

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-7, SUB 1148

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Fresh Air II, LLC,	)	
Complainant,	)	
	)	
v.	)	ORDER SERVING COMPLAINT AND
	)	REQUIRING RESPONSE
Duke Energy Carolinas, LLC,	)	
	)	
Respondent.	)	

BY THE CHAIRMAN: On June 15, 2017, Fresh Air II, LLC, filed a verified Complaint regarding two interconnection requests described as Complainant Younts PV1 and Complainant Round Hill PV1 (collectively the Complainants) in the above-captioned docket against Duke Energy Carolinas, LLC (DEC).

In summary, both Complainant Younts PV1 and Complainant Round Hill PV1 allege each is constructing a 5 MW solar photovoltaic renewable energy facility to be located in DEC's service territory and that DEC has not complied with the Commission's Interconnection Standard, including but not limited to failure to complete the Facilities Study and the System Impact Study, failure to notify the Complainant that it would not meet the deadlines, and failure to provide the Complainant with an estimated time for completion of the Facilities Study and the System Impact Study. Complainants both allege that DEC has violated the requirements of PURPA.

The relief requested by Complainants is that the Commission conclude that DEC has failed to use reasonable efforts to comply with the Commission's Interconnection Standard and the NC Interconnection Procedures, order DEC to immediately complete the System Impact Studies and comply with all other deadlines, without subjecting Complainants to Respondent's recently implemented study criteria.

Based on the allegations of the verified Complaint, it appears that the Complainants and DEC have a controversy regarding the Commission's Interconnections Standard and Interconnection Procedures and the requirements of PURPA. Therefore, the Chairman finds good cause to serve the Complaint, located on the Commission's website, and this Order on DEC. Further, the Chairman finds good cause to direct that DEC shall either satisfy the demands of the Complainants and so advise the Commission, or file a response to the Complaint on or before, July 20, 2017.

IT IS, THEREFORE, ORDERED as follows:

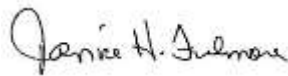
1. That the Chief Clerk shall serve a copy of the Complaint, attached hereto as Attachment A, and this Order on DEC; and

2. That on or before July 20, 2017, DEC shall either satisfy the demands of the Complainants and so advise the Commission, or file a response to the Complaint.

ISSUED BY ORDER OF THE COMMISSION.

This the 20<sup>th</sup> day of June, 2017.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, appearing to read "Janice H. Fulmore". The signature is written in a cursive, flowing style.

Janice H. Fulmore, Deputy Clerk

## STATE OF NORTH CAROLINA UTILITIES COMMISSION RALEIGH

DOCKET NO. E-7, Sub 1148

In the matter of

Complaint by

FRESH AIR II, LLC  
a California limited liability company,

against

DUKE ENERGY CAROLINA, LLC  
a North Carolina limited liability company.

COMPLAINT

Pursuant to N.C. Gen. Stat. § 62-73 and Rule R1-9 of the Rules and Regulations of the North Carolina Utilities Commission (the “Commission”), Fresh Air II, LLC, that has two interconnection requests described as “Complainant Younts PV1” and “Complainant Round Hill PV1” (collectively, the “Complainants”), makes a formal Complaint against Respondent Duke Energy Carolinas, LLC (“Respondent”). Specifically, among other violations of statutes and Commission Rules and Orders, Respondent has failed to comply with the standards required by the North Carolina Interconnection Procedures, Forms, and Agreements (“NC Interconnection Standard”) that were approved in the Commission’s *Order Approving Revised Interconnection Standard* issued on June 9, 2008, in Docket No. E-100, Sub 101 (“June 9, 2008 Order”) and the North Carolina Interconnection Procedures, Forms, and Agreements (“NC Interconnection Procedures”) that was approved in the Commission’s *Order Approving Revised Interconnection Standards* issued on May 15, 2015 in Docket No. E-100, Sub 101 (“May 15, 2015 Order”).

In support of the Complaint, Complainants respectfully show the Commission the

following:

## **PARTIES AND JURISDICTION**

1. Fresh Air II, LLC is a limited liability company, duly organized and existing under the laws of the State of California. Fresh Air II, LLC's business address is 101 Second Street, Suite 1250, San Francisco, CA 94105-3627.

