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Clerk's Office
N.C. Utilities Commission

Ms. Renné C. Vance, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4325

RE: Docket No. E-100, Sub 127

Dear Ms. Vance:

Enclosed for filing are the original and thirty (30) copies of Duke Energy Carolinas, LLC's Proposed Order in the above referenced docket.

Sincerely,

Robert W. Kaylor/

Robert W. Kaylor

Encls.

cc: Parties of Record

CD to Barnes

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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-100, SUB 127

In the Matter of Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities - 2010	))))))	**DUKE ENERGY CAROLINAS, LLC's PROPOSED ORDER**

HEARD: Tuesday, January 25, 2011, at 9:00 a.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner William T. Culpepper, III, Presiding, Chairman Edward S. Finley, Commissioners Lorinzo L. Joyner, Bryan E. Beatty, Susan Warren Rabon, ToNola D. Brown-Bland, and Lucy T. Allen

APPEARANCES:

For Carolina Power & Light Company, d/b/a/ Progress Energy Carolinas, Inc.:

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For Duke Energy Carolinas, LLC:

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For the Using and Consuming Public:

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BY THE COMMISSION: These are the current biennial proceedings held by the North Carolina Utilities Commission (the "Commission") pursuant to the provisions of Section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the Federal Energy Regulatory Commission ("FERC") regulations implementing those provisions, which delegated responsibilities in that regard to this Commission. These proceedings are also held pursuant to the responsibilities delegated to this Commission pursuant to G.S. § 62-156(b) to establish rates for small power producers as that term is defined in G.S. § 62-3(27a).

Section 210 of PURPA and the regulations promulgated thereto by the FERC prescribe the responsibilities of the FERC and of State regulatory authorities, such as this Commission, relating to the development of cogeneration and small power production. Section 210 of PURPA requires the FERC to prescribe such rules as it determines necessary to encourage cogeneration and small power production, including rules requiring electric utilities to purchase electric power from and to sell electric power to, cogeneration and small power production facilities. Under Section 210 of PURPA, cogeneration facilities and small power production facilities that meet certain standards and are not owned by persons primarily engaged in the generation or sale of electric power can become "qualifying facilities" ("QF) and thus become eligible for the rates and exemptions established in accordance with Section 210 of PURPA.

Each electric utility is required under Section 210 of PURPA to offer to purchase available electric energy from cogeneration and small power production facilities that obtain QF status. For such purchases, electric utilities are required to pay rates that are just and reasonable to the customers of the utility, are in the public interest, and do not discriminate against cogenerators or small power producers. The FERC regulations require that the rates that electric utilities pay to purchase electric energy and capacity from qualifying cogenerators and small power producers reflect the cost that the purchasing utility actually can avoid as a result of obtaining energy and capacity from these sources, rather than generating an equivalent amount of energy itself or purchasing energy or capacity from other suppliers.

With respect to electric utilities subject to state regulation, the FERC delegated the implementation of these rules to State regulatory authorities. State commissions may implement these rules by issuance of regulations, on a case-by-case basis, or by any other means reasonably designed to give effect to the FERC's rules.

The Commission at the outset determined to implement Section 210 of PURPA and the related FERC regulations by holding biennial proceedings. The instant proceeding is the latest such proceeding to be held by this Commission since the enactment of PURPA. In prior biennial proceedings, the Commission has determined separate avoided cost rates to be paid by the four electric utilities in North Carolina to QFs with which they interconnect. The Commission has also reviewed and approved other related matters involving the relationship between the electric utilities and such QFs, including terms and conditions of service, contractual arrangements, and interconnection charges.

This proceeding is also the result of the mandate of G.S. §62-156, which was enacted by the General Assembly in 1979. The statute provides that "no later than March 1, 1981, and at least every two years thereafter," this Commission shall determine the rates to be paid by electric utilities for power purchased from small power producers according to certain standards prescribed in the FERC regulations regarding factors to be considered in the determination of avoided cost rates. The definition of the term "small power producer" for purposes of G.S. §62-156 is more restrictive than the PURPA definition of that term, in that G.S. §62-3(27a) includes only hydroelectric facilities of 80 MW or less, thus excluding generators of other types of renewable resources.

