

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

DOCKET NO. SP-13695, SUB 1

In the Matter of:	)	ACCION GROUP, LLC, THE CPRE
Petition for relief of	)	INDEPENDENT ADMINISTRATOR,
Orion Renewable Resources LLC	)	

Independent Administrator's Post Hearing Brief

NOW COMES, Accion Group, LLC, the Independent Administrator for the Competitive Procurement of Renewable Energy Program ("**CPRE**" or "**Program**") (hereinafter "**IA**" or "**Accion**") through its attorneys, The Crisp Law Firm, PLLC, for the purpose of providing the North Carolina Utilities Commission (hereinafter, "**NCUC**" or "**Commission**") with factual information regarding the CPRE Tranche 1 solicitation as it relates to the Petition for Relief ("**Petition**") filed by Orion Renewable Resources, LLC ("**Petitioner**" or "**Orion**"). The information provided herein is supplemental to what was presented during the November 2, 2020 hearing, and as directed by the Commission, the IA will not repeat the testimony previously provided. The IA agrees with the representations of Duke Energy Carolinas, LLC ("**Duke**" or "**DEC**") in its Post-Hearing Brief and will not repeat those arguments.

**I. Introduction and Summary Position**

Orion posits that the Avoided Cost Threshold as defined in Section IV of the Request For Proposal (the "**RFP**") was synonymous with avoided cost for the full 20-year term of a Power Purchase Agreement ("**PPA**"), and that the IA's evaluation of Proposals was limited to the tables set forth in the RFP. This is factually incorrect. Orion failed to disclose to the Commission that it received a PPA in Tranche 2 for the same project that was found non-competitive in Tranche 1. Indeed, it was the IA and Duke that disclosed this fact. Further, Orion did not propose how the Commission should resolve this dispute as it would impact other Proposals and the CPRE program,

or disclose the cost to customers if the Tranche 2 PPA were amended to reflect the pricing bid in Tranche 1. When Orion, in a responsive pleading, requested a Tranche 1 PPA, it failed to disclose the magnitude of the windfall profits the Petitioner would reap. These half-disclosures, alone, should be reason for the Commission to deny Orion's requested relief. Permitting a disappointed Market Participant ("**MP**") to challenge the RFP over a year after the completion of the Stakeholder sessions and draft document comment process established by the Commission undermines the establishment of a truly competitive procurement process in North Carolina.

## **II. Discussion**

The avoided cost tables were levelized composites of hourly avoided costs to be used to calculate the hourly revenues for Proposals selected for a PPA for the identified pricing periods. The levelized prices in CPRE Tranche 1 "Avoided Costs Threshold" table were based on a calculation of avoided costs for every hour of the 20-year PPA timeframe and assumed avoided capacity benefits based on generation that was available in every hour of the year (unlike solar generation). MPs were required to bid a single decrement to the composite Avoided Cost Threshold, and the online Proposal form would not accept pricing above the composite Avoided Cost Threshold. The online Proposal form also calculated what the MP would be paid in the pricing period, if it were awarded a PPA.

While the RFP tables presented the Avoided Cost Threshold to be used along with the price decrement to determine the Proposal PPA pricing cost of the hourly energy and capacity generated by the facility included in a Proposal, the IA's evaluation method determined the net benefit derived from each Proposal's hourly production over the 20-year term of the PPA by using the detailed hourly (8760 hours by 20 years) avoided costs provided by Duke. That detailed 175,200

hourly avoided costs matched hour by hour with each MP's 175,200 hourly energies to be delivered to the grid, using the information provided by the MP with each Proposal. Each hourly avoided cost used in the evaluation is higher or lower than the related pricing period prices in the tables. Therefore, the net benefit of each proposal is determined by the revenues derived using the table and the cost savings determined by the detailed evaluation model as described in the RFP, the Stakeholder sessions, and the Q&A on the IA Website. The net benefit is the sum of the avoided energy costs plus the avoided capacity costs, minus the Proposal PPA pricing cost, and minus any T&D system upgrade costs. The net benefit identifies the savings to customers from the energy and capacity provided by each Proposal. The avoided cost tables define a three tier price approach (summer peak, non-summer peak, and off-peak). The three values are utilized to cover 20 years of 8760 hours. There are four sets of three tier prices applicable for distribution versus transmission connection located on the two unique balancing areas, DEC and Duke Energy Progress.