2. Fresh Air II, LLC is a wholly-owned subsidiary of Ecoplexus, Inc. ("Ecoplexus"), a Delaware corporation that is authorized to do business in the State of North Carolina.

3. Complainants are self-certified as Qualifying Facilities ("QF").

4. Respondent provides electric service to customers in North Carolina. Respondent is a public utility under the laws of the State of North Carolina, and is subject to the jurisdiction of the Commission with respect to its operations in this State. Upon information and belief, Respondent's business address is P.O. Box 1006, Charlotte, North Carolina, 28201.

5. Complainants' legal representative in this proceeding to whom all notices, pleadings, and other documents related to this proceeding should be directed is:

Karen M. Kemerait  
Smith Moore Leatherwood LLP  
434 Fayetteville St., Suite 2800  
Raleigh, NC 27601  
Telephone: (919) 755-8764  
E-mail: karen.kemerait@smithmoorelaw.com

## **FACTS**

### **A. Background as to Interconnection Requirements**

6. Respondent has a legal obligation to interconnect QFs to its electric

system pursuant to The Public Utilities Regulatory Policies Act of 1978 (“PURPA”) and assess costs for such interconnections on a nondiscriminatory basis with respect to other customers with similar load characteristics. *See* Sections 292.303 (c) and 292.306 of PURPA. Individual state regulatory authorities are authorized to promulgate rules and procedures governing QF interconnections, provided that said rules and procedures comply with PURPA.

7. On June 4, 2004, Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and Virginia Electric and Power Company d/b/a Dominion North Carolina Power filed in Docket No. E-100, Sub 101, a proposed small generator interconnection standard, application, and agreement to be applicable in North Carolina. The proposal was intended to streamline the interconnection process and standardize the interconnection criteria for safety and reliability. By Orders dated March 22, 2005, and July 6, 2005, the Commission approved a small generator interconnection standard for North Carolina.

8. On June 9, 2008, the Commission issued its June 9, 2008 Order that adopted a modified version of the Federal Energy Regulatory Commission (“FERC”) small generator interconnection procedures, forms and agreements for generators up to 20 megawatts (“MW”) as the NC Interconnection Standard. The NC Interconnection Standard is binding on Respondent. The NC Interconnection Standard applies to all interconnection requests made after June 9, 2008 and before May 15, 2015.

9. Thereafter, as a result of a collaborative review process with representatives from industry stakeholders, the Public Staff, and other interested parties, on May 15, 2015, the Commission adopted the Interconnection Procedures in Docket No. E-100, Sub 101, as the new interconnection standard for North Carolina. The

Interconnection Procedures are binding on Respondent. The NC Interconnection Procedures apply to all interconnection requests pending at the time of the May 15, 2015 Order and to all interconnection requests submitted thereafter.

**B. The NC Interconnection Standard**

10. The pertinent provisions and requirements of the Interconnection Standard and the June 9, 2008 Order are as follows.

Interconnection Request

11. In order to interconnect a QF to Respondent's electric system, the interconnection customer must submit an Interconnection Request to Respondent, along with the required processing fee or deposit. *See* Section 1.3 of the NC Interconnection Standard.

Interconnection Queue Position

12. After the interconnection customer submits an Interconnection Request, Respondent must assign a queue position to the interconnection customer based on the date- and time-stamp of the Interconnection Request. *See* Section 1.6 of the NC Interconnection Standard. The queue position of each Interconnection Request shall be used to determine the cost responsibility for the upgrades necessary to accommodate the interconnection. Respondent is permitted to study Interconnection Requests serially or in clusters for the purpose of the System Impact Study, if required, in accordance with the required timelines on the NC Interconnection Standard. *See* Section 1.6 of the NC Interconnection Standard.

Scoping Meeting

13. A Scoping Meeting is required to be held within ten (10) business days

after the Interconnection Request is deemed complete, or as otherwise mutually agreed to by the parties. *See* Section 4.2.1 of the NC Interconnection Standard. During the Scoping Meeting, the parties shall discuss whether Respondent should perform a Feasibility Study or proceed directly to a System Impact Study. *See* Section 4.2.2 of the NC Interconnection Standard.