On May 5, 2010, the Commission issued its *Order Establishing Biennial Proceeding, Requiring Data and Scheduling Public Hearing* ("Scheduling Order"). The Scheduling Order made Carolina Power and Light, d/b/a/ Progress Energy Carolinas, Inc. ("PEC"), Duke Power Company, LLC d/b/a Duke Energy Carolinas LLC ("Duke Energy Carolinas"), Virginia Electric and Power Company d/b/a Dominion North Carolina Power ("Dominion"), and Western Carolina University ("WCU") parties to the proceeding to establish the avoided cost rate each is to pay for power purchased from QFs and small power producers pursuant to Section 210 of PURPA and the FERC regulations associated therewith, and to G.S. §62-156. The Scheduling Order also required each electric utility to file proposed rates and proposes standard form contracts. The Scheduling Order stated that the Commission would attempt to resolve all issues arising in this docket based on a record developed through public witness testimony, statements, exhibits, and avoided costs schedules verified by persons who would otherwise be qualified to present expert testimony in a formal hearing, and written comments on the statements, exhibits, and schedules, rather than a full evidentiary hearing. PEC, Duke Energy Carolinas, Dominion, and WCU were required to file their statements and exhibits by November 1, 2010. Other persons desiring to become parties were initially required to seek permission to intervene and to file their statements and exhibits by January 10, 2011. All parties were allowed to file Reply Comments by February 16, 2011 and Proposed Orders by March 16, 2011. The Commission scheduled a public hearing for January 25, 2011, solely for the purpose of taking non-expert public witness testimony. Finally, the Commission required PEC, Duke Energy Carolinas, Dominion, and WCU to publish notice and submit affidavits of publication no later than the date of the hearing.

On January 7, 2011, the Public Staff filed a motion with the Commission, requesting extensions of time to file initial comments, reply comments and proposed orders. On January 12, 2011, the Commission issued its *Order Granting Extensions*. The Commission extended the due dates for filing initial comments to February 22, 2011, the due date for reply comments to March 31, and the due date for proposed orders to April 27, 2011.

The following parties' petitions to intervene were granted: Charles B. Mierek and the North Carolina Sustainable Energy Association ("NCSEA").

The Commission held a public hearing on January 25, 2011, as described in its Scheduling Order. No public witnesses appeared to testify.

In response to the Public Staff's oral motion for an extension of time to file initial comments, the Commission issued an order on February 24, 2011, allowing initial comments to be filed on February 25, 2011.

On March 2, 2011, New River Power and Light Company filed its Comments and Proposed Avoided Cost Rate. On April 20, 2011, it submitted a Revised Avoided Cost Filing.

On March 28, 2011, Duke Energy Carolinas filed a motion to extend the time for all parties to file reply comments from March 30, 2011 until April 4, 2011. By order issued March 30, 2011, the Commission allowed Duke Energy Carolinas' motion.

PEC, Duke Energy Carolinas, and NC Power filed Reply Comments on April 4, 2011.

On April 26, 2011, the Public Staff made an oral motion for extension of time for all parties to file proposed orders up to and including April 29, 2011. By order issued April 26, 2011, the Commission allowed the Public Staff's motion.

Based on the foregoing, all of the parties' comments and exhibits, and the entire record in this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. Duke Energy Carolinas should offer long-term levelized capacity payments and energy payments for five-year, ten-year, and fifteen-year periods as standard options to (a) hydroelectric QFs owned or operated by small power producers as defined in G.S. §62-3(27a) contracting to sell five MW or less capacity, and (b) non-hydroelectric QFs fueled by trash or methane derived from landfills, hog waste, poultry waste, solar, wind, and non-animal forms of biomass contracting to sell five MW or less capacity. The standard levelized rate options of ten-year and fifteen-year should include a condition making contracts under those options renewable for subsequent term(s) at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rates and other relevant factors. or (2) set by arbitration. Duke Energy Carolinas shall offer its five-year levelized rate option to all other QFs contracting to sell 3 MW or less capacity.

