

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2 SUB 1297

DOCKET NO. E-7 SUB 1268

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	CLEAN POWER SUPPLIERS
Duke Energy Carolinas, LLC and)	ASSOCIATION’S AND CAROLINAS
Duke Energy Progress, LLC 2022)	CLEAN ENERGY BUSINESS
Procurement Pursuant to Session)	ASSOCIATION’S MOTION FOR
Law 2021-165, Section 2(c))	RECONSIDERATION

Pursuant to N.C. Gen. Stat. § 62-80 and Rule 1-7 of the North Carolina Utilities Commission Rules and Regulations, Intervenor Clean Power Suppliers Association (“CPSA”) and the Carolinas Clean Energy Business Association (“CCEBA”) (collectively, “Solar Intervenor”) hereby move for limited reconsideration of the Commission’s June 9, 2022, Order Approving Request for Proposals and Pro Forma Power Purchase Agreement Subject to Amendments (“RFP Order”), because it proceeds on an incomplete and incorrect understanding of the impact of the emergency declaration issued by the Biden administration on June 6 (“the Emergency Declaration”). Contrary to claims made in Duke’s June 7 reply comments, on which the Commission solely relied, the Emergency Declaration does not “substantially if not completely mitigate CPSA/CCEBA’s primary concern about market uncertainty due to possible new tariff action during the bid window,” and the RFP must still allow the opportunity for an upward pricing adjustment. If it does not, then initial bids must price in the risk of additional tariffs, for the reasons described below.

A. BACKGROUND

1. On June 1, 2022, Duke filed its proposed final RFP and pro forma PPA, as well as comments in support of the Proposed RFP. The proposed RFP would require Controllable PPA Track market participants to submit a revised “Part A” bid on or about April 3, 2023. Proposed RFP Sec. IV.D (p. 19). As described by Duke, this would allow bidders “to improve their pricing from their original bid due to factors such as a potential Solar Investment Tax Credit (‘ITC’) extension or lower solar equipment costs[.]” Duke Comments at 3.

2. On June 3, the Solar Intervenors filed comments on the Proposed RFP. The Solar Intervenors were generally supportive of the bid refresh mechanism, but objected to the proposed “one-way” refresh, noting that because of the risk of additional solar module tariffs arising from the Auxin Solar antidumping / countervailing duties petition (“the AD/CVD petition”), a one-way refresh was likely to result in higher initial bids in the RFP, and would actually be detrimental to ratepayers.

3. In its comments on the Proposed RFP, the Public Staff also expressed concern about the impacts of the AD/CVD Petition and investigation, noting that “it may have significant impacts on the viability of the 2022 RFP, particularly if the repricing mechanism does not allow for price increases to reflect any tariffs imposed on imported solar panels.” *Id.* at 7-8.

4. On June 6, President Biden issued an emergency declaration temporarily extending, for a period of 24 months, the duty-free importation of solar cells and modules from the countries identified in the AD/CVD Petition (Attachment A) (“the Emergency Declaration”). For a period of up to 24 months from the Emergency Declaration, solar modules may be imported from those countries without facing additional duties, and

retroactive duties (which had been sought in the AD/CVD Petition) will not be imposed on modules imported during that time. However, the Secretary of Commerce has stated that Department's investigation into the AD/CVD Petition will continue and may result in the imposition of additional tariffs after the 24-month emergency period has ended. (See Attachment B)

5. One June 7, Duke filed a Response to Public Staff and Clean Power Suppliers Association/Clean Energy Business Alliance Comments on 2022 Solar Procurement Program RFP and pro forma PPA ("June 7 Response"), in which it stated that the Emergency Declaration "substantially if not completely mitigate CPSA/CCEBA's primary concern about market uncertainty due to possible new tariff action during the bid window and counteracts the argument that a bid refresh in the upward direction will be warranted." June 7 Response at 3. As far as the Joint Intervenors know, Duke did not consult with any potential bidders or other members of the solar industry before making this claim.

6. On June 10, the Commission issued the RFP Order, in which it noted "the impact that market pressures are having on solar developers," but nonetheless concluded that an upward pricing adjustment was not necessary for the bid refresh. The Commission did not explain its reasoning in detail, but noted that it "finds the Biden Administration's announcement material in the determination of this matter." RFP Order at 4.