#### Feasibility Study

14. If the parties agree that a Feasibility Study should be performed, Respondent is required to provide the interconnection customer with a Feasibility Study Agreement within five (5) business days after the Scoping Meeting. *See* Section 4.2.3 of the NC Interconnection Standard.

15. If the parties agree not to perform a Feasibility Study, but to proceed directly to a System Impact Study or Facilities Study, Respondent is required to provide the interconnection customer with either a System Impact Study Agreement or a Facilities Study Agreement no later than five (5) business days after the Scoping Meeting. *See* Section 4.2.4 of the NC Interconnection Standard.

#### System Impact Study

16. If a System Impact Study is required, the interconnection customer must return a signed System Impact Study Agreement within thirty (30) business days of receiving it. *See* Section 4.4.4 of the NC Interconnection Standard. The purpose of the System Impact Study is to identify any electrical system impacts from the interconnection, including any impact of the interconnection on the reliability of the electric system. *See* Section 4.4.2 of the NC Interconnection Standard.

17. If the System Impact Study shows no potential for adverse system

impacts, Respondent shall send the interconnection customer a Facilities Study Agreement within five (5) business days. *See* Section 4.4.7 of the NC Interconnection Standard.

#### Facilities Study

18. The interconnection customer is required to return the executed Facilities Study or a request for an extension of time within thirty (30) business days of receiving it. *See* Section 4.5.3 of the NC Interconnection Standard.

19. Respondent may require a deposit of the good faith estimated costs for the Facilities Study. *See* Section 4.5.4 of the NC Interconnection Standard.

#### Interconnection Agreement

20. If the System Impact Study shows that no additional facilities are required, Respondent is required to provide the interconnection customer an executable Interim Interconnection Agreement within five (5) business days. *See* Section 4.4.7 of the NC Interconnection Standard.

21. Also, upon completion of the Facilities Study, Respondent is required to provide the interconnection customer an executable Interim Interconnection Agreement within five (5) business days. *See* Section 4.5.6 of the NC Interconnection Standard.

22. The interconnection customer has thirty (30) business days, or another mutually agreeable timeframe, to sign and return the Interconnection Agreement. *See* Section 5.8 of the NC Interconnection Standard.

#### Written Notice of Failure to Comply

23. If the interconnection customer has not executed an Interconnection Agreement with Respondent prior to the effective date of the NC Interconnection



Procedures, the interconnection customer has thirty (30) days to demonstrate site control and to post the interconnection request deposit. *See* Section 1.3 of the NC Interconnection Standard.

24. If the interconnection customer does not demonstrate site control or post the interconnection deposit within the thirty (30)-day time frame, Respondent is required to provide written notice to the interconnection customer and allow an opportunity to cure. If the interconnection customer fails to comply after ten (10) business days of receiving the written notice, the interconnection customer will lose its queue position and its Interconnection Request will be deemed withdrawn. *See* Section 1.9 of the NC Interconnection Standard.

**C. The NC Interconnection Procedures**

25. The pertinent provisions and requirements of the Interconnection Procedures, and the May 15, 2015 Order and comments are as follows.

**Increased Cost for Interconnection Request to Reduce Respondent's Backlog.**

26. In order to interconnect a QF to Respondent's electric system, the interconnection customer must submit an Interconnection Request to Respondent, along with the required Interconnection Request Deposit. *See* Section 1.4 of the NC Interconnection Procedures. As part of the industry-wide effort to reduce Respondent's backlog of Interconnection Requests, Section 1.4 of the Interconnection Procedures increased the Interconnection Request Deposit required to be paid by each interconnection customer from \$1,000 in the previous Interconnection Procedures, to a minimum of \$20,000 in the current Interconnection Procedures, plus \$1.00 per kWac of capacity. *Id.* The Interconnection Request Deposit is intended to cover Respondent's

reasonably anticipated costs for staffing, administering and conducting the System Impact Study and the Facilities Study in accordance with the timelines set forth in the Interconnection Procedures. *Id.*

27. Subsequent to the adoption of the new Interconnection Process, Respondent's processing of Interconnection Requests has slowed rather than quickened.