2. Duke Energy Carolinas should offer QFs not eligible for the standard long-term levelized rates the following three options if Duke Energy Carolinas has a Commission-recognized active solicitation underway: (1) participating in Duke Energy Carolinas' competitive bidding process, (2) negotiating a contact and rates with Duke Energy Carolinas, or (3) selling

energy at Duke Energy Carolinas' Commission-established variable energy rate. If Duke Energy Carolinas does not have a Commission-recognized active solicitation underway, Duke Energy Carolinas should offer QFs not eligible for the standard long-term levelized rates the option of (1) contracting with Duke Energy Carolinas to sell power at the variable energy rate established by the Commission in these biennial proceedings, or (2) contracting with Duke Energy Carolinas to sell power at negotiated rates. If Duke Energy Carolinas does not have a solicitation underway, any unresolved issues arising during such negotiations will be subject to arbitration by the Commission at the request of either party to determine Duke Energy Carolinas' actual avoided cost, including both capacity and energy components, as appropriate; however, the Commission will only arbitrate if the QF is prepared to commit its capacity to Duke Energy Carolinas for a period of at least two years. In either case, whether there is an active solicitation underway or not, QFs not eligible for the standard long-term levelized rates have the option of selling into the wholesale market. The exact points at which an active solicitation should be regarded as beginning and ending for these purposes should be determined by motion to, and order of, the Commission. Unless there is such a Commission order, is will be assumed that there is solicitation underway. If the variable energy rate option is chosen, such rate may not be locked in by contract term, but shall instead change as determined by the Commission in the next biennial proceeding.

3. Duke Energy Carolinas should use the peaker method to develop its avoided capacity and energy rates for purposes of this proceeding. The peaker method is generally accepted and used throughout the electric utility industry and is reasonable for use in this proceeding.

4. A performance adjustment factor ("PAF") of 2.0 should be utilized by Duke Energy Carolinas for its avoided cost calculations for hydroelectric facilities with no storage capacity and no other type of generation.

5. Except for hydroelectric facilities with no storage capacity and no other type of generation, a PAF of 1.2 should be utilized by Duke Energy Carolinas for its avoided cost calculations for all QFs in this proceeding.

6. The revised rate schedules and contract terms and conditions proposed in this proceeding by Duke Energy Carolinas should be approved. The approved rate schedules and standard contracts should be allowed to go into effect 10 days after this Order.

DISCUSSION AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence for this finding is found in the Initial Statement of the Public Staff, the Initial and Revised Initial Statements and Reply Comments of Duke Energy Carolinas, and in the Commission's prior avoided cost orders.

This issue is one the Commission must continually reconsider as economic circumstances change from one biennial proceeding to the next. In so doing, the Commission must balance the need to encourage QF development, on the one hand, and the risks of overpayments and stranded costs on the other. The increasingly competitive nature of the utility industry makes the latter considerations more compelling today than in the past. The Commission continues to believe, however, that its decisions in the most recent avoided cost proceedings strike an appropriate balance between those concerns. The Commission, therefore, concludes that Duke Energy Carolinas should continue to offer long-term levelized rate options of five, ten, and fifteen year terms to hydro QFs contracting to sell five MW or less capacity and to QFs contracting to sell five MW or less capacity that are fueled by solar, wind, non-animal waste biomass, trash, or methane from landfills or hog waste or poultry waste. The Commission further concludes that that Duke Energy Carolinas should continue to offer five-year levelized rates to all other QFs contracting to sell three MW or less capacity.

With these limitations, long-term contract options serve important statewide policy interests while reducing the utilities' exposure to overpayments. While the Commission believes that these policies should be furthered, it is also concerned about reducing the utilities' exposure to overpayments, and our decision reflects this concern as well.

