Rebate Program Annual Report, at 2.

Respectfully submitted this the 6th day of July, 2020.

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CERTIFICATE OF SERVICE

I certify that a copy of these Reply Comments have 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 6th day of July, 2020.

Electronically submitted
/s/ Tim R. Dodge