Interconnection Queue Number

28. After the interconnection customer submits an Interconnection Request, Respondent must assign a queue number to the interconnection customer. *See* Section 1.7 of the NC Interconnection Procedures. The queue number of each Interconnection Request shall be used to determine the order in which each Interconnection Request is study is begun, as well as the cost responsibility for the upgrades necessary to accommodate the interconnection subject to any interdependency as described in Section 1.8. Respondent is required to process each Interconnection Request individually as defined in Sections 2, 3 and 4 of the NC Interconnection Procedures, subject to the applicable timelines contained therein.

Scoping Meeting

29. A Scoping Meeting shall be held within ten (10) business days after the Interconnection Request is deemed complete, or as agreed to by the parties. *See* Section 4.2.1 of the NC Interconnection Procedures. During the Scoping Meeting, the parties shall discuss whether Respondent should perform a Feasibility Study or proceed directly to a System Impact Study, a Facilities Study, or an Interconnection Agreement based on the complexity of the proposed interconnection for the customer. *See* Section 4.2.2 of the NC Interconnection Procedures.

### Feasibility Study

30. If the parties agree that a Feasibility Study should be performed, Respondent shall provide the interconnection customer a Feasibility Study Agreement no later than five (5) business days after the Scoping Meeting. *See* Section 4.2.3 of the NC Interconnection Procedures. The interconnection customer must return the executed Feasibility Study Agreement within fifteen (15) business days. *See* Section 4.3.2 of the NC Interconnection Procedures.

### System Impact Study

31. If a System Impact Study is required, the interconnection customer must return a System Impact Study Agreement signed by the interconnection customer within fifteen (15) business days of receiving it. *See* Section 4.3.1 of the NC Interconnection Procedures. The System Impact Study identifies any electrical system impacts from the interconnection, including any impact of the interconnection on the reliability of the electric system, and the preliminary estimated upgrade charge. *See* Sections 4.3.3 and 4.3.4 of the NC Interconnection Procedures. Respondent's System Impact Study Report will provide the preliminary estimated upgrade charge and the preliminary estimated interconnection facilities charge. *See* Sections 4.3.4 and 4.3.5 of the NC Interconnection Procedures. Section 10 of the System Impact Study Agreement states that the System Impact Study will also include any analysis of distribution and transmission impacts as may be necessary to understand the impact of the proposed generating facility on the electric system operation.

32. Section 4.3.2 of the NC Interconnection Procedures increased the Interconnection Request timeframe that Respondent is required to complete the System

Impact Study from thirty (30) business days to fifty (50) business days if distribution system impacts are studied. The Interconnection Procedures also increase the timeframe that Respondent is required to complete the System Impact Study if there are transmission system impacts from forty-five (45) business days to sixty-five (65) business days, and an additional twenty (20) business days are allowed only if the study involves an affected system. *See* Section 4.3.2 of the Interconnection Procedures and Sections 16, 17 and 19 of the System Impact Study Agreement. The required timeframe under the NC Interconnection Procedures to complete the System Impact Study was extended from the previous timeline, and agreed to by the utilities, to ensure that the utilities would have adequate time to complete full studies.

#### Interconnection Agreement and Scheduling

33. If requested by the interconnection customer following delivery of the System Impact Study Report, Respondent is required to provide the customer an executable Interim Interconnection Agreement within ten (10) business days. *See* Section 4.3.8 of the NC Interconnection Procedures. Also, at the time that the System Impact Report is delivered to the interconnection customer, Respondent shall deliver an executable Facilities Study Agreement to the customer. *See* Section 4.3.9 of the NC Interconnection Procedures.

34. Within ten (10) business days of receipt of the Facilities Study Report, the interconnection customer shall request a construction planning meeting that shall be scheduled within ten (10) business days of the interconnection customer's request. *See* Sections 5.1 and 5.2 of the NC Interconnection Procedures. Within fifteen (15) business days of the construction planning meeting, Respondent is required to provide an

executable Final Interconnection Agreement. *See* Section 5.1.4 of the NC Interconnection Procedures.