DISCUSSION AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The evidence for this finding is found in the Initial Statement of the Public Staff, the Initial and Revised Initial Statements and Reply Comments of Duke Energy Carolinas, and in the Commission's prior avoided costs orders.

No party to this proceeding proposed to change the options available to QFs not eligible for long-term levelized rates. The Commission continues that Duke Energy Carolinas should continue to be required to offer QFs not eligible for standard long-tem levelized rates the option of contracts and rates derived by free and open negotiations or, during times explicitly designated by Commission order, participation in a utility's competitive bidding process for obtaining additional capacity.

In the Commission's January 22, 1985 *Order* in Docket No. E-100, Sub 41A, the Commission found that QFs of five MW or larger should have the resources and expertise to negotiate with utilities and that the competing interests of the parties can best be resolved by negotiations.[1] The Commission further explained that the primary reasons for requiring large QFs to negotiate rates was the large financial risk a utility and its retail customers are exposed to

[1] *Order* at p. 15.

when a utility signs a long-term purchase power agreements at fixed avoided costs rates based on long-term cost forecasts, given the uncertainty involved in forecasting a utility's avoided costs. If a utility overestimates its avoided costs, the utility and its customers are forced to pay higher costs for electricity than would otherwise be the case for up to 15 years. The Commission's primary duty is to ensure retail utility customers are furnished electricity at the lowest reasonable cost. Unnecessarily exposing retail customer to the risk of overpayment does not serve that goal.

In addition, a utility must maintain the ability to negotiate all aspects of contracts with larger QFs because their operational flexibility and size may negatively impact system operations. Any change affecting the economic operation of a utility system caused by a QF indiscriminately providing energy into the utility's system results in costs to that utility that would have not otherwise been incurred. As a result, the utility must maintain the option of controlling deliveries from the QF to not only prevent incurring additional costs, but to preserve system reliability.

In the past, certain large QFs not eligible for standard long-term rates have asserted that the utilities have greater bargaining power than the QFs and that the utilities have, at times, used this greater power to negotiate in bad faith. Beginning in Docket No. E-100, Sub 53, the Commission explained that the proper remedy in this situation is for a QF to file a complaint with the Commission against the utility in question. In addition, in the Commission's avoided cost proceedings in Docket No. E-100, Sub 96 and in Docket No. E-100, Sub 106, the Commission established an arbitration process for QFs and for utilities.[2]

The Commission believes that Duke Energy Carolinas should continue to be required to offer QFs not eligible for the standard long-term levelized rates the option of contracts and rates

[2] *See e.g.*, *Order Establishing Standard Rates and Contract Terms for Qualifying Facilities,* Docket No. E-100, Sub 106, p. 17, issued Dec. 19, 2007 ("2007 Order").

derived by free and open negotiations or, when explicitly approved by Commission Order, participating in Duke Energy Carolinas' competitive bidding process for obtaining additional capacity. The QF also has the right to sell its energy on an "as available" basis pursuant to the methodology approved by the Commission. Under PURPA, a larger QF is just as entitled to full avoided costs as a smaller QF. The exclusion of larger QFs from the long-term levelized rates in the standard rate schedules was never intended to suggest otherwise.

The Commission has previously concluded that, absent an approved, active solicitation, negotiations between a utility and a larger QF are subject to arbitration by the Commission as the request of either the utility or the QF to determine the utility's actual avoided cost, including both capacity and energy components, as appropriate, as long as the QF is willing to commit its capacity for at least a two-year period. Such arbitration would be less time consuming and expensive for the QF than the previously available complaint process. The Commission concludes that the arbitration option should be preserved.

DISCUSSION AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence to support this finding of fact is found in the Initial and Revised Initial Statements of Duke Energy Carolinas and the Commission's most recent avoided cost order in Docket Nos. E-100, Sub 117, and in orders in previous biennial proceedings. (*See e.g.* Docket Nos. E-100, Sub 59; E-100, Sub 66; E-100, Sub 74; and E-100, Sub 106).

