

**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)	ORDER DENYING MOTION
Policy Changes)	FOR STAY PENDING APPEAL

BY THE PRESIDING COMMISSIONER: On March 23, 2023, in the above-captioned proceeding the Commission issued its Order Approving Revised Net Metering Tariffs (NEM Order). Among other directives, the NEM Order approved Duke Energy Progress, LLC's and Duke Energy Carolinas, LLC's (collectively, Duke) revised net energy metering tariffs effective July 1, 2023, for a period of four years and approved the Proposed Bridge Rate as described in the May 19, 2022 Stipulation agreed to by Duke and the North Carolina Rooftop Solar Installers.

On April 19, 2023, pursuant to N.C. Gen. Stat. § 62-90(a), Intervenors Environmental Working Group (EWG), 350 Triangle, 350 Charlotte, the North Carolina Alliance to Protect Our People and Places We Live (NC-APPPL), NC WARN, North Carolina Climate Solutions Coalition (NCCSC), and Sunrise Movement Durham Hub filed a Joint Motion for an Extension of Time to File Notice of Appeal and Exceptions, seeking an additional 30 days to appeal the NEM Order.

On April 20, 2023, the Commission issued an order extending the deadline for all parties to file notice of appeal and exceptions to May 22, 2023.

On May 17, 2023, following requests from 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., Yes Solar Solutions, and Duke, the Commission issued an order extending the effective date to implement the approved NEM tariffs from July 1, 2023, to October 1, 2023.

On May 18, 2023, EWG, 350 Triangle, 350 Charlotte, NC-APPPL, NC WARN, NCCSC, Sunrise Movement Durham Hub, and Donald Oulman (collectively, Joint Appellants) filed a Joint Notice of Appeal and Exceptions to the Commission's March 23, 2023 NEM Order.

SUMMARY OF THE PLEADINGS

Joint Motion for Stay Pending Appeal

Also on May 18, 2023, Joint Appellants filed a Motion for Stay Pending Appeal, requesting that the Commission stay enforcement of the NEM Order during the pendency of the appeal. In support of the Motion, Joint Appellants state that the NEM Order has significant implications for residential rooftop solar customers and installers throughout North Carolina and, if implemented, the revised NEM tariffs will significantly reduce the savings of rooftop solar customers. Joint Appellants contend that the NEM Order should be reviewed on appeal before allowing such widespread results. Joint Appellants further state that the request for a stay pending appeal will not materially delay the implementation of any proposed tariffs, nor will the request result in prejudice to Duke.

Duke's Memorandum in Opposition to Joint Motion for Stay Pending Appeal

On June 7, 2023, Duke filed a Memorandum in Opposition to the Motion for Stay Pending Appeal. Duke argues that the requested stay, which would maintain the existing NEM rate structure during the pendency of the appeal, would prolong, possibly for years, existing cross-subsidies and thus be counter to justice, public policy, and House Bill 589's express instruction for the Commission and the utilities to establish NEM rates "that ensure that the net metering retail customer pays its full fixed cost of service," and avoid cross-subsidization. N.C.G.S. § 62-126.4(b). See also N.C.G.S. § 62-126.2 (declaring "as a matter of public policy" that "cross-subsidization should be avoided.").

In addition, Duke contends that any stay could have the effect of voiding or significantly minimizing the effect of the NEM Order. The NEM tariffs are in effect for a four-year period and, according to Duke, an appeal could last for years. Duke states that by the time the appeal of the NEM Order has concluded, a significant portion of the effective period of the tariffs will likely have lapsed. Thus, Duke contends that a stay would be unjust because it would materially delay and limit the effect of the NEM Order.

Duke further contends that any stay of the NEM Order could also stay Duke's development of a pilot program to evaluate operational impacts to the electric system of behind-the-meter residential solar plus energy storage — a pilot program the Commission ordered on March 23, 2023, in Docket Nos. E-2, Sub 1287 and E-7, Sub 1261. Order Declining to Approve Proposed Smart Saver Solar Program and Requiring Development of Pilot Program, *Application by Duke Energy Progress, LLC for Approval of Smart Saver Solar Energy Efficiency Program*, Nos. E-2, Sub 1287 and E-7, Sub 1261 (N.C.U.C. Mar. 23, 2023) (Pilot Program Order). Duke states that pursuant to the Pilot Program Order, Duke must develop a pilot program by June 21, 2023, and participants in the pilot program would be served under the time-of-use rates and Bridge Rate set forth in the appealed NEM Order. According to Duke, a stay of the NEM Order in this docket and the rates set forth in the NEM Order could be problematic for and result in a stay of the pilot program.

DISCUSSION AND CONCLUSIONS

After careful consideration, the Presiding Commissioner finds that good cause exists to deny Joint Appellants' Motion for Stay Pending Appeal. Pursuant to N.C.G.S. § 62-95, "[p]ending judicial review, the Commission is authorized, *where it finds that justice so requires*, to postpone the effective date of any action taken by it." N.C.G.S. § 62-95 (emphasis added). In the NEM Order, the Commission found that Duke's revised NEM tariffs meet the statutory requirement to develop NEM rates that address a NEM customer's full fixed cost of service and concluded that certain NEM rate design elements are necessary to help abate subsidization of NEM customers by non-NEM customers. The Commission agrees with Duke that a continuation of the current NEM rate structure during the pendency of the appeal would prolong existing cross-subsidies and would be counter to House Bill 589's express intent. Based upon the foregoing, the Presiding Commissioner concludes that justice does not require a stay of the Commission's March 23, 2023 NEM Order.

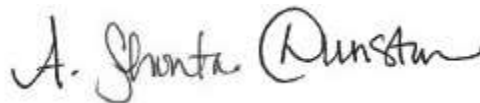
Further, in the NEM Order, the Commission acknowledged the parties' concerns, including several of the Joint Appellants', that energy storage was not specifically addressed in Duke's revised NEM tariffs. Accordingly, the Commission chose to address this issue in its Pilot Program Order in Docket Nos. E-2, Sub 1287 and E-7, Sub 1261, where the Commission directed Duke to develop a pilot program addressing the inclusion of storage as part of residential NEM generating facilities. Participants in that pilot program would be served under the time-of-use rates and Bridge Rate approved in the NEM Order. Thus, not only would a stay prolong existing cross-subsidies, it could potentially delay the development of a pilot program designed to examine the increasingly important role that energy storage may have in customer-sited generation.

IT IS, THEREFORE, ORDERED, that the Motion for Stay Pending Appeal filed by Joint Appellants in this docket on May 18, 2023, should be, and is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of June, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "A. Shonta Dunston". The signature is written in a cursive, flowing style.

A. Shonta Dunston, Chief Clerk