**D. Respondent's Obligation to Comply with Required Timeframes to Process Interconnection Requests**

35. Section 5.1 of the NC Interconnection Standard and Section 6.1 of the NC Interconnection Procedures require Respondent to make “reasonable efforts” to meet all time frames provided in the Interconnection Procedures, including processing Interconnection Requests. The provisions further provide that if Respondent cannot meet a deadline, Respondent must “notify the Interconnection Customer, explain the reason for the failure to meet the deadline, and provide an estimated time by which it will complete the applicable interconnection procedure in the process.” The May 15, 2015 Order made it clear that one of the purposes of the revised Interconnection Procedures is that it “establish[es] clearly defined and enforceable deadlines for both the utilities and the QFs”. *See* Page 8 of the May 15, 2015 Order.

36. The May 15, 2015 Order generally addressed the necessity for increased transparency and communication by Respondent for the purpose of allowing an orderly flow to the study of Interconnection Requests. This was to be accomplished by making information available regarding the status of the interconnection queue, increasing cooperation between Respondent and the interconnection customers wishing to interconnect at an early stage in the process through scoping meetings and detailed correspondence.

**E. Respondent's Implementation of Advanced Study Criteria**

37. Upon information and belief, on or before June 24, 2016, Respondent

halted processing interconnection requests, in direct violation of the Interconnection Procedures, as part of Respondent's unilateral effort to implement a new interconnection screen called Circuit Stiffness Review ("CSR"). CSR is a proxy technical screen standard designed to ensure that the electric distribution system has sufficient capability or "stiffness" to support a proposed generating facility interconnection. CSR applies a stiffness ratio threshold of 25. For those interconnection requests that do not meet the CSR threshold, additional advanced studies screens are required. Upon information and belief, approximately eighty percent (80%) of all interconnection requests in Respondent's queue had not or would not meet Respondent's CSR threshold of 25. To date, it has not been substantiated to Complainants that the use of CSR is based on accepted industry practices or that the selected CSR threshold of 25 bears any relationship to power quality issues that Respondent may have experienced in its system. The use of CSR is also not common among other utilities that have significantly higher QF penetration than Respondent. Any tests relating to power quality or reliability should be part of the System Impact Study of the established Interconnection Procedures, and Respondent is obligated to conduct such tests within the time frames described in the NC Interconnection Procedures. The inclusion of CSR as a new study screen did not change the obligations of Respondent to meet the time frames required by the NC Interconnection Procedures. Without consent from the QF industry, Respondent began applying CSR to interconnection requests on July 7, 2016, and further delayed work on the queue as a result of such application.

**F. Complainant Younts PV's Compliance with Interconnection Requirements**

38. Complainant Younts PV1 has complied in full with all applicable provisions of the NC Interconnection Standard and the NC Interconnection Procedures.

39. On June 6, 2013, Complainant Younts PV1 submitted an Interconnection Request for a 5 MW generating facility, and paid the required deposit. In the Interconnection Request, Complainant Younts PV1 provided evidence of site control, as required by Section 1.3 of the NC Interconnection Standard.

40. Thereafter, Respondent deemed Complainant Younts PV1's Interconnection Request application to be complete.

41. On July 31, 2015, Complainant Younts PV1 provided payment of additional deposit.

42. On November 2, 2015, Complainant Younts PV1 provided written notice to Respondent that Respondent was 65 days late in completing the System Impact Study.

43. On July 15, 2016, Complainant Younts PV1 provided Respondent with a written Notice of Dispute, attached hereto as Exhibit A and incorporated herein by reference. As of July 15, 2016 when the Notice of Dispute was provided, Respondent had failed to complete the Facilities Study, and the System Impact Study was overdue by more than 170 business days.

44. Respondent failed to notify Complainant Younts PV1 that it would not meet the deadlines for completing the Facilities Study and the System Impact Study, failed to explain the reason for the failure to meet the deadlines, and also failed to provide an estimated time for completion of the Facilities Study and the System Impact Study.