#### **Avoided Costs Threshold for Tranche 1**

<b>Transmission Connected Projects</b>				
<b><u>Avoided costs (\$/MWh)</u></b>	<b><u>DEC</u></b>		<b><u>DEP</u></b>	
	<b><u>Summer</u></b>	<b><u>Non-Summer</u></b>	<b><u>Summer</u></b>	<b><u>Non-Summer</u></b>
<b><u>Capacity + Energy On Peak</u></b>	\$58.00	\$74.90	\$57.40	\$78.20
<b><u>Energy Off Peak</u></b>	\$36.40		\$35.70	

<b>Distribution Connected Projects</b>				
<b><u>Avoided costs (\$/MWh)</u></b>	<b><u>DEC</u></b>		<b><u>DEP</u></b>	
	<b><u>Summer</u></b>	<b><u>Non-Summer</u></b>	<b><u>Summer</u></b>	<b><u>Non-Summer</u></b>
<b><u>Capacity + Energy On Peak</u></b>	\$59.40	\$76.70	\$58.50	\$79.70
<b><u>Energy Off Peak</u></b>	\$37.20		\$36.20	

#### **Seasonal Hourly Definitions**

- Seasonal hourly definitions are consistent with Rate Schedule PP (NC) Option B.
- Summer Months -- June 1 through September 30.
- Non-Summer Months -- October 1 through May 31.

- Summer On-Peak Period Hours – Monday through Friday, beginning at 1 P.M. and ending at 9 P.M.
- Non-Summer On-Peak Hours – Monday through Friday beginning at 6 A.M. and ending at 1 P.M.
- Off-Peak Period Hours shall be all other weekday hours, all Saturday and Sunday hours, and all Holiday Hours.
- Off-Peak Holiday Hours – All hours for the following holidays: New Year’s Day, Memorial Day, Good Friday, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day.

CPRE Tranche 1 RFP at 11.

Orion’s implication that the MPs were unaware of the evaluation methodology the IA would use is erroneous. As directed by the Commission, the IA conducted three Stakeholder sessions. The draft RFP documents were fully vetted during those sessions and the evaluation process explained. Orion personnel, including the witness at the November 2, 2020 hearing, participated in each session. While there was extensive discussion of the evaluation methodology during those sessions, no stakeholder challenged the evaluation process or asserted that the IA should not use the detailed hourly 20-year avoided cost calculations for evaluation of Proposals. Similarly, as directed by the Commission, the IA conducted a “comment period” during which MPs were provided with the draft PPA and RFP and requested to help draft the documents. Neither Orion nor any other MP objected to the evaluation methodology detailed in the RFP, requested clarification, or in any other way identified a problem with the evaluation method the IA used.

N.C. Gen. Stat. § 62-110.8(b)(2) caps the price at which Duke procures CPRE resources at the current forecast of its avoided cost calculated over the term of the PPA “*consistent with the Commission-approved avoided cost.*” Commission Rule R8-71(b)(2) defines “Avoided cost rate” as the long-term, levelized avoided energy and capacity costs utilizing the methodology most recently approved by the Commission. In accordance with N.C. Gen. Stat. § 62-110.8(b)(2), the Tranche 1 RFP did, in fact, identify the maximum bid price based on the then current Commission-

approved avoided cost methodology (such prices, the “Avoided Cost Threshold”) and all bidders were required to bid a decrement to such Avoided Cost Threshold.

However, while N.C. Gen. Stat. § 62-110.8(b)(2) establishes a maximum price on bids selected through CPRE (i.e., a “cap”), it does not mandate that the IA and Duke must select each and every bid that submits a bid price below the Avoided Cost Threshold subject only to the total CPRE procurement total. Instead, under the CPRE Rule (R8-71), the IA is given wide latitude to evaluate, provided the result did not exceed the Avoided Cost Threshold. Orion failed to establish that the Avoided Cost Threshold was defined as the avoided cost cap and that the composite PPA pricing guidance included in the Avoided Cost Threshold table in the Tranche 1 RFP must be used to evaluate Proposals, as opposed to the IA methodology which used the hourly Avoided Cost calculated by Duke for each hour of the 20-year PPA.

### **III. Remedy**

Award of a Tranche 1 RFP, and the revocation of the Tranche 2 PPA awarded Orion, would impose a significant increased cost to Duke customers. The IA believes such a result would be contrary to the intent of the CPRE program, and that the evaluation standards used by the IA were consistent with N.C. Gen. Stat. § 62-110.8 and the Commission’s rules.

### **IV. Conclusion**

Accordingly, for the reasons set forth herein, and based on the record established by the Commission, the IA respectfully requests that Orion’s request be denied.

Respectfully submitted,

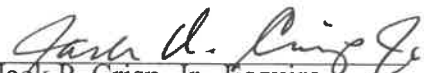
Accion Group, LLC  
Through Its Attorneys  
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**CERTIFICATE OF SERVICE**

I certify that a copy of Accion Group, LLC's, The CPRE Independent Administrator, Post Hearing Brief in Docket No. SP-13695, SUB 1, has been served by electronic mail, hand delivery, or by depositing a copy in the United States mail, postage prepaid, properly addressed to parties of record.

This the 4th day of January, 2021.

  
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Jack P. Crisp, Jr., Esquire