

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 180

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:
Investigation of Proposed Net Metering) JOINT MOTION FOR STAY
Policy Changes) PENDING APPEAL

Intervenors Environmental Working Group, 350 Triangle, 350 Charlotte, the North Carolina Alliance to Protect Our People and the Places We Live, NC WARN, North Carolina Climate Solutions Coalition, and Sunrise Movement Durham Hub, through undersigned counsel, and *pro se* intervenor Donald Oulman (collectively, “Joint Appellants”), pursuant to N.C. Gen. Stat. § 62-95 and Rule 8(a) of the North Carolina Rules of Appellate Procedure, hereby move the N.C. Utilities Commission (the “Commission”) to stay enforcement of the Order Approving Revised Net Metering Tariffs entered on March 23, 2023 in the above-referenced matter (the “Order”) until resolution of Joint Appellants’ appeal of the Order. In support of this Motion, Joint Appellants show as follows:

1. On November 29, 2021, Duke Energy Progress LLC and Duke Energy Carolinas LLC (the “Companies”) filed a Joint Petition for Approval of Revised Net Energy Metering Tariffs (the “Joint Petition”) in the above-referenced docket.
2. At various times, Joint Appellants have all been granted intervention into the present docket.

3. The Commission entered an Order Approving Revised Net Metering Tariffs on March 23, 2023.

4. On April 20, 2023, the Commission entered an Order extending the deadline for Joint Appellants to file Notice of Appeal and Exceptions through May 22, 2023.

5. Contemporaneous with the present motion, Joint Appellants have filed a Notice of Appeal and Exceptions from the Commission's Order.

6. Pursuant to N.C. Gen. Stat. § 62-95, "Pending judicial review, the Commission is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it."

7. Under Rule 8 of the N.C. Rules of Appellate Procedure, "When appeal is taken in a civil action from a judgment, order, or other determination of a trial court, stay of execution or enforcement thereof pending disposition of the appeal must ordinarily first be sought by the deposit of security with the clerk of the superior court in those cases for which provision is made by law for the entry of stays upon deposit of adequate security, **or by application to the trial court for a stay order in all other cases.**" (emphasis added)

8. The present docket has significant implications for residential rooftop solar customers and installers throughout the State. In fact, it appears to be undisputed that the Companies' proposed NEM tariffs, if implemented, will

drastically reduce the savings of rooftop solar customers.¹ According to NC WARN's expert, William Powers, the Companies' own data show the following:

- "This reduction in savings amounts to twenty-nine percent (29%) for DEC NEM customers under the RS tariff";
- There would be "a 31 percent decline in NEM savings for DEC's NEM customers under the RE tariff"; and
- "This reduction in savings amounts to thirty percent (30%) for DEP's NEM customers."²

9. The Public Staff similarly concluded that the Companies' proposed NEM tariffs, if implemented, would result in a drastic reduction in the savings of rooftop solar. For instance, the Public Staff concluded that the average monthly bill for NEM customers could increase by as much as 118.53%:³

Based on the data provided by the Companies, the Public Staff analyzed the impacts of the proposed NEM Tariffs on quartiles of residential customers. The customer data was separated based on solar generation in kWh as a percent of load in kWh. The top quartile of customers on average generates 102.84% of their electricity needs, leading to a current average bill of \$26.38. **Under the proposal, their bill would on average increase to \$57.65.** On the other end of the spectrum, the bottom quartile of customers only generates 50.3% of their electricity needs, leading to an average monthly bill of \$100.77. **Under the proposal, their average bill would increase to \$117.49. The first quartile percent change in bill**

¹ The following analysis was based upon the NEM tariffs as initially proposed by the Companies, not as modified by the Commission in its Order.

² Joint Reply Comments of NC WARN, NCCSC and Sunrise Durham, NCUC Docket No. E-100, Sub 180, at pp 18-19.

³ The Public Staff's Initial Comments, NCUC Docket No. E-100, Sub 180, at pp. 31-32 (emphasis added).

would be 118.53% while the last quartile would increase by 16.59%.

10. Intervenors Sundance Power Systems, Inc., Southern Energy Management, Inc., and Yes Solar Solutions (collectively, the “Rooftop Solar Installers”) reached similar conclusions. In their Initial Comments, the Rooftop Solar Installers noted that they “downloaded data from 30 existing Duke customers with solar systems installed for over a year and analyzed their data under Duke’s proposed NEM rate structures.”⁴ Following an analysis of these data, the Rooftop Solar Installers “found a reduction in value to the customers of 20% - 35% over the life of the solar system.”⁵

11. Therefore, if the proposed NEM tariffs go into effect, the results for rooftop solar customers engaged in net energy metering will be drastic and immediate. Before allowing such a widespread result, the Order should be reviewed on appeal.

12. Notably, on May 8, 2023, the North Carolina Sustainable Energy Association, Southern Environmental Law Center on behalf of Vote Solar and Southern Alliance for Clean Energy, the Solar Energy Industries Association, Sundance Power Systems, Inc., Southern Energy Management, Inc., and Yes Solar Solutions (collectively, the “Settling Parties”) filed a Motion in the present docket requesting to an extension to October 1, 2023 for implementation of the new NEM tariffs approved by the Order. The Settling Parties represent that the

⁴ Rooftop Solar Installer’s Initial Comments, NCUC Docket No. E-100, Sub 180, at p. 3.

⁵ *Id.*

Companies have no objection to the requested extension and the North Carolina Attorney General has indicated his support for extension. On May 12, 2023, the Companies filed a separate motion requesting the Commission to extend the deadlines as set forth in the said motion filed by the Settling Parties.

13. Among other things, the Settling Parties, in their extension motion, “raised concerns regarding the calculator and certain additional corresponding customer protections which would increase the amount of time the Companies need to develop the calculator.”⁶

14. These legitimate concerns raised by the Settling Parties about the calculator and certain additional customer protections highlight the imperative nature of the Joint Appellants’ request to stay this case pending appeal. Numerous intervenors to this docket, including Joint Appellants, have argued that these NEM proposals have not been adequately investigated as required by statute. The Settling Parties’ said concerns further establish that the Companies’ proposed NEM tariffs require further review before implementation.

15. In an order of May 17, 2023, the Commission granted the requested extensions of time and, among other things, ruled that “the effective date of the approved NEM tariffs is extended to October 2, 2023.” Therefore, the present request for a stay pending appeal will not materially delay the implementation of any proposed tariffs, nor will the present request for a stay result in prejudice to the Companies.

⁶ Settling Parties’ Extension Motion, NCUC E-100 Sub 180, at p. 2.

CONCLUSION

For the reasons set forth above, enforcement of the Order should be stayed pending the result of Joint Appellants' appeal.

This the 18th day of May, 2023.

/s/ Matthew D. Quinn

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon all counsel of record in the above-referenced docket by email transmission, or by hand delivery, or by depositing a copy of the same in the United States Mail, postage prepaid.

This the 18th day of May, 2023.

LEWIS & ROBERTS, PLLC

/s/ Matthew D. Quinn

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