The Commission observes that it has repeatedly reaffirmed that the peaker method is appropriate for calculating Duke Energy Carolinas' avoided cost rates. No party has offered any evidence in this proceeding to support the Commission altering its previous conclusions with respect to the use of the peaker methodology.

In Docket No. E-100, Sub 74, the Commission discussed that the peaker methodology was based on a method for estimating marginal costs developed by the National Economic Research Associates, Inc. The method was described in detail in what became known as the "Grey Books" series of publications, jointly sponsored by the National Association of Regulatory Utility Commissioners, the Electric Power Research Institute, the Edison Electric Institute, the American Public Power Association, and the National Rural Electric Cooperative Association. It is one of four marginal costing methodologies developed in the "Electric Utility Rate Design Study" portion of the "Grey Books" series.

According to the theory underlying the peaker method, if the utility's generating system is operating at equilibrium (i.e., at the optimal point), the cost of a peaker (a combustion turbine or CT) plus the marginal running costs of the system will produce the utility's avoided cost. It will also equal the avoided cost of a baseload plant, despite the fact that capital costs of a peaker are less than those of a baseload plant. This is because the lower capital costs of the CT are offset by the fuel and other operation and maintenance expenses included in system marginal running costs, which are higher for a peaker than for a new baseload plant. The sum of the peaker capital costs, plus the system marginal running costs, will theoretically match the cost per kWh of a new baseload plant, assuming the system is operating at the optimum point. Stated simply, the fuel savings of a baseload plant will offset it higher capital costs, producing a net cost equal to the capital costs of a peaker.

For purposes of this proceeding, the Commission concludes that the peaker method is still generally accepted and used throughout the electric utility industry and is reasonable for use in this proceeding.

DISCUSSION AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4-5

The evidence to support these findings of fact is found in the Commission's Orders in Docket No. E-100, Sub 59; E-100, Sub 66; E-100, Sub 74; E-100, Sub 100; and E-100, Sub 106 and in the Initial and Revised Initial Statements of Duke Energy Carolinas.

The Commission has traditionally used a performance adjustment factor ("PAF") in calculating avoided cost rates for utilities that use the peaker methodology. This adjustment accounts for the fact that a generating facility cannot be in operation at all times. A wholesale power contract typically includes a capacity charge that is calculated on a per-kW basis and is payable regardless of the number of kWh the seller provides. In contrast, the standardized capacity rates for purchases from QFs in North Carolina are calculated on a per-kWh basis. As a result, if rates were set at a level equal to a utility's avoided costs without a PAF, QFs would not receive the full capacity payment to which they are entitled unless operating 100% of the on-peak hours throughout the year. The PAF is used to increase the capacity rates and, thus, allow a QF to experience a reasonable amount of outages and still receive payments equal to the utility's avoided costs. Until 1997, a PAF of 1.2 was approved by the Commission for use in calculating the appropriate avoided cost rates for all QFs. In 1997, the Commission approved a PAF of 2.0 to be used in determining the avoided cost rate for hydro QFs with no storage capability and no other type of generation, allowing such QFs to recover their full capacity payments if they operate 50% of the time. In so determining, the Commission acknowledged the statutory preference for encouraging hydro generation contained in G.S. § 62-156 and concluded that using a higher PAF for hydro QFs was appropriate. The 1.2 PAF used by the Commission in previous cases (for QFs other than run-of-the-river hydro facilities) reflects in the Commission's judgment that, if a unit is available 83% of the time, it is operating reasonably and should be allowed to recover the utility's full avoided costs.

Duke Energy Carolinas has explained in prior proceeding that the PAF is actually mischaracterized as a mechanism to adjust avoided capacity cost rates to accommodate the operating characteristics of certain QFs. In its Initial and Revised Initial Statements, Duke Energy Carolinas stated that, given previous Commission orders on this issue, it did not propose to change the PAFs that have been applied in past proceedings.