**G. Respondent's Failure to Comply with Interconnection Requirements as to Complainant Younts PV1**

45. Despite Complainant Younts PV1's full compliance with the NC

Interconnection Standard and the NC Interconnection Procedures, Respondent has failed, and continues to fail, to comply with critical requirements of the interconnection requirements.

46. As of July 15, 2016, when Complainant Younts PV1 had provided Respondent with a written Notice of Dispute, Respondent had failed to timely complete the Facilities Study and the System Impact Study. Respondent failed to notify Complainant that it would not meet the deadline for completing the Facilities Study and the System Impact Study, failed to explain the reason for the failure to meet the deadline, and also failed to provide an estimated time for completion of the Facilities Study.

47. Due to Respondent's failure to comply with the required time frames in the NC Interconnection Procedures, Complainant Younts PV1 requested that Respondent complete the Facilities Study and the System Impact Study immediately.

48. Due to Respondent's failure to comply with the NC Interconnection Procedures in timely completing the Facilities Study and the System Impact Study, Complainant Younts PV1 has been substantially delayed in being able to execute an Interconnection Agreement. Such delay in being able to execute an Interconnection Agreement has materially prejudiced Complainant Younts PV1.

49. Respondent has still failed to complete the Facilities Study and the System Impact Study.

#### **H. Complainant Round Hill PV1's Compliance**

50. Complainant Round Hill PV1 has complied in full with all applicable provisions of the NC Interconnection Standard and the NC Interconnection Procedures.

51. On February 14, 2014, Complainant Round Hill PV1 submitted an



Interconnection Request for a 5 MW generating facility, and paid the required deposit. In the Interconnection Request, Complainant Round Hill PV1 provided evidence of site control, as required by Section 1.3 of the NC Interconnection Standard.

52. On July 1, 2015, Respondent requested evidence of site control and an additional deposit. Complainant Round Hill PV1 provided payment of the additional deposit on July 31, 2015, and it submitted evidence of site control on August 28, 2015.

53. On July 15, 2016, Complainant Round Hill PV1 provided Respondent with a written Notice of Dispute, attached hereto as Exhibit A. As of July 15, 2016, Respondent had failed to complete the System Impact Study within the time frame provided under the NC Interconnection Procedures, and the results of the Facilities Study were more than 170 business days overdue.

54. Respondent failed to notify Complainant Round Hill PV1 that it would not meet the deadlines for completing the System Impact Study and the Facilities Study, failed to explain the reason for the failure to meet the deadlines, and also failed to provide an estimated time for completion of the Facilities Study and the System Impact Study.

**I. Respondent's Failure to Comply with Interconnection Requirements as to Complainant Round Hill PV1**

55. Despite Complainant Round Hill PV1's full compliance with the NC Interconnection Standard and the NC Interconnection Procedures, Respondent has failed, and continues to fail, to comply with critical requirements of the interconnection requirements.

56. As of July 15, 2016, when Complainant Round Hill PV1 had provided Respondent with a written Notice of Dispute, Respondent has failed to timely complete the Facilities Study and the System Impact Study. Respondent failed to notify

Complainant that it would not meet the deadline for completing the Facilities Study and the System Impact Study, failed to explain the reason for the failure to meet the deadline, and also failed to provide an estimated time for completion of the Facilities Study.

57. Due to Respondent's failure to comply with the NC Interconnection Procedures in timely completing the Facilities Study and the System Impact Study, Complainant Round Hill PV1 has been substantially delayed in being able to execute an Interconnection Agreement. Such delay in being able to execute an Interconnection Agreement has materially prejudiced Complainant Round Hill PV1.

58. Respondent has still failed to complete the Facilities Study and the System Impact Study.

**J. Dispute Proceeding as to Complainants**

59. The allegations contained in the above paragraphs 1 through 58 of this Complaint are realleged and incorporated herein by reference as if fully set forth.

60. Since Respondent failed to resolve the disputes of Complainants by showing reasonable efforts to comply with the Interconnection Procedures, Complainants submitted a written Notice of Dispute on July 15, 2016 in good-faith efforts to informally resolve the disputes. Despite Complainants' efforts to informally resolve the disputes, Complainants have been unable to resolve the disputes.