B. REQUEST FOR RECONSIDERATION

Duke's claim, in its June 7 letter, that "the Auxin Solar AD/CVD Petition risk has largely been mitigated by recent events" did not accurately describe the impacts of the President's declaration. Because the Commission's finding that an upward pricing adjustment is inappropriate was premised entirely on this claim, it should be reconsidered.

Pursuant to G.S. § 62-80, the Commission may, in its discretion, rescind, alter, or amend

an order upon reconsideration. *State ex rel. Utilities Comm’n v. MCI Telecommunications Corp.*, 132 N.C. App. 625, 630, 514 S.E.2d 276, 280 (1999). Such action may not be taken arbitrarily or capriciously, but may be warranted by some change in circumstances or a misapprehension or disregard of a fact that provides a basis for the Commission to rescind, alter, or amend a prior order. *State ex rel. Utilities Comm’n v. North Carolina Gas Service*, 128 N.C. App. 288, 293-294, 494 S.E.2d 621, 626, rev. denied, 348 N.C. 78, 505 S.E.2d 886 (1998). Additional evidence or a change in circumstances may justify reconsideration or alteration of a Commission Order. *Id.*¹

The Joint Commenters anticipate that Emergency Declaration will, in the near term, mitigate the major disruptions in the solar module supply market that have arisen from the AD/CVD Petition. However, the Auxin petition remains pending before the Department of Commerce and, while CPSA believes that it lacks merit, there is a very real possibility that Commerce will rule in Auxin’s favor and impose substantial tariffs on imported panels that would go into effect in June of 2024.

Because of long lead times for interconnection, most solar projects procured in the 2022 Procurement will not achieve commercial operation until 2026, or for any projects contingent on significant network upgrades, potentially until 2027. Although some solar project developers receiving 2022 RFP awards have the ability to procure and import solar modules well before construction begins and therefore may be able to take advantage of temporarily lower panel prices resulting from the Emergency Declaration, many other developers may not be able to do so. Procuring and importing panels well in advance of

¹ Because the Commission had not established any procedural deadlines in the matter past the June 3 deadline for comments on the Draft RFP, there were no clear timelines or an opportunity to provide a response to Duke’s June 7 comments. The Solar Intervenors were in the process of filing comments responsive to the June 7 letter when the RFP Order was issued.

construction is burdensome and costly, in direct proportion to the amount of time that panels will be purchased and held unused. Those costs must be considered in bid pricing for the procurement. Moreover, bidders in the 2022 Procurement will not know what their interconnection lead time (and therefore how long they must hold panels before they can commence construction, achieve commercial operation, and start generating revenue) is likely to be until after the DISIS Phase 2 analysis has been conducted.

The upshot is that, while the Emergency Declaration provides partial, short-term relief from some of the negative consequences of the AD/CVD Petition, it by no means fully mitigates those impacts. Accordingly, the Emergency Declaration does not mitigate the risk of the AD/CVD Petition for most projects, and the reasons for allowing symmetrical re-pricing in the 2022 RFP, as stated in the Solar Intervenors' comments, still stand. Any concern about "gaming" the RFP via upward bid re-pricing can be addressed by clarifying that upward price adjustments would only be permitted if the Department of Commerce either decides to impose additional tariffs in response to the AD/CVD petition, or fails to conclude its investigation by the time of re-pricing (in which case the risk of tariffs must still be factored into pricing).

C. REQUEST FOR EXPEDITED CONSIDERATION

The resolution of the issues prompting this Motion for Reconsideration is critical to the development of a successful 2022 RFP that will procure solar resources at the least cost to ratepayers. Accordingly, the Solar Intervenors respectfully request that the Commission consider this Motion for Reconsideration on an expedited basis.

D. CONCLUSION

For the reasons set forth above, the Solar Intervenors request that the June 10 Order be revised in the following respect:

1. The Bid Refresh Mechanism in the Final RFP shall permit revised Part A bids to exceed the original Part A bid pricing, if the Department of Commerce either (a) does not conclude its investigation into the AD/CVD petition by the time of re-pricing, or (b) imposes additional tariffs on imported solar modules as a result of the AD/CVD Petition.

Respectfully submitted this the 13th day of June 2022.

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CERTIFICATE OF SERVICE

I hereby certify that all persons on the Commission's docket service list have been served a true and accurate copy of the foregoing Motion for Reconsideration by hand delivery, first class mail, deposited in the U. S. Mail, postage pre-paid, or by e-mail transmission with the party's consent.

This 13th day of June, 2022.

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