In its Initial and Revised Initial Statements, Duke Energy Carolinas calculated its proposed capacity rates by using a PAF of 2.00 for the avoided capacity cost calculations for hydroelectric QFs not in excess of five (5) megawatts with no storage capability (Run-of-the-River Hydro QFs) and a PAF of 1.20 for all other QFs as has been required by the Commission since its *Order Establishing Standard Rates and Contract Terms for Qualifying Facilities* in Docket No. E-100, Sub 79.

The Company supports the development of customer-owned renewable cogeneration and small power production facilities and recognized that these facilities provided environmental benefits. Rates and policies available for customer generators should not unfairly burden other customer classes or discriminate between types of QFs.

The Commission has carefully reviewed all of the comments on this issue and concludes that a PAF of 2.0 should be utilized by Duke Energy Carolinas for their avoided cost calculations for hydroelectric facilities with no storage capacity and no other type of generation, and except for hydroelectric facilities with no storage capacity and no other type of generation, a performance adjustment factor of 1.2 should be utilized by Duke Energy Carolinas for its avoided cost calculations for all QFs in this proceeding.

DISCUSSION AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is found in the Initial and Revised Initial Statements of Duke Energy Carolinas, the Initial Statement of the Public Staff, the Reply Comments of Duke Energy Carolinas, and Commission orders in previous biennial proceedings.

In its Initial and Revised Initial Statements, Duke Energy Carolinas stated that its proposed Schedule PP(H) and PP(N) update the Capacity Credits and Energy Credits to reflect the most recent projections of Duke Energy Carolinas' avoided capacity and energy costs. To make standard rates available to QFs during the time that the next proceeding is pending, while still recognizing that new rates will be based on more current avoided cost projections, Schedule PP(N) and PP(H) reflect that the fixed long-term rates will be available only to customers under contract with the Company on or before November 1, 2012, and the variable rates will remain available until new variable rates are approved. Citing the Commission's 2007 Order, Duke Energy Carolinas noted that the Commission had previously approved inclusion of this provision in that biennial cost proceeding.

In its Initial Statement, the Public Staff contended that both Duke Energy Carolinas and NC Power have provisions making the currently approved avoided cost rates unavailable as the expected due dates for the utilities' filing of proposed new rates in the next biennial avoided cost proceeding. The Public Staff questioned whether it was consistent with PURPA to end the availability of avoided cost rates as of the date the new proposed avoided cost rates are expected to be filed. In so doing, the Public Staff discussed the Commission's recently decided arbitrations in Docket No. E-2, Sub 966 and Docket No. SP-476, Sub 1 that involved interpreting FERC's rule 18 CFR 292.304(b). The Public Staff argued that the Commission stated that this rule gives QFs two important options and that the utility must work with the QF's choices. A QF has an option to sell power "as available" or sell pursuant to a legally enforceable obligation over a specified term. If a QF chooses the latter option, it then has the option of choosing rates based on avoided costs calculated at the time the obligation is incurred. The Commission further held that the QF must have a CPCN and have clearly indicated to the utility that it wanted to commit itself to sell its output for a legally enforceable obligation to be incurred.

In its Reply Comments, Duke Energy Carolinas recounted the procedural history of its proposal in Schedule PP(H) and PP(N). In earlier proceedings, the Commission allowed a utility to file a motion to suspend the availability of its currently approved cost rates and tariff. QFs that had their CPCNs as of the date of the motion were entitled, however, to the existing rates. QFs without CPCNs that signed contracts at the new, proposed rates were entitled to have their payments increased if the Commission approved avoided cost rates higher than the rates proposed by the utilities. If the Commission approved lower rates, however, the Commission would not permit the utilities to decrease the payments to the QFs.[3]

In Docket No. E-100, Sub 79 (1996 Biennial Proceeding), the Company requested that the Schedule PP rates be available only to QFs entering contracts on or before the 1998 due date for the next biennial proceeding, for delivery on or before May 4, 2001. The Company argued that allowing its request would better ensure that the avoided costs rates reflect current avoided costs, noting that even with that time limitation, nearly four years could elapse from the time that avoided costs were estimated until delivery begins. The Commission approved the Company's request by Order issued June 19, 1997. Therefore, until 2007, the availability of Schedule PP expired upon the filing of new proposed avoided cost rates in the next biennial proceedings.