**K. Respondent's Failure to Comply with the Interconnection Procedures**

61. The allegations contained in the above paragraphs 1 through 60 of this Complaint are realleged and incorporated herein by reference as if fully set forth.

62. Respondent failed to make reasonable efforts to timely complete the Facilities Studies and to meet the 50-business day time frame to complete the System

Impact Studies.

63. Respondent failed to notify Complainants that it would not meet the required 50-day deadline, and it provided no explanation for its failure to meet the deadline.

64. Respondent's delay in completing the Facilities Studies and System Impact Studies have substantially prejudiced Complainants.

65. Respondent is in violation of the NC Interconnection Standard and the NC Interconnection Procedures by (1) failing to make reasonable efforts to timely complete the Facilities Studies, (2) failing to make reasonable efforts to meet the 50 business day deadline for completing the System Impact Studies, providing ball park costs, and Interim Interconnection Agreements, and (3) failing to notify Complainants that it would not meet the deadlines and explain the reason for such failure.

66. Pursuant to the Interconnection Procedures, Respondent is not entitled to require additional studies and impose additional screens and requirements, including CSR and the Line Voltage Regulator screen, for Complainants' projects since the System Impact Studies would have been completed if Respondent had complied with the time frames required by the NC Interconnection Standard and the NC Interconnection Procedures.

**L. Violations of PURPA Obligations**

67. The allegations contained in the above paragraphs 1 through 66 of this Complaint are realleged and incorporated herein by reference as if fully set forth.

68. Due to Respondent's failure to comply with the Interconnection Procedures and failing to interconnect Complainants' facilities in a non-discriminatory

manner, Respondent is also in violation of the rules and regulations associated with PURPA by:

- a. Creating new interconnection screens and standards that apply to QF Interconnection Requests, and no other interconnection requests from load customers, that are discriminatory against QFs and have no reasonable basis for being added to the Interconnection Procedures as they required to be performed by Respondent as part of the agreed upon study process.
- b. Processing interconnection requests for QF customers through a single statewide queue impedes and delays the start of the System Impact Study review process for QFs by creating bottlenecks that other interconnection customers, such as new retail or industrial customers, do not experience.

*See* PURPA § 292.303 (c) and § 292.306.

69. The practical effect of Respondent's discriminatory treatment limits Complainants' ability to interconnect and sell its electrical output in violation of PURPA.

### **PRAYER FOR RELIEF**

WHEREFORE, Complainants respectfully requests that the Commission:

1. Find and conclude that Respondent failed to use reasonable efforts to comply with the NC Interconnection Standard and the NC Interconnection Procedures.
2. Order Respondent to (1) expeditiously complete the System Impact Study for Complainant Younts PV 1 without subjecting Complainant Younts PV1 to Respondent's recently implemented study criteria, and (2) expeditiously complete the System Impact Study for Complainant Round Hill PV 1 without subjecting Complainant

Round Hill PV1 to Respondent's recently implemented study criteria.

3. Grant such other and further relief as the Commission may deem just and proper.

Respectfully submitted this the 15th day of June, 2017.

A handwritten signature in dark ink, appearing to read "Karen", is written over a horizontal line.

Karen M. Kemerait  
Smith Moore Leatherwood LLP  
434 Fayetteville St., Suite 2800  
Raleigh, NC 27601  
Telephone: (919) 755-8764  
E-mail:  
karen.kemerait@smithmoorelaw.com

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

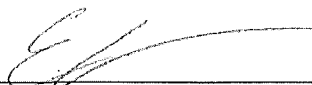
State of California

VERIFICATION

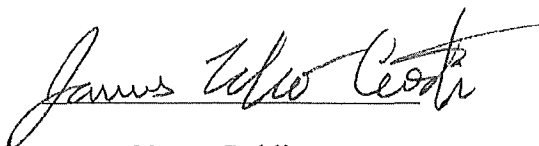
San Francisco COUNTY

Erik Stuebe, being first duly sworn, deposes and says that he is President of Ecoplexus, Inc., the Sole Member of Fresh Air II, LLC, that he has read the foregoing Complaint and that the same is true of his own knowledge, except as to those matters and things therein alleged upon information and belief, which he believes to be true.