[3] *See Order on Pending Motions*, Docket No. E-100, Sub 74, issued February 13, 1995.

In Docket No. E-100, Sub 106 (2006 Biennial Proceeding), however, the Company requested to modify the expiration of Schedule PP. To make standard rates available to QFs during the time the next biennial proceeding was pending, while recognizing that the new rates would be based upon more current avoided cost projections, Duke Energy Carolinas proposed that the fixed long-term rates be available only to customers under contract with the Company on or before November 1, 2008, and that the variable rates remain available until new variable rates were approved.

The Company proposes to do the same for the next biennial proceeding. The proposed provision reads as follows:

> The Fixed Long-Term Rates on this Schedule are available only to Customers under contract with the Company on or before November 1, 2012 for delivery of power beginning on or before the earlier of thirty (30) months from the date of execution of the contract or May 1, 2015.

According to Duke Energy Carolinas, this provision "make[s] standard rates available to QFs during the time the next proceeding is pending, while recognizing that the new rates will be based upon more current avoided cost projections." In other words, Duke Energy Carolinas proposes to continue its currently approved procedure of making its variable rates that are approved by the Commission in this proceeding available to QFs until the Commission approves new variable rates in the next biennial proceeding. Furthermore, customers that execute contracts containing the variable rates after expiration of the long-term rates on Schedule PP(N) and PP(H) may then amend their contracts to select one of the long-term rates for which they are eligible, once new avoided cost rates are approved by the Commission.

The Commission agrees that inclusion of this provision is intended to ensure that rates in the contracts will not become excessively out of date before actual delivery begins. Duke Energy Carolinas has noted that its experience has shown that a utility's filing to lower its avoided cost rates sometimes prompts QFs to try to "lock in" at the current higher rates before the Commission acts. Duke Energy Carolinas' provision, however, allows for long-term avoided costs rates offered to the QFs to more closely align to actual avoided costs, instead of simply providing a potential for QFs seeking to enter into contracts after November 1, 2012 to "game" the system.

The Commission's conclusions in the recent arbitrations do not require Duke Energy Carolinas to make available its fixed long-term rates that were calculated prior to November 2010 to QFs seeking a contract after November 1, 2012. Instead, PURPA and the regulations promulgated from it require the avoided costs rates for purchases by electric utilities "shall be just and reasonable to the electric consumers of the electric utility and in the public interest" and shall not exceed the utilities' avoided costs. PURPA § 210(b); 18 C.F.R. 292.304(a). If a QF seeks a contract with Duke Energy Carolinas after November 1, 2012, the QF may obtain the variable rates approved in this docket that will be in effect until the Commission approves the Company's proposed, calculated avoided cost rates, including long-term fixed rates, in the next biennial proceeding. After that determination is made, the QF may amend its contract to opt into the approved, long-term rates for which it is eligible. This prevents exposing the utility and the ratepayers to paying for longer periods of time avoided costs rates that are in excess of the utility's actual avoided costs.

The Public Staff also suggested that in the alternative to the Company's provision, QFs qualifying for standard rates could be entitled to the proposed avoided cost rates, subject to those rates being trued up if the Commission approved higher rates. The Commission finds, however, that Duke Energy Carolinas' proposed Schedule PP(N) and PP(H) provide a mechanism that is consistent with PURPA, but less burdensome administratively than adding potential true-ups.

Moreover, the Commission notes that Exhibit 6 to Duke Energy Carolinas' Initial Statement shows that most of the Company's PPAs with QFs are at variable rates. Therefore, the Company's provision also better reflects its experience with QFs in this respect.

The Public Staff also noted concerns with the Company's fixed charge calculation appearing to including a higher debt component of ADC. After discussions and an exchange of information, the Public Staff did not request the Company to recalculate its proposed rates or otherwise make any changes in its filing in response to the Public Staff's inquiry into this subject.

Thus, the Commission concludes that the rate schedules and contract terms and conditions proposed by Duke Energy Carolinas should be approved. The approved rate schedules and contract shall go into effect 10 days after this Order is issued.

IT IS, THEREFORE, ORDERED as follows:

1. That Duke Energy Carolinas should offer long-term levelized capacity payments and energy payments for five-year, ten-year, and fifteen year periods as standard options to (a) hydroelectric QFs owned or operated by small power producers as defined in G.S. § 62-3(27a) contracting to sell 5 MW or less capacity, and (b) non-hydroelectric QFs fueled by trash or methane derived from landfills, hog waste, poultry waste, solar, wind, and non-animal forms of biomass contracting to sell 5 MW or less capacity. The standard levelized rate options of ten years and fifteen years should include a condition making contracts under those options renewable for subsequent term(s) at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rates and other relevant factors, or

(2) set by arbitration. Duke Energy Carolinas shall offer its five-year levelized rate option to all other QFs contracting to sell three MW or less capacity;

2. That Duke Energy Carolinas should offer QFs not eligible for the standard long-term levelized rates the following three options if Duke Energy Carolinas has a Commission-recognized active solicitation underway: (1) participating in Duke Energy Carolinas competitive bidding process, (2) negotiating a contact and rates with Duke Energy Carolinas, or (3) selling energy at Duke Energy Carolinas' Commission-established variable energy rate. If Duke Energy Carolinas does not have a Commission-recognized active solicitation underway, Duke Energy Carolinas should offer QFs not eligible for the standard long-term levelized rates the options of (1) contracting with Duke Energy Carolinas to sell power at the variable energy rate established by the Commission in these biennial proceedings, or (2) contracting with Duke Energy Carolinas to sell power at negotiated rates. If Duke Energy Carolinas does not have a solicitation underway, such negotiations will be subject to arbitration by the Commission at the request of either party to determine Duke Energy Carolinas' actual avoided cost, including both capacity and energy components, as appropriate; however, the Commission will only arbitrate if the QF is prepared to commit its capacity to Duke Energy Carolinas for a period of at least two years. In either case, whether there is an active solicitation underway or not, QFs not eligible for the standard long-term levelized rates have the option of selling into the wholesale market. The exact points at which an active solicitation should be regarded as beginning and ending for these purposes should be determined by motion to, and order of, the Commission. Unless there is such a Commission order, is will be assumed that there is solicitation underway. If the option of the variable energy rate is chosen, such rate may not be locked in by contract term, but shall instead change as determined by the Commission in the next biennial proceeding;

3. That a performance adjustment factor of 2.0 should be utilized by Duke Energy Carolinas for their avoided cost calculations for hydroelectric facilities with no storage capacity and no other type of generation;

4. That, except for hydroelectric facilities with no storage capacity and no other type of generation, a performance adjustment factor of 1.2 should be utilized by Duke Energy Carolinas for its avoided cost calculations for all QFs in this proceeding; and

5. That the rate schedules and contract terms and conditions proposed in this proceeding by Duke Energy Carolinas should be approved. The approved rate schedules and standard contracts should be allowed to go into effect 10 days after this Order.

ISSUED BY ORDER OF THE COMMISSION

This the ___ day of May, 2011.

NORTH CAROLINA UTILITIES COMMISSSION

Gail L. Mount, Deputy Clerk

CERTIFICATE OF SERVICE

I certify that a copy of *Duke Energy Carolinas, LLC's Proposed Order in Docket No. E-100*, Sub 127, has been served by electronic mail (e-mail), hand delivery or by depositing a copy in the United States Mail, first class postage prepaid, properly addressed to parties of record.

This the 29th day of April, 2011.

Robert W. Kaylor / RE

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