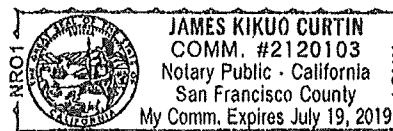
This the 15<sup>th</sup> day of June, 2017.



Sworn to and subscribed before me,  
this the 15 day of June, 2017.



Notary Public



My Commission expires: July 19, 2019

### CERTIFICATE OF SERVICE

I hereby certify that on this the 15th day of June, 2017, a true and exact copy of the foregoing document was duly served upon the following by either depositing same in a depository of the United States Postal Service, first-class postage prepaid, or by electronic delivery.

This 15th day of June, 2017.

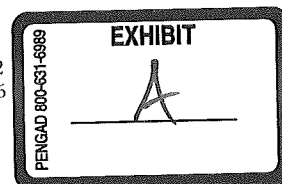
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FRESH AIR II, LLC

  
\_\_\_\_\_  
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Duke Energy Carolinas  
Attention: Customer Owned Generation - Mail Code ST13A  
P.O. Box 1010  
Charlotte, NC 28201  
Email: CustomerOwnedGeneration@duke-energy.com  
Phone: 866.233.2290

July 15, 2016

**Re. Notice of Interconnection Process Disputes, DEC Interconnection Queue**

Dear Sir or Madam:

In accordance with Section 6.2 of the North Carolina Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Generator Interconnections in effect by order of the NCUC filed in Docket No. E-100, Sub 101 on May 15, 2015 (the "New Standards"), Ecoplexus and its various Fresh Air Energy affiliates ("Ecoplexus") hereby disputes Duke Energy Progress' ("DEC") processing of the interconnection requests for the Round Hill and Younts projects for reasons specified herein. Capitalized terms used but otherwise not defined in this notice shall have the same meaning given under the New Standards.

**Round Hill, Queue Position 3391**

In early 2014, Ecoplexus filed an interconnection request to connect the <5MWac Round Hill project to DEC's system, and paid the requisite deposit. Similar to the other Ecoplexus projects, significant delays occurred on the DEC side and no formal study results were ever received. On July 1, 2015, DEC in accordance with the New Standards, DEC assigned checklist number 3391, requested evidence of site control, and an additional deposit. Ecoplexus paid the additional deposit amount on July 31, 2015, but requested additional information from DEC prior to submitting evidence of site control, which was eventually submitted on August 28, 2015. Ecoplexus has inquired as to the status of the System Impact Study on multiple occasions, and filed a Notice of Queue Error on February 16, 2016, but has never received a response however, the project is now referenced in queue data published by DEC.

The results of the Facilities Study Agreement are currently more than 170 Business Days overdue, therefore, Ecoplexus requests the results of the System Impact Study results conforming to attachment 7 of the New Standards be forwarded immediately.



**Younts, Queue Position 2906**

On June 6, 2013, Ecoplexus filed an interconnection request to connect the <5MWac Younts project to DEP's system, and paid the requisite deposit. DEC assigned queue number 2906. On November 11, 2014, DEC notified Ecoplexus that due to limited capacity in the transmission lines, approximately \$3M of transmission line upgrades were required, and requested that Ecoplexus confirm it wanted to move forward with a System Impact Study. Ecoplexus confirmed that it wished to proceed to the full System Impact Study. Similar to other Ecoplexus projects, Younts experienced significant study delays. Ecoplexus posted a supplemental deposit pursuant to the New Standards was on July 31, 2015 and DEC assigned checklist number 2906. The results of the System Impact Study for the Younts project are currently more than 170 Business Days overdue. Ecoplexus requests that the study be completed and the resulting report results conforming to Attachment 7 of the New Standards be promptly provided.

Ecoplexus is hopeful that the parties can resolve these disputes, and we respectfully request your earliest response to this notice, but in no event later than the ten business days required by the New Standards. Please route all correspondence and notifications through Jacob Pundyk.

Jacob Pundyk  
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Sincerely,



Joseph M DeVito  
Senior Vice President of Development  
Ecoplexus